Neutral Citation Number: **[2024] EWHC 1822 (Comm)**

Case Numbers: **CL-2024-000087; CL-2024-000088**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Judgment given on 28 June 2024

Before

MR JUSTICE BUTCHER

Between

BAYERISCHE LANDESBANK

Claimant in CL-2024-000087

and

LANDESBANK BADEN-WURTTEMBERG

Claimant in CL-2024-000088

and

RUSCHEMALLIANCE LLC

Defendant

Representation:

For the Claimants: Siddharth Dhar KC, Stuart Cribb and Edward Batrouney (instructed by Freshfields Bruckhaus Deringer LLP).

For the Defendant: The Defendant did not appear and was not represented.

Mr Justice Butcher **Friday. 28 June 2024**
(**14:01** pm)

Judgment by **MR JUSTICE BUTCHER**

1. This has been the trial of claims for final anti-suit injunctions ("ASIs") and related relief against the Defendant, Ruschemalliance LLC ("RCA") in two sets of proceedings. The Claimant in the first set of proceedings is Bayerische Landesbank ("BL") and the Claimant in the second set of proceedings is Landesbank Baden-Wurttemberg ("LBBW"), together "the Banks." The Banks' claims give rise to substantially identical issues, and are being managed together, pursuant to two orders of Mr Justice Foxton, dated 15 February 2024 ("the Interim Orders"). Interim anti-suit injunctive relief was granted *ex parte* by Mr Justice Foxton in the Interim Orders, and the anti-suit injunctive relief in the Interim Orders was continued by consent orders made by Mr Justice Bright on 28 February 2024.

2. RCA is apparently no longer legally represented in England, and it appears that it has not engaged in these proceedings since its former solicitors, Enyo Law, came off the record on 30 April 2024. RCA has not appeared at this hearing in front of me or been represented at it. It nevertheless appears from the material which is before me, to which I will refer in more detail in what follows, that RCA is on notice of this trial, and has been given the opportunity to participate in it, an opportunity which it has not taken up.

Introduction

3. The Banks' ASI claims arise from RCA's commencement in August 2023 and its continued pursuit of proceedings in Russia, referred to as the Russian proceedings, by which it claims over €320 million under various bonds granted by the Banks. Those bonds relate, as I will say in more detail in due course, to a project for the construction of liquefied natural gas and gas processing plant facilities in Russia - which has been described in this trial as 'the project' - and guarantee the obligations of RCA's contractual counterparties, Linde GmbH ("Linde") and RenCons Heavy Industries LLC ("RCH") in connection with the project. The bonds are

expressly governed by English law and contain Arbitration Agreements ("AAs") which provide for ICC arbitration in Paris. This trial forms part of a series of disputes which have been before this court arising from the project. This is because the Banks are only two of a number of financial institutions, including UniCredit, Deutsche Bank and Commerzbank, which were involved in the guaranteeing of Linde and/or RCH's obligations under the project, and which have turned to the English court seeking to protect their arbitral rights. It is, in that context, a matter of significance that at the time that Enyo were engaged to represent RCA, they said on RCA's behalf that the jurisdictional issues to which the Banks' ASI claims gave rise were materially identical to those in parallel proceedings brought by UniCredit against RCA under claim number CL2023000498, which have been referred to as 'the UniCredit proceedings'.

4. It also emerges that the Banks' ASI claims are materially identical to those advanced by UniCredit as to their merits. Both sets of claims arise out of the same project and underlying facts and concern essentially identical contractual provisions and give rise to the same substantive issues. This is significant because, as I will explain, what appears to have been the only argument which had any prospect of success which was available to RCA to resist the grant of ASI relief against the Banks, was the jurisdictional point raised in the UniCredit proceedings, namely that the English court had no jurisdiction, in particular because the arbitration agreements were not governed by English law or that England was not the proper forum for the claim.

5. On 23 April 2024, however, the Supreme Court dismissed RCA's jurisdictional appeal in the UniCredit proceedings and upheld the declarations and final injunctive relief which had been granted by the Court of Appeal (Unicredit Bank GmbH v Ruschemalliance LLC [2024] EWCA Civ 64). The Supreme Court made an order to that effect; although it stated that a written judgment was to follow, which has not yet been made available. Since the decision of the Supreme Court, it appears that RCA has disengaged from the current claim for an ASI but

has instead pressed on with the Russian proceedings. At a hearing in Russia on 14 May 2024, RCA's counsel said, apparently, and I quote:

> 'We believe that all those events that are developing in parallel proceedings in England have nothing to do with the consideration of the present case.'

