Disgruntled shareholders' appeal dismissed – "strong reasons" given by the Cayman Islands Court of Appeal affirming permanent anti-suit relief

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In a wide-ranging judgment of the Cayman Islands Court of Appeal ("**CICA**") handed down on 2 July 2024, the CICA dismissed an appeal against the grant of a permanent anti-suit injunction restraining the pursuit of proceedings in Pakistan ("the **Appeal**").

Dillon Eustace's Conal Keane and Niall Dodd acted for the successful respondent to the appeal, IGCF SPV 21 Limited ("**SPV 21**"), led by Graham Chapman KC of 4 New Square. A copy of the judgment is available **here**.

The key takeaways from the judgment, delivered by Justice of Appeal Smellie, are as follows:

- The clear and continuing breach of contractual obligations is to be considered a strong reason for the grant of an anti-suit injunction.
- The abandonment of a principal ground of appeal does not bode well for the success of an appeal.
- The rule in *Henry v Geoprosco* (stemming from an English Court of Appeal case about an alleged submission to the jurisdiction of a foreign court) will not be applied as common law in the Cayman Islands either on submission for the purposes of the recognition and enforcement of foreign judgments, or on submission to a foreign court as a consideration for the grant of an anti-suit injunction.

Background

In November 2022, SPV 21 applied to the Grand Court of the Cayman Islands for an anti-suit injunction to restrain two Cayman Islands entities, Al Jomaih Power Limited ("**Al Jomaih**") and Denham Investments Ltd ("**Denham**") (together,

"the **Appellants**") from pursuing an action commenced by them in Pakistan ("the **Pakistan Action**") where *ex parte* injunctive relief had been obtained which blocked SPV 21-nominated directors from taking their place on the Board of KEL. The Pakistan Action was issued in the High Court of Sindh Province against SPV 21, its managers, KES Power Limited ("**KESP**"), K-Electric Limited ("**KEL**") and various Pakistan government agencies.

The Pakistan Action is one of several pieces of litigation taken by the Appellants relating to the management of KESP, the majority shareholder of KEL - the main supplier of energy to Karachi, the largest city in Pakistan, with a population of more than 20 million. See Dillon Eustace's recent **article** on the failed attempt by the Appellants to strike out a petition presented to wind up KESP on a just and equitable basis.

The anti-suit injunction sought by SPV 21 was aimed at restraining the Appellants from acting upon the Pakistan injunction and from further pursing the Appellant's claims against SPV 21, its manager, KESP and KEL in breach of its clear and continuing contractual obligations.

In February 2023, the Grand Court granted interim injunctive relief restraining the pursuit of the Pakistan Action ("the **Interim Judgment**"), pending a full trial. Following the main trial of the application for an anti-suit injunction, in which evidence of expert witnesses was given, the Grand Court handed down its judgment ("the **Anti-Suit Judgment**") granting permanent anti-suit injunctive relief in favour of SPV 21.

The Appeal

The Appellants appealed the Anti-Suit Judgment on four grounds:

1. Whether the Pakistan Action was sufficiently concerned with the SHA to fall within the exclusive jurisdiction clause so as to justify granting any anti-suit injunction.

2. Whether by permitting the remainder of the Pakistan Action to continue against the government entities, a real risk of inconsistent findings was created.

3. Whether the Judge was plainly wrong to find that the Appellants had not established strong reasons for refusing to grant the anti-suit injunction.

4. In the alternative, whether the Judge was plainly wrong to prevent the Appellants from continuing to pursue the Pakistan Action against SPV 21 in an amended form.

Ground 1

In submissions at the hearing of the Appeal, the first ground of appeal was abandoned and it was remarked upon by Justice of Appeal Smellie that this was "*... only realistic, in light of the ample support from the factual background for the Judge's determination that the Pakistan action was clearly being pursued in breach of the SHA*."

Ground 2

The risk of multiplicity of proceedings and inconsistent outcomes was cited and relied upon by the Appellants but rejected by the CICA as providing strong reasons having discounted the risk – "*... None of this can be said to have escaped the Judge in his careful assessment of the evidence or in his reasoning and exercise of discretion...*" The bald assertion by the Appellants in written submissions that "*SPV 21 anyway can bring a claim in damages if denied an injunction*" was assessed as being not worthy of discussion by the CICA.

Ground 3

On the Appellants' third ground of appeal, there was a change of tack. It was submitted that the Judge had misdirected himself by failing to apply the proper rule, the rule in ***Henry v Geoprosco*** [1976] Q.B. 726 . They said that had the Judge directed himself according to that rule, the Judge would have concluded that SPV 21 had submitted to the Pakistan jurisdiction with the consequence that it should be obliged to continue to submit to the jurisdiction of the Pakistan Court to the conclusion of the Pakistan Action on its merits. However, *Henry v Geoprosco* was not a case about whether a party should be granted an anti-suit injunction by way of enforcement of an exclusive jurisdiction clause but was about whether an injunction should be granted against the recognition and enforcement of a foreign judgment. It was submitted that the rule in Geoprosco represents common law in the Cayman Islands. The CICA did not accept the submission on behalf of the Appellants that on the basis of Carr J's judgment in ***Strategic Technologies Pte Ltd v Procurement of the Republic of China Ministry of National Defence*** [2020] 1 WLR 3388 it can be said that "*The English Court has found as a fact that Cayman law would apply the*

principle states in Henry v Geoprosco as representing the common law."

Ground 4

The CICA held that there was no basis for entertaining the alternative approach proposed by the Appellants in their fourth ground of appeal, which had not been proposed to the Judge on an inter partes basis during course of the trial.

Conclusion

The breadth of the CICA Judgment reflects upon many important cross-border considerations that can, and do, arise when an anti-suit injunction to restrain foreign proceedings is sought. It will likely continue to be a leading reference point for those litigants seeking to obtain or oppose anti-suit relief.

The unsuccessful Appellants have sought leave from the CICA to appeal to the Privy Council.

If you wish to discuss this judgment or issues relating to anti-suit relief, please contact Conal or Niall.

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