

## **ENGLISH COURT OF APPEAL REJECTS RUSSIAN BRIBERY CLAIMS**

*Fiona Trust & Holding Corporation & Ors v Skarga & Ors* [2013] EWCA Civ 275

### **Introduction**

In *Fiona Trust & Holding Corporation & Ors v Skarga & Ors* [2013] EWCA Civ 275, the Court of Appeal considered whether Russian or English law was the applicable law of the tort as determined under the Private International Law (Miscellaneous Provisions) Act 1995.

### **Legal principles**

The rules applicable to the determination of the applicable law of “issues relating to tort” are set out in Sections 11 and 12 of the Private International Law (Miscellaneous Provisions) Act 1995.

Pursuant to Section 11 of that Act, the general rule is that the applicable law is the law of the country in which the events constituting the tort occur, and where elements occur in different countries, the applicable law is, in cases other than personal injury or property damage, the law of the country in which the most significant element or elements of those events occurred.

However, under Section 12, this rule may be displaced if it appears from a comparison of the significance of the factors connecting a tort with that country and the significance of any factors connecting the tort with another country that it would be substantially more appropriate for the applicable law to be the law of that other country. In that case, the applicable law would be that of the other country.

### **Background**

The dispute between the parties included various allegations of bribery which had been pleaded as claims in tort. It was crucial to determine whether the torts were governed by English law or Russian law – under Russian law, the bribery claims would fail; while under English law, the claims would succeed due to irrebuttable presumptions that the relevant transactions at issue were entered into as a result of the bribes and that there was loss in, at least, the amount of the bribes.

In the Commercial Court, Justice Andrew Smith dismissed the bribery claims, holding that Russian law was applicable.

The claimants appealed, arguing that the law of Russia (if applicable pursuant to Section 11) was displaced pursuant to Section 12. In particular, the fact that the contractual arrangements entered into as a consequence of the bribes were governed by English law was a significant factor in displacing the presumption.

## **Judgment**

The Court of Appeal dismissed the appeal, holding that Russian law was the applicable law.

Delivering the judgment of the Court, Longmore LJ stated that the correct approach to the determination of the applicable law was that set out by the Court of Appeal in *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808 [2012] 2 Lloyds Rep. 313 para 148, as subsequently approved by the Supreme Court.

Considering Section 11, Longmore LJ held that in the circumstances the applicable law was Russian law. The provision or arrangements for bribes had generally been made in Russia (along with Finland and Italy), and the failure to disclose to Mr Skarga's employer took place in Russia. None of the events constituting the tort occurred in England.

The key issue was therefore whether the general rule had been displaced under Section 12.

In *VTB Capital Plc v Nutritek International Corp*, the factors identified as relevant to the comparison under Section 12 were potentially much wider than the 'elements of the events constituting the tort' in Section 11, and could include the parties' connections with another country, the connections with another country of any of the events which constitute the tort or the connection with another country of any of the circumstances or consequences of those events which constitute the tort, and in particular:

- (a) a pre-existing relationship of the parties, whether contractual or otherwise;
- (b) any applicable law expressly or impliedly chosen by the parties to apply to that relationship, and
- (c) whether the pre-existing relationship is connected with the events which constitute the tort.

The Court of Appeal found that the fact that the contractual arrangements entered into after the bribes were governed by English law was not significant enough to displace the presumption. In the circumstances, there was no "clear preponderance of factors" pointing to English law sufficient to displace Russian law as the applicable law.

## **Observation**

Following the decisions in *VTB Capital Plc v Nutritek International Corp* and *Fiona Trust & Holding Corporation & Ors v Skarga & Ors*, it is apparent that allegations relating to torts, including bribery, will require a connection with England before they will be subject to the jurisdiction of the English courts. As a general rule, part of the tort must have been committed in England. Where none of the elements of the tort take place in England, it will be difficult to persuade the Court that it should accept jurisdiction without clear, preponderant factors.

9<sup>th</sup> April 2013