6. RCA has also, apparently, very recently, namely on 5 June 2024, applied to the Russian court *ex parte* for freezing relief as security for its claims in the Russian proceedings. Such relief was granted on the following day, 6 June 2024, freezing or purporting to freeze the Banks' assets up to the total sum of some €324 million. A further hearing in the Russian proceedings is fixed for next Thursday, 4 July 2024. Evidence has been put before me from a Russian law expert, Mr Sergey Usoskin, to the effect and that there is a real prospect that the Russian court will grant judgment on the merits against the Banks at that hearing or shortly thereafter.

7. Finally, by way of introduction, I should refer to the fact that on 14 May 2024, which was after the Supreme Court's decision in the UniCredit proceedings to which I have referred, Jacobs J granted Commerzbank final anti-suit injunctive relief. His decision has a neutral citation number of [2024] EWHC 1474 (Comm). In para.8 of that judgment, Jacobs J referred to the fact that RCA's solicitors in that action, also Enyo, had said to Commerzbank that, and I quote:

> 'The jurisdictional issues in the *UniCredit* proceedings are materially identical to those raised in the Commerzbank Proceedings (i.e. the governing law of the arbitration agreement, and the proper place for the claim).'

8. At para.20, Jacobs J said that the impact of the Supreme Court decision would ordinarily, if RCA were minded to comply with it, be to dispense with any real need for further significant hearings in that case, and at para.39 that, and I quote:

‘The effect of the Supreme Court decision upholding the Court of Appeal is that the only potential argument which has ever been identified, in response to Commerzbank's claim for injunctive and related relief, has been finally disposed of against RusChemAlliance.’

9. At paras.40 to the first sentence of para.44, Jacobs J said:

‘40. Secondly, and allied to that point, this is not a case where RusChemAlliance had ever made any suggestion that there is a potentially different point which they can raise as against Commerzbank, when compared to the points that were raised and decided against them in relation to UniCredit. On the contrary, if one goes back to the letter from Enyo law dated 25 September 2023, the point being made in that letter was that the only argument available to RusChemAlliance was indeed the point that was being litigated in the *UniCredit* proceedings. That, too, was the basis of the order which I made on 28 September 2023. So there was ever only one defence that was being advanced in this case, and the substance of that defence was that there was no jurisdiction on the part of the English court over RusChemAlliance and no jurisdiction to grant the injunctive relief which UniCredit had been seeking.

41. It was no doubt for that reason that the hearing before Teare J was a somewhat unusual hearing: in that it was both a hearing of the jurisdictional challenge by RusChemAlliance, and an expedited hearing of the trial of the claim which UniCredit was making. On appeal, final relief was granted by the Court of Appeal, whose decision was upheld by the Supreme Court. The important point, as Mr Millett submitted, is that if there had been a defence to the case it would have emerged in the *UniCredit* proceedings, and that there has never been any suggestion that there is any defence to the claim other than the point which has been argued and ultimately now resolved against RusChemAlliance.

42. The third point, which is significant in the present context, is that RusChemAlliance has been given a large number of opportunities to engage with the present case subsequent to the decision of the Supreme Court…

43. The position as it seems to me, at least not having heard anything from the Defendant, is clear. If one considers what has happened, both in these proceedings and in the Russian proceedings involving UniCredit, it is obvious, on the present material at least, that RusChemAlliance has decided that it will serve no useful purpose for it to continue to participate in the English proceedings. That is, no doubt, why Enyo law are no longer acting. It is also plain from RusChemAlliance's conduct in relation to UniCredit, and their failure to provide any confirmation that they will abide by undertakings previously given to the English court in these proceedings, that RusChemAlliance's intention is to seek to continue the Russian proceedings in ways which they think will advantage them.

44. It does seem to me that, against that background, it is appropriate for the court to take whatever steps can reasonably be taken, consistent with due process being followed, to ensure that the rights of Commerzbank in this case are protected as fully as the court can protect them…'

10. As I will say, it appears to me that the same analysis applies here and that this is a clear case in which RCA has breached and continues to breach its promises to arbitrate, which were made in the arbitration agreements in the bonds, and that the justifications which it has put forward as reasons for not complying with those promises have been rejected by the Court of Appeal and by the Supreme Court.

Factual background

11. The relevant factual background is helpfully summarised in the judgment of Males LJ in UniCredit at paras.5-12 as follows:

‘5. RCA is a company incorporated under the laws of the Russian Federation. In July and September 2021 it entered into two Engineering Procurement and Construction contracts for the construction of LNG (liquefied natural gas) and GPP (gas processing plant) facilities in Russia. Its contractual counterparties were German companies, Linde GmbH and Renaissance Heavy Industries LLC, together described as 'the Contractor'.

6. Under the EPC contracts RCA was obliged to pay, in stages, a total of approximately €10 billion. The Contractor was entitled to advance payments of approximately 20% of that sum, i.e. €2 billion. Those advance payments have been made.

