QB-2018-005408

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

[2021] EWHC 1111 (QB)

30 April 2021

Royal Courts of Justice
Strand, London, WC2A 2LL

Before :

MASTER DAVISON

- -

Between :

PAUL JAMIESON — **Claimant**

- and -

(1) WURTTEMBERGISCHE VERSICHERUNG AG
(2) BANK OF AMERICA MERRILL LYNCH — **Defendants**

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Mr Harry Steinberg QC (instructed by **Stewarts Law LLP**) for the **Claimant**
Ms Sarah Crowther QC (instructed by **DWF LLP**) for the **First Defendant**
Mr Richard Viney (instructed by **Clyde & Co LLP**) for the **Second Defendant**

Hearing date (via Microsoft Teams): 28 April 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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1. This short judgment should be read together with my judgment earlier this year under neutral citation number [2021] EWHC 178 (QB). The background is set out in that judgment and I will not repeat it.

2. At the conclusion of the hearing on 28 April 2021 I ordered that the stay of these proceedings imposed by the consent order of 28 September 2018 should be lifted. I also ordered that the applications of the defendants seeking orders that the court should decline jurisdiction should be dismissed. My decision followed the receipt of the response to the request under Art 29(2) of the Brussels Regulation (Recast) to the Munich Regional Court to inform this court, without delay, of the date when it was deemed seised of the claim; see the concluding part of my earlier judgment. I am setting out my reasons in writing so that the German court has them before it when it gives further consideration to the German proceedings, which will be at a hearing on 6 May next week.

3. The answer to the court's request is dated Monday 15 March 2021 and is from Judge Sabine Rübner, the Presiding Judge of the Court. In translation, the most relevant parts of the response are as follows:

> "Pursuant to Article 32(1)(a) of the Brussels Regulation (Recast) the Regional Court Munich I is considered seised on 13 June 2018."

As to the decision of the appeal court, Judge Rübner said this:

> "The view of the Regional Court as to the date of seisin remains valid. The ruling of the Munich Higher Regional Court of 14 December 2020 made no findings to the contrary in this regard."

4. Following those introductory paragraphs, Judge Rübner set out the legal reasoning that underpinned her response. The reasoning is closely aligned with that to be found in the Regional Court's original decision, which was dated 13 May 2020.

5. As Ms Crowther QC for the first defendant ("the insurers") acknowledged, the response to the question as to date of seisin is clear and unequivocal. The response clearly states that the date that the German court was deemed seised was 13 June 2018. That date was after the English action was commenced and it follows that it was the English court that was first seised.

6. But Ms Crowther submitted that there was a "confusion" in the underlying reasoning. The confusion lay in the German court's alleged failure to apply the proviso to Article 32(1)(a) correctly. I quote from paragraph 15 of her skeleton argument:

> "The date chosen by Judge Rübner is chosen 'because' it was 'the point in time' when Württembergische Versicherung AG had taken all steps necessary for the German court to serve the claim form on Mr Jamieson. This is, unfortunately, not the test under Article 32(1)(a). Those steps are expected to have taken place *subsequent* to the date of seisin, which is 'deemed' to be the date on which the claim form was initially lodged."

7. To put the submission in plain terms, Ms Crowther was saying that Judge Rübner had simply got it wrong. She further submitted that I should, in effect, ignore the response because the actions – as opposed to the words – of the German courts demonstrated that "they clearly consider themselves [still] seised of the proceedings". At best, the date of seisin was unclear and I should either seek further clarification or adjourn the hearing to await the outcome of the hearing before the German court on 6 May 2021.

8. My reasons for rejecting Ms Crowther's submissions are set out in the following paragraphs.

9. There is no ambiguity at all in the response of Judge Rübner. It is not permissible for me to question the reasoning that lies behind the response. If there had been a total absence of

reasoning, it would not have been permissible for me to question that either. I do not sit as a Court of Appeal from Judge Rübner and for me to challenge or debate her reasoning would be a breach of the principles of comity. The mechanism in Article 29(2) is for a question and an answer and not (as Mr Steinberg QC for the claimant pithily put it) a dialogue. The words "without delay" in Article 29(2) do not encourage a dialogue. Whilst there may be cases where to seek clarification would be appropriate, this is not one of them. The clarification which Ms Crowther invited me to seek would, in reality, be simply argumentative. What she and her clients want is not a clearer answer, but a different one.

10. It is true that the German courts continue to entertain the claim there. But that is not necessarily inconsistent with the finding that those courts were seised of the claim on 13 June 2018 (and therefore after the English court). The Higher Court did not find it necessary to clarify which court was seised first. They took an entirely different approach based upon jurisdiction, namely that the claim for a negative declaration was inadmissible because it undermined the right of an injured party under Articles 11(1)(b) and 13(2) to bring his claim in his country of domicile – which right was intended to ensure a regime more favourable to the "weaker party" in accordance with Recital 18 to the Recast Regulation. It appears to me that the claim is continuing in the German courts in order to work out the consequences of this ruling. It further appears that it is this question, i.e. the question of jurisdiction, that will be addressed at the hearing next week. That change of focus does not, it seems to me, alter or detract from the finding as to date of seisin.

11. I see no point in further adjournments of this claim to await the outcome of the 6 May 2021 hearing (or any other hearings) in Germany. As I have already said, it appears that the 6 May hearing will be addressing jurisdiction rather than seisin. Further, the German court's finding as to date of seisin and this court's response, which has been to lift the stay on the English proceedings, are likely to have the result of rendering the 6 May hearing redundant. Even if that was not the case, it is clear that the direction of travel of the German court is to terminate the German proceedings in favour of the English ones. In view of the conduct of the insurers, which reflects little credit upon them, that result does not seem unjust.

12. Although the issue before me is not strictly a matter of judicial discretion, I add that if I were not to "grasp the nettle" and lift the stay, I would be condemning the claimant to many months, (perhaps years), of delay, expense and uncertainty. Conversely, the insurers are not significantly disadvantaged by the lifting of the stay in this country. To the extent that they would wish to have a definitive ruling on the propriety of so-called 'torpedo' claims, they can and should seek such a ruling in a case where the German courts were indisputably first seised.

13. At the conclusion of the hearing, Ms Crowther and Mr Viney sought permission to appeal, which I refused. The circumstances of this claim are unusual. But that is not a reason to grant permission. The only error of approach that I was said, arguably, to have made was to have acted upon Judge Rübner's response to the Article 29(2) request without questioning her reasons. No authority was offered for the proposition that this was the wrong approach and considerations of comity and practicality and the interpretation of Article 29 itself all pointed in the opposite direction. It must, in those circumstances, be for the defendants to persuade an appellate court that there is a real prospect of success on appeal.

14. For the same reasons, I will not grant a stay of my order lifting the stay, that is to say I will not re-impose the stay pending an application for permission to appeal. Again, that must be a matter for an appellate court.