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US COURT JUDGMENT AGAINST SYRIA TO BE ENFORCED IN ENGLAND

Certain Underwriters at Lloyd's London v Syrian Arab Republic [2018] EWHC 385
(Comm)

Introduction

By a decision handed down on 1 March 2018 in *Certain Underwriters at Lloyd's London v Syrian Arab Republic* [2018] EWHC 385 (Comm), the English Commercial Court entered judgment against Syria in proceedings to enforce a US judgment rendered in 2012 for approximately US\$51 million in respect of acts of state-sponsored terrorism that resulted in the hijacking of EgyptAir flight 648 in 1985.

Background

On 23 November 1985, EgyptAir flight 648 was hijacked while travelling from Athens to Cairo. The hijacking resulted in the shooting of US victims and the complete destruction of the aircraft.

In a claim for damages brought by the plaintiff insurers of the aircraft before the US District Court of Columbia against Syria, Syrian Air Force Intelligence and its Chief (General Al-Khuli), the US court found that the hijacking was an act of international terrorism committed by the Abu Nidal Organisation and, further, found that that organisation was sponsored and supported by Syria at the time of the hijacking.

The plaintiffs now sought to enforce the US judgment in the English jurisdiction. There are several statutory mechanisms in English law governing the recognition and enforcement of court judgments from foreign jurisdictions. The United States of America, however, is not covered by any of those statutory mechanisms and, therefore, the enforcement of US court judgments in England falls to be determined at common law.

Decision

The Commercial Court (Andrew Henshaw QC (sitting as a High Court Judge) (“the Judge”)) entered judgment against Syria.

The Judge first examined whether the English enforcement proceedings had been validly served upon Syria. The State Immunity Act 1978 and the Civil Procedure Rules require that a party wishing to serve a claim form or other document on a foreign sovereign State file in the Central Office of the Royal Court of Justice a request for service to be arranged by the UK Foreign & Commonwealth Office (“FCO”) together with the documents to be served (with translations where necessary). The FCO must then transmit the documents to the Foreign Ministry of the State concerned and service shall be deemed to have been effected when the documents are received at that Ministry.

The claimants produced for the Judge a letter from the FCO stating that when the courier asked a reception consignee at the Syrian Ministry of Foreign Affairs to take delivery of the documents, the consignee was aware that the sender was the UK FCO but refused to accept the documents and insisted they be removed from the premises. Furthermore, the claimants had taken various other steps to effect service on Syria or otherwise draw Syria’s attention to the enforcement proceedings, including sending the documents by email and by courier to the Syrian Ministry of Foreign Affairs and to Syria’s former US attorneys.

The Judge considered on the facts that this was a “*truly exceptional case*” which justified an order dispensing with service of the proceedings and other documents which the claimants had attempted to serve, noting that “*in all the circumstances there is no further step which the Claimants or the FCO could reasonably be expected to take in order to effect service*”.

The Judge then turned to consider whether the US judgment could be enforced in England on the basis of a submission by Syria to the US jurisdiction. In circumstances where Syria’s US attorneys had filed certificates expressly stating that all of the instant defendants were appellants in an appeal against the US judgment and, indeed, all of the instant defendants had participated in the appeal, the Judge found that Syria and the other defendants had submitted to the jurisdiction of the US courts.

Having satisfied himself that the test for the enforcement of the US judgment at common law was satisfied, judgment was entered for the US judgment sum of US\$51,574,997.89 plus interest.

Concluding Remarks

The judgment in the instant case (given in the absence of representation by the State or any Advocate to the Court to assist the Court) details the apparently extensive efforts of the claimants to bring the enforcement proceedings to the attention of the defendants which the Judge concluded justified the serious decision to dispense with the need for service upon a foreign sovereign State.

This marks a further serious warning to States that behaving in an “ostrich-like” manner in the face of legal claims (without raising arguments which might well be available) is far from likely to be helpful in the long term.