Judiciary of England and Wales

12 December 2024

KINGDOM OF SPAIN v. THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LIMITED

Appeal Nos: CA-2024-000178 (the Brussels Appeal)
CA-2024-000180, CA-2024-000182, CA-2024-000597 (the Arbitration Appeals)
CA-2024-000588 (the Human Rights Appeal)

Important note for press and public: this summary forms no part of the court's decision. It is provided so as to assist the press and the public to understand what the court decided.

The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk

JUDGMENT SUMMARY

1. On 19 November 2002, the M/T Prestige (the vessel) broke in two and sank off the coast of Spain in the course of a voyage from St. Petersburg to the Far East. The vessel was carrying 70,000 metric tonnes of fuel oil. The resulting oil spillage caused significant pollution damage to the Spanish and French coastlines.

2. A P&I Club, the London Steam-Ship Owners' Mutual Insurance Association Limited (the Club) provided Protection and Indemnity insurance to the owners and managers of the vessel. The terms of that insurance included two critical clauses. The first required

London arbitration (the arbitration clause). The second was a "pay to be paid" clause that provided for the Club only to be liable if the owners and managers had first actually paid the full amount of their liability out of their own monies (the pay to be paid clause).

3. There were five appeals before the Court of Appeal (Sir Geoffrey Vos MR, Lady Justice Andrews and Lady Justice Falk) from three separate judgments of Mr Justice Butcher (the judge). The first concerned human rights ([2021] EWHC 1247 (Comm)). The second concerned many issues relating to Spain's, France's and the Club's claims ([2023] EWHC 2473 (Comm)). The third concerned France's claims against the Club ([2023] EWHC 2474 (Comm)). The five appeals fell into three categories.

4. The first appeal concerned the question of whether a judgment for some €855,493,575.65, which was obtained by Spain and other claimants against the Club in the Spanish Courts on 1 March 2019 (the Spanish judgment), should have been registered in England pursuant to Chapter III of Regulation (EC) No. 44/2001 (the Brussels I Regulation). The events took place before Brexit. Spain said in support of its appeal that the Spanish judgment should be enforced in England and Wales, relying on a decision of the Court of Justice of the European Union (the CJEU) delivered on 20 June 2022 (the CJEU's decision), after the judge had referred certain questions to it on 21 December 2020. The judge decided that the CJEU's decision did not bind him to register the Spanish judgment, because (a) the CJEU had exceeded its jurisdiction, and (b) Hamblen J in *The Prestige (No. 2)* [2013] EWHC 3188 (Comm), [2014] 1 Lloyd's Rep 309 (Hamblen J's judgment) and the Court of Appeal in *The Prestige (No. 2)* [2015] EWCA Civ 333, [2015] 2 Lloyd's Rep 33 (the CA's section 66 judgment) had decided under section 66 (section 66) of the Arbitration Act 1996 (the 1996 Act) that an order should be made in the terms of an arbitration award delivered on 13 February 2013 (Mr

Schaff's award) by Mr Alastair Schaff KC (Mr Schaff). Mr Schaff's award had declared that Spain was bound to arbitrate its claims against the Club. Hamblen J's judgment and the CA's section 66 judgment are together referred to as the "section 66 judgments". Accordingly, since the judge held that he was not bound by what the CJEU had decided, he decided that the section 66 judgments created issue estoppels that were irreconcilable judgments preventing the registration of the Spanish judgment in England & Wales under article 34(3) of the Brussels I Regulation (article 34(3)).

5. In addition, the judge held that there was an issue estoppel created in favour of the Club as against Spain by Mr Schaff's award, which would anyway have prevented the registration of the Spanish judgment as a matter of English public policy under article 34(1) of the Brussels I Regulation (article 34(1)).

6. The judge, therefore, set aside the registration ordered originally by Master Cook. Mr Schaff also made a similar award against France in separate arbitration proceedings, but France has never sought to register its Spanish judgment against the Club in England.

7. The second set of three appeals, the Arbitration Appeals, all concerned the question of whether separate arbitration awards made by Sir Peter Gross against Spain and by Dame Elizabeth Gloster (together the Arbitrators) against France should be upheld. The Arbitrators and the judge held that the Club was entitled to equitable compensation from Spain and France in respect of their breach of an equitable obligation to arbitrate their claims against the Club. The essential question in the Arbitration Appeals was whether they were right as a matter of law. The Club says they were, and Spain and France say that no such equitable compensation is available in law. There are two important connected, but subsidiary, question raised by these appeals. The first is whether an

injunction restraining the Spanish proceedings could or should have been granted against either Spain or France, and the second is whether the Club was, either in addition to the equitable compensation or instead of it, entitled to equitable damages in lieu of or in addition to such an injunction against Spain and France. Equitable damages, as opposed to equitable compensation, are claimed under section 50 of the Senior Courts Act 1981 (section 50), which was the statutory successor to section 2 of the Chancery Amendment Act 1858 (known as Lord Cairns's Act). Spain and France support the judge's holding that no injunctions can be granted against them because of section 13(2)(a) of the State Immunity Act 1978. They appeal the judge's determination to uphold the Arbitrators' decisions to award the Club equitable compensation. The Club appeals the judge's decision to refuse it equitable damages under section 50, which the Arbitrators had each declined to award for different reasons.

