

PRESS SUMMARY

**BORIS MINTS AND OTHERS v PJSC
NATIONAL BANK TRUST AND ANOTHER**

Court of Appeal (Sir Julian Flaux, Chancellor of the High Court, Lord Justice Newey and Lord Justice Popplewell) [2023] EWCA Civ 1132 on appeal from [2023] EWHC 118 (Comm)

1. This appeal arises out of the Russian invasion of Ukraine on 24 February 2022 and concerns the effect of the UK sanctions regime, particularly the Sanctions and Anti-Money Laundering Act 2018 (“SAMLA”) and the Russia (Sanctions) (EU Exit) Regulations 2019 (“the Regulations”) on ongoing litigation in the Commercial Court commenced in June 2019. The claimant banks claim some US\$ 850 million against the appellants on the basis that they conspired with representatives of the claimant banks to enter into uncommercial transactions with companies connected with the appellants by which loans were replaced with worthless or near worthless bonds. Freezing orders were obtained against the appellants. The litigation had been progressing towards trial when the invasion took place. The second claimant bank is a “designated person” under the sanctions regime.
2. The appellants’ application before the judge and on appeal raises three issues of general importance in relation to the scope of the sanctions regime:
 - (1) Can a judgment be lawfully entered for a designated person by the English court following a trial at which it has been established that the designated person has a valid cause of action? (the entry of judgment issue);
 - (2) In circumstances where the Office of Financial Sanctions Implementation (“OFSI”) can license the payment of a designated person’s own legal costs, can OFSI also license (i) the payment by a designated person of an adverse costs order; (ii) the satisfaction by a designated person of an order for security for costs; (iii) the payment by a designated person of damages pursuant to a cross-undertaking in an injunction and (iv) the payment of a costs order in favour of a designated person? (the licensing issue);
 - (3) Does a designated person (specifically Vladimir Putin or Elena Nabiullina, the governor of the Central Bank of Russia) “control” an entity (in the present case the first claimant, 99% owned by the Central Bank of Russia) within the meaning of Regulation 7 where the entity is not a personal asset of the designated person but the designated person is able to exert influence over it by

virtue of the political office that he or she holds at the relevant time? (the control issue).

3. At first instance the judge (Cockerill J) decided the first two issues in favour of the claimant banks and the third issue in favour of the appellants. The appellants appealed to the Court of Appeal.
4. The Court of Appeal (Sir Julian Flaux, Chancellor of the High Court, Lord Justice Newey and Lord Justice Popplewell) unanimously dismissed the appellants' appeal.
5. In relation to the entry of judgment issue, the Court of Appeal decided that (i) applying the principle of legality the fundamental right of the claimants to access to the courts was not excluded or curtailed by SAMLA [178]-[187]; (ii) SAMLA and the Regulations made under it were intended by Parliament and the Government to continue the EU sanctions regime without any substantive change [189]. The 2014 EU Regulation is not intended to impinge on the right of access to the court for an effective remedy and a fair trial of a civil claim and the Regulations should be construed as maintaining continuity with the 2014 EU regulation [190]-[196]. (ii) irrespective of the principle of legality, on the correct construction of Regulations 11 and 12 of the Regulations, they cannot be construed as prohibiting the entry of a money judgment in favour of a designated person [197]-[209]; and (iii) when the principle of legality is applied, the appellants' case that entry of judgment is prohibited is unarguable. The legislation does not and is not intended to prohibit the court from exercising its core function of entering judgment [203]-[204] and [209].
6. In relation to the licensing issue, the Court decided that on the correct construction of Schedule 5 paragraphs 3 and 5 of the Regulations and/or applying the principle of legality, OFSI could issue a licence in each of the scenarios set out at 2(2) above [214]-[224].
7. In view of the Court's conclusion on the first two issues, the control issue did not arise, since, even if the first claimant is a controlled person and therefore to be regarded as designated, both claimants are entitled to pursue the proceedings on which, if the claim is successful, the court will be able lawfully to enter a money judgment and the claimants are both entitled to the licences to which the second issue relates. Nonetheless, since the issue was fully argued, the Court decided it and concluded that on the clear and wide meaning of Regulation 7, the second claimant was controlled by Mr Putin and/or Ms Nabiullina because he or she was able to exert influence over it by virtue of the political office he or she held [225]-[233] .

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at: <https://www.judiciary.uk/judgments/>

