

IN THE COURT OF APPEAL, CIVIL DIVISION



REF: A4/2020/0911

(1) NATIONAL BANK OF KAZAKHSTAN
 (2) THE REPUBLIC OF KAZAKSHTAN
 Appellants/Claimants

–v– (1) THE BANK OF NEW YORK MELLON SA/NV,
 LONDON BRANCH
 (2) ANATOLIE STATI
 (3) GABRIEL STATI
 (4) ASCOM GROUP SA
 (5) TERRA RAF TRANS TRADING LIMITED
 Respondents/Defendants

ORDER made by the Rt. Hon. Lady Justice Carr

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal the order of Teare J dated 4 May 2020

Decision: permission to appeal is refused.

Reasons

I do not consider that the appeal has a real prospect of success and there is no compelling reason why an appeal should be heard.

Teare J, who had extensive knowledge of the complex procedural background to the litigation, was entitled to limit the declarations to be made and to decline to resolve fully the whole dispute between the Claimants and the Second to Fifth Defendants. There is no real prospect of an appellate court interfering with Teare J's decision to limit his decision to answering the specific question referred to the English court by the Belgian court and not to determine the outcome (or "assume responsibility for the determination") of proceedings in Belgium (which remain ongoing). He gave detailed reasons for the approach that he adopted (at [39] to [42] in particular), including by reference to his interpretation of his earlier judgment on jurisdiction (which he accepted could have been expressed more clearly), namely that the referral was only of the existence of a chose in action under English law.. The task referred by the Belgian court to the English court was to apply English law. It was entirely reasonable for Teare J to consider that it was not for the English court to determine hypothetical questions of Kazakh or Belgian law. This was all as foreshadowed in his exchanges during the course of oral submissions (eg at pp. 18 and 19 of the transcript for the case management conference on 15 February 2019).

In light of the above, the application in relation to paras. 6 and 11 of the order (relating to the debt claim against the First Defendant ("BNYM")) falls away. In any event, I would not have been minded to grant permission. It is not arguable that the First Claimant had an accrued cause of action in debt at the time of trial; BNYM is entitled presently to rely on clause 16(i) of the Global Custody Agreement. It cannot be said that Teare J was wrong to adjourn the debt claim with liberty to restore.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- All cases involving a litigant in person (other than immigration and family appeals)
- Boundary disputes;
- Inheritance disputes.

If yes, is there any reason not to refer to CAMS mediation under the pilot? Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation? Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed:

Date: Carr LJ/ 8 July 2020

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

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