7. The contracts also provided for the Contractor to provide on demand bonds guaranteeing the performance of its obligations. It arranged for some of those bonds to be provided by the Claimant, UniCredit Bank GmbH, then known as UniCredit Bank AG, a German bank. Further bonds were provided by other banks, including Deutsche Bank and Commerzbank.

8. UniCredit issued seven bonds. Four of them were to guarantee the performance of the Contractor's obligations under the contract. Three of them were to secure the repayment of the advance payments.

9. Each of the bonds provided for English law and ICC arbitration in Paris, as follows:

> “11. This Bond and all non-contractual or other obligations arising out of or in connection with it shall be construed under and governed by English law.
>
> 12. In case of dispute arising between the parties about the validity, interpretation or performance of the Bond, the parties shall cooperate with diligence and in good faith, to attempt to find an amicable solution. All disputes arising out of or in connection with the bond which cannot be resolved amicably, shall be finally settled under the rules of arbitration of the International Chamber of Commerce, the ICC, by one or more arbitrators appointed, in accordance with the said ICC's rules. The place of

arbitration shall be Paris and the language to be used in the arbitral proceedings shall be English."

10. Following Russia's invasion of Ukraine in February 2022, the European Union extended its existing sanctions and imposed new sanctions on Russia, and on specified Russian legal entities and persons, although these did not include RCA. This led the Contractor to seek clarification from the German Federal Office for Economic Affairs and Export Control whether it could continue to perform the EPC contracts. It was instructed that it could not. As a result, the Contractor halted performance of the contracts, citing EU sanctions as its reason for doing so.

11. On 23rd September 2022, RCA terminated or purported to terminate the first contract on the ground that the Contractor had materially breached its obligations. On 7th April 2023 it terminated or purported to terminate the second contract on the same basis. It requested the Contractor to return the advance payments which it had made and sought compensation for damage caused by the breach.

12. Following the termination of the contracts, RCA made demands on UniCredit for payment under the on-demand bonds. Initially UniCredit declined to pay on the ground that the demands did not comply with formalities required by the terms of the bonds. However, RCA submitted revised demands which appear to have cured any formal defects. The position now is that demands for payment have been made under all seven bonds, which UniCredit has rejected on the grounds that such payment was prohibited by EU sanctions, specifically Articles 3b(2)(b) and 11(1) of Regulation (EU) 833/2014. UniCredit has not advanced any other ground for its refusal to pay.'

12. As I will set out in rather more detail, the choice of law and arbitration provisions quoted by Males LJ in that case in relation to UniCredit were in materially the same terms as in the bonds issued by the Banks.

Procedural background

13. Since the current proceedings were commenced, the following relevant events have occurred in relation to these proceedings. On 15 February 2024, interim ASIs were granted ex parte by Foxton J in favour of the Banks. Those interim orders provided inter alia that RCA should be restrained from seeking any interim or conservatory order or relief or remedy or measure from the Russian court inconsistent with the arbitration agreements or the Claimants' steps to enforce such agreements. On 28 February 2024, by way of consent orders made by Bright J, to which I have already referred, these proceedings were stayed pending the written judgment of the Supreme Court on RCA's then-extant jurisdictional appeal in the UniCredit proceedings. The interim ASIs were continued and, in summary, RCA was obliged to take all steps necessary to seek an adjournment of the Russian proceedings until a return date or further order of this court in relation to the ASIs granted by the Interim Orders. On 29 February 2024, Enyo filed an acknowledgement of service on behalf of RCA in both sets of proceedings. RCA indicated an intention to dispute the court's jurisdiction.

14. On 16 April 2024, LBBW filed a request for ICC arbitration seeking declaratory relief upholding the validity of the arbitration agreement in its bond, and damages for legal costs of defending RCA's claims in the Russian proceedings.

15. On 23 April 2024, as I have already referred to, the Supreme Court dismissed RCA's jurisdictional appeal in the UniCredit proceedings. Then, as again I have already said, on 30 April 2024, RCA's legal representatives in England, Enyo, came off the record.

16. On 14 May 2024, a hearing took place in the Russian proceedings. Mr Usoskin's second expert report gives the details as to what occurred. In summary, RCA did not seek an adjournment of the Russian proceedings, but rather resisted BL's application for an adjournment. The judge, Judge Chekunov, invited RCA to explain why it had changed its attitude towards orders made by this court and in response RCA's counsel said:

‘Now we simply do not take that into account anymore … We believe that all those events that are developing in parallel proceedings in England have nothing to do with the consideration of the present case.’

17. RCA also filed evidence on the merits against both Banks and requested that the Russian court consider the merits of its claim against BL and render a judgment on the merits at the 14 May 2024 hearing. The Russian court did not in fact turn to consider the merits or give an immediate judgment at that hearing against either BL or LBBW because it decided, on its own motion, to add Linde and RCH as additional Defendants to RCA's action. It fixed the next hearing in the Russian proceedings for the date which I have already mentioned, namely 4 July 2024.