8. The fifth appeal was the Club's Human Rights Appeal. The Club contends that the judge ought also to have refused to register the Spanish judgment on the grounds that: (a) the conclusions on civil liability on which it was founded were arbitrary or manifestly unreasonable, and impermissibly decided new facts not found by the lower court, in violation of Article 1 of Protocol 1 and article 6 of the European Convention on Human Rights, (b) the conviction of the vessel's Master was not "subject to review by a higher tribunal" as required by article 14(5) (article 14(5)) of the International Covenant on Civil and Political Rights, and (c) the recognition of the Spanish judgment was, therefore, "manifestly contrary to [the] public policy" of England & Wales under article 34(1). Spain contends that the judge was right to reject the Club's human rights arguments. He held, in effect, that article 36 of the Brussels I Regulation, which provides that "under no circumstances may a foreign judgment be reviewed as to its substance", prevented him

examining the substance of the Spanish judgment. The Club argued that the judge failed properly to apply the principles laid down in previous CJEU authorities.

9. These appeals were argued over 7 court days. **They raise two short central questions, namely whether the judge was right: (i) to have refused to register the Spanish judgment against the Club, and (ii) to have awarded equitable compensation to the Club. He was right on (i) for different reasons, and wrong on (ii).**

10. The Court of Appeal in a lead judgment by the Master of the Rolls and a concurring judgment by Lady Justices Andrews and Falk decided, in a little more detail, as follows.

11. **The judge was wrong to hold that he was not bound by [54]-[73] of the CJEU's decision. He was bound to follow what the CJEU decided**. The CJEU answered the questions referred in a way that the judge had not anticipated, but the CJEU had not exceeded or gone outside its jurisdiction or violated the principles of procedural fairness.

12. **The judge was wrong to think that Hamblen J's judgment (as upheld by the CA's section 66 judgment) created a binding issue estoppel, justifying him in departing from [54]-[73] of the CJEU's decision as to the meaning of article 34(3)**. It did not. The section 66 judgments decided nothing about the meaning of "judgment" in article 34(3). **Accordingly, the Spanish judgment ought to have been registered on a proper application of the CJEU's interpretation of article 34(3)**.

13. **Mr Schaff's awards did, however, create a binding issue estoppel. It was manifestly contrary to English public policy for the Spanish judgment to be recognised under**

article 34(1). Accordingly, the judge was right, in the result, to refuse to register the Spanish judgment.

14. The judge was right to hold that he was bound to decide that the section 66 judgments did not create a binding issue estoppel that could prevent registration of the Spanish judgment as a manifest breach of English public policy under article 34(1) by reason of the CJEU's answer to the third question it was asked.

15. Although the categories of case in which equitable compensation may be awarded are not closed, **the Arbitrators and the judge were wrong to think that equitable compensation could be awarded in this case**.

16. **The judge was right to hold that that an injunction restraining enforcement of the Spanish judgment could not be granted against Spain or France by reason of section 13(2)(a) of the State Immunity Act 1978**. He was, therefore, right to hold that Dame Elizabeth Gloster ought not have granted such an injunction against France.

17. Since no injunction could have been granted against either Spain or France, **the judge was right to hold that equitable damages under section 50 were not available against them either**.

18. The primary remedy for the failure to abide by the equitable obligation to arbitrate is an injunction. In a case where neither an injunction nor damages in lieu are available, equitable compensation cannot be granted.

19. **The judge was also right, for substantially the reasons he gave, to reject the Club's arguments in support of its contention that the Spanish judgment should not be registered because of the Spanish Court's manifest breaches of the public policy of England & Wales under article 34(1)**. It was not open to the Club to argue that article 14(5) was a rule of customary international law. There was no manifest breach of the Club's human rights, as a result of the way the Spanish Supreme Court dealt with the findings of fact against the Master. The Master had already lost appeals to the Spanish Constitutional Court and the European Court of Human Rights.

20. **The Court said that the decisions reached reflected the justice of the case**. The Spanish judgment should not be enforced against the Club in breach of the pay to be paid clause, which was undoubtedly binding in law on Spain and France as Mr Schaff's awards made plain. The equitable compensation sought would create unjustified extra-territorial consequences, if the Spanish judgment were to be enforced in other countries in circumstances that could not be predicted.

21. Accordingly, the first appeal brought by Spain (CA-2024-000178) was dismissed. Spain's and France's appeals (CA-2024-000180 and CA-2024-000182 respectively) against the award of equitable compensation were allowed, and the Club's cross appeal (CA-2024-000597) was dismissed. The Club's Human Rights Appeal (CA-2024-000588) was also dismissed.