Judgment handed down in an unusual s.67 application concerning a foreign restructuring

Following a handing down in April, judgment has now been published in ***Pannonia Bio Zrt v Marciniak & Anor*** **[2025] EWHC 1005 (Comm)**, a case concerning the consequences of a restructuring carried out by a foreign party to an arbitration agreement governed by English law.

As a matter of the English law of conflicts, the question who the parties to the contract are is governed by the law of the contract; but questions of status of a natural or legal person are generally governed by the law of the person's domicile. Status for this purpose includes the question whether a person should be regarded as a successor of another person. That is because if a corporation comes into being for the purpose of taking over the powers, assets, and liabilities of another business, it would be pointless to recognise its existence on the basis of its law of domicile (as the English court must), and yet to refuse to recognise the purpose for which it was created: see, for example, ***National Bank of Greece and Athens SA v Metliss*** **[1958] AC 509**. This gives rise to complications where foreign parties to an English law contract undergo a restructuring under their law of domicile, particularly where the contract in question is an arbitration agreement.

The English court has previously grappled with such issues in cases where the relevant parties were all corporations. In many such cases, the restructuring results in the original corporation being erased from the register of companies in its home jurisdiction, leaving little doubt as to whether it can still be a party to an arbitration. In ***Pannonia***, the Court had to consider a restructuring from an unincorporated business carried out by a natural person to a corporation, which does not result in the natural person ceasing to exist.

P is a producer of industrial alcohol incorporated in Hungary. M is a businessman domiciled in Poland, who works in the chemical sector. At the relevant time, his business was operated as a sole trading unincorporated business. P and M entered into contracts for sale of denatured alcohol, which were governed by English law and contained an arbitration agreement also governed by English law.

M's lorries collected the product in Hungary and transported it to M's factory in Poland. It is M's case that the alcohol was non-compliant with the contractual specifications, which caused various losses to M, including importantly tax penalties imposed upon him by the Polish revenue authorities due to the product not meeting EU denaturing requirements.

Subsequently, M converted his business into an incorporated company pursuant to the restructuring provisions of the Polish Commercial Companies Code. After a further restructuring, that company was converted into CB. It was common ground that under the relevant Polish statutory provisions, the result of this process was that CB took over all business rights and liabilities of M, but that it did not take over M's liability to pay the Polish tax penalties, which under the Polish tax code was personal to M.

M and CB commenced an arbitration against P, claiming damages for breach of the sale contracts: M for losses incurred on the tax penalties, and CB for all other losses. It was common ground between the parties that, as a result of the restructuring, CB had standing to bring the claim, and that it was a party to the arbitration agreement. However, P denied that M had any cause of action for breach of the sale contracts, or that he was a party to the arbitration agreement contained in them, because any such cause of action, and the arbitration agreement, had moved from P to CB. As a result, the LCIA tribunal did not have jurisdiction over M's claims against P. The tribunal rejected the objection

4 Pump Court, Temple, London, EC4Y 7AN
T: +44 (0)20 7842 5555 F: +44 (0)20 7583 2036
www.4pumpcourt.com

and upheld its own jurisdiction in an award, which P then challenged pursuant to s.67 of the Arbitration Act 1996.

The hearing canvassed, amongst other things, the authorities regarding the precise scope of the "question of status" for which English law must refer to foreign law. In the end, however, none of these points needed to be grappled with, because cross-examination of experts on Polish restructuring law exposed flaws in the evidence of the expert engaged by M and CB. In closing, P submitted that the Court did not need to decide the complex theoretical points of English conflict of laws rules, because even within the framework contended for by M and CB, the Court should prefer the evidence of P's foreign law expert, with the same result. The Court accepted that submission, noting that M and CB's expert "*fail[ed] to explain at all convincingly how it is that that [her evidence] is consistent with either the express terms of [the relevant statutory provisions of Polish law] or any principled or identifiable exception to it or how, even if that is so, that results in the arbitration agreements being only partly transferred or made tripartite agreements when previously they were not*". Accordingly, the tribunal's award on jurisdiction was set aside, and declarations were made that the tribunal had no jurisdiction to decide M's proposed claims.

Apart from being the first case concerning a foreign restructuring from a self-employed business to a corporation (where the predecessor by nature continues in existence), the decision serves as a reminder that, in appropriate cases, the Court benefits significantly from expert evidence of foreign law being given live and tested in cross-examination.

Kajetan Wandowicz acted unled (against King's Counsel) for P, the successful claimant (the respondent in the underlying arbitration), instructed by Katie Pritchard and Andrew Bennett of Squire Patton Boggs.

The full judgment can be read here.

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