Public Policy Defence against Foreign Money Judgment Fails

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Wednesday, June 24, 2020

Earlier this month, in Lenkor Energy Trading Dmcc ("Lenkor") v Puri ("Mr Puri") [2020] EWHC 1432 the High Court upheld an order granting summary judgment in favour of Lenkor in relation to a debt owed to it by Mr Puri under a Dubai judgment. Mr Puri’s argument that illegality tainting the underlying transaction made enforcement of the judgment contrary to public policy, was rejected.

Background

In 2014, Mr Puri, owner and sole shareholder of IPC Dubai ("IPC"), entered into a tripartite agreement ("Agreement") with Lenkor’s sister company ("LHK") and a third party ("Buyer") for the sale of cargoes of gasoil by LHK. Mr Puri signed cheques guaranteeing payment for cargo under the Agreement.

When the Buyer failed to make payments due under the Agreement, Lenkor sought to cash the cheques but there were insufficient funds in IPC’s account. Lenkor obtained judgment in civil proceedings in Dubai under a statutory provision which imposed personal liability on the drawer of the cheque – Mr Puri. An interest charge of 9% was also ordered to run from the due date of the cheques.
Meanwhile, in separate arbitration proceedings in London, brought by LHK against IPC and the Buyer, the arbitrator found that LHK’s claim against the Buyer for the contract price under the Agreement was tainted by illegality. LHK had falsified documents to make out that the product being supplied under the Agreement was High Speed Diesel when in fact it was an inferior type of gasoil.

**Lenkor’s Application for Summary Judgment**

In 2019, Lenkor applied for summary judgment in England to enforce the judgment of the Dubai Court against Mr Puri.

Mr Puri resisted the application on the basis that recognising the Dubai Court’s judgment would offend public policy on the grounds of; (i) the illegality of the underlying agreement because of the falsified documents; (ii) piercing the corporate veil, and (iii) excessive penalty.

The Court rejected Mr Puri’s arguments granting summary judgment in favour of Lenkor. Mr Puri was given permission to appeal the Court’s finding in relation to point (i).

**Mr Puri’s Appeal to the High Court**

The appeal was dismissed.

For the public policy defence to succeed, the Court said that it is the enforcement of the foreign judgment itself, not the underlying transaction, which must offend public policy. The Dubai judgment was based on the legal consequences of signing cheques in Dubai without sufficient funds to meet them. Mr Puri had not identified any rule which required the Court to inquire into the underlying transactions. The Court was simply considering the enforcement of the Dubai judgment.

Further, enforcement of the Dubai judgment did not amount to enforcement of LHK’s claims under the Agreement for a number of reasons.

Firstly, the mere fact that two transactions have an equivalent economic effect is not sufficient to establish that they are, in legal substance, the same transaction. Secondly, the parties are different. IPC is the payment guarantor and Lenkor is the beneficiary of that payment guarantee. Thirdly, IPC’s liability under the payment guarantee is contractual, whereas Mr Puri’s liability under Dubai law is statutory.

**Comment**

This case presents an important reminder that in order for a public policy defence of illegality to succeed, it is the judgment and not the underlying transaction which must offend English public policy. It would only be appropriate to examine the underlying transaction if the illegality affected the obligation being enforced by the judgment. Here, it was simply the Dubai judgment being enforced and this did not relate to the illegal behaviour under the Agreement.
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