

Litigation - Cyprus

Court reaffirms deviations from *forum non conveniens* principles

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On November 5 2013 the Limassol District Court had the opportunity to examine aspects of the *forum non conveniens* doctrine in the context of an application to set aside service of the writ of summons issued in *Gorsoan Limited v Bullock*.⁽¹⁾ The case is one of a series of actions between Gazprombank and Janna Bullock in various jurisdictions, in which the bank is seeking to recover \$21 million in damages it claims to have suffered due to purported fraud by Bullock and her associates.

Certain defendants/applicants argued that the Cyprus court had no jurisdiction to try the action and that the most appropriate forum was Russia.

With reference to the European Court of Justice (ECJ) decision in *Owusu v Jackson*,⁽²⁾ the district court judge reaffirmed that when Cyprus courts have jurisdiction on the basis of EU Regulation 44/2001, or the Brussels Convention that preceded it, the court cannot refuse its jurisdiction on the grounds that another country would constitute a more appropriate forum.

The court noted that the principles established in *Owusu* continue to apply notwithstanding the replacement of the Brussels Convention by the regulation. Furthermore, these principles are applicable even when the allegedly more appropriate forum is a country that is not an EU member state.

The court concluded that in light of Article 2 of the regulation, the Limassol District Court has jurisdiction because some of the defendants are residents of Cyprus. It went on to note that leading commentators⁽³⁾ have supported the view that the principles established in *Owusu* apply beyond Article 2:

"Admittedly the wording of special jurisdiction under articles 5, 6 and 7 and Sections 3, 4 and 5 of the Regulation is less obviously mandatory than the wording of Article 2. Nonetheless, there is no hint in the wording of Article 5, 6, and 7 and Sections 3, 4, and 5 that the principles laid down in these provisions can be derogated from. Owusu has been applied by Gloster J where jurisdiction was based in Article 6(1). In her view it would equally apply whenever there is jurisdiction under the Regulation."

The district court judge also made reference to *Viking Line Abp v The International Transport Workers Federation*,⁽⁴⁾ where the ECJ applied the principles established in *Owusu*. In relation to the first defendant, who was a US resident, the court stated that:

"even if it would be decided that EC Regulation 44/2001 and the principles in Owusu are not applicable because she is a US resident, it would be incorrect for the court to stay the proceedings only against the said defendant for reasons associated with forum conveniens given that the procedure against the rest of the defendants will continue in Cyprus since Cypriot courts have jurisdiction. It would indeed cause an illogical result if the court decided that it is not the appropriate forum to try the case only against the first defendant. This would cause parallel proceedings with potentially conflicting decision and multiple judicial and legal expenses (see AG of Zambia v Meer Care & Desai (2005) EWHC 2102)."

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Endnotes

⁽¹⁾ Action 3573/2012.

⁽²⁾ Case C-281/02 [2005] ECR I-1383.

⁽³⁾ *Private International Law*, 14th edition, Cheshire, North and Fawcett, page 326.

⁽⁴⁾ (2005) EWHC 1222.

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