18. On 23 May 2024, RCA filed an answer in the LBBW arbitration. Its primary position was to challenge the jurisdiction of the Paris tribunal on the basis that under Art. 248.1 of the Russian Arbitrazh Procedural Code (or ‘APC’), the Russian courts have exclusive jurisdiction over the dispute.

19. On 28 May 2024, the Banks served on RCA an intended application seeking to lift the stay imposed by the consent orders and to fix a trial of their ASI claim for a date before the 4 July hearing in Russia. That has been called the on-paper application. It appears from the evidence before me that the on-paper application was served on RCA before being filed and it further appears that no response was received by the Banks to the proposed application.

20. Instead, on 5 June 2024, and in what appears to have been a clear breach of the interim ASIs, RCA made without notice applications in Russia for freezing order relief against the Banks seeking to secure its position prior to a judgment on the merits from the Russian court.

21. On 6 June 2024, those applications were granted by the Russian court. Specifically, the Russian court made an order which froze or purported to freeze certain of BL's and LBBW's assets up to the amount of €273 million-odd and €51 million-odd euros respectively, being the

sums claimed by RCA against each of those two banks in the Russian proceedings. Among the specific assets frozen or purportedly frozen were each bank's rights to claim repayment of loans advanced under an agreement dated 28 May 2018 to PJSC Nizhnekamskneftekhim or NKNK, which, as I understand it, is a wholly unrelated transaction.

22. On 13 June 2024, and in light of those developments, Foxton J granted the Banks' on-paper application. The stay of these two sets of proceedings was lifted and this hearing was fixed to take place before the 4 July 2024 hearing in Russia. The directions which were proposed by the Banks and which were made by Foxton J were clearly put forward and granted on the basis that they would provide RCA with an opportunity to engage with and participate in these proceedings. However, as I have said, RCA has not engaged. Had it done so, it would have been obliged to file any evidence on which it wished to rely by 18 June 2024, but no such evidence was filed. I am, however, as I have already said, satisfied that this is not as a result of RCA being unaware of these proceedings. I am on the contrary satisfied that RCA is fully on notice at the trial of these proceedings and has been given a proper opportunity to participate in this trial.

23. Specifically, the on-paper application was served on RCA on 28 May 2024. It was served via the email addresses provided by RCA in the Notices of Change of Legal Representatives, which included three of the email addresses identified in the Alternative Service Order. One of the email addresses identified in the Notices of Change was rcadr@elwi.com; the same email address was provided in the equivalent notice filed in the Commerzbank proceedings and Jacobs J noted at para.33 of the judgment to which I have already referred that:

> ‘That email address is an email address of a law firm called Elwi based in Russia. The designation 'rcadr' is not a particular individual, but in fact a group email. That means that emails are received by various Russian lawyers who are working at Elwi instructed by

RusChemAlliance, in connection both with the Russian proceedings, which I have described, and also the Paris arbitration proceedings.'

24. The on-paper application was also served via courier on addresses in Kingisepp, which is also identified in the alternative service order.

25. On 3 June 2024, the on-paper application was filed with the court and served on RCA on the same day, at the same email addresses. The orders made by Foxton J, dated 13 June 2024, were served on RCA on 14 June 2024 by means of the same email addresses.

Jurisdiction

26. I deal first with the issue of the jurisdiction of the court. RCA has not made any application challenging the jurisdiction of the English court in these two sets of proceedings, although it had intimated an intention to do so before the Supreme Court dismissed its jurisdictional appeal in the UniCredit proceedings. The absence of any actual challenge, might itself be said to be dispositive of this issue. Nevertheless, it is right to say rather more about this and to record that, in my judgment, any such challenge would be hopeless in light of the decision in UniCredit, and that I am satisfied that each of the requirements of CPR 6.37(1)-(3) is met. As to the merits test, for reasons which I will explain, the Banks have a good claim for the grant of final anti-suit and anti-enforcement relief against RCA.

27. As to the gateway required by CPR 6.37(1)(a), the Banks rely upon PD6B para.3.1(6)(c), "Claim in respect of a contract governed by English law," and the relevant contracts at issue are the arbitration agreements contained within the Bonds. Each of the Bonds is in materially identical terms to the instruments already considered in UniCredit.

28. The Court of Appeal in UniCredit and Foxton J in granting the Interim Orders considered that the arbitration agreements in the relevant instruments are governed by English law. That appears to me, given the analysis of the Court of Appeal in UniCredit, which, as I

have said, has been upheld by the Supreme Court to be clearly right in relation to the arbitration agreements which are relevant to these proceedings.

29. In rather more detail, the position is as follows.

30. In relation to BL's three bonds, cl.11 of each provides "this bond and all non-contractual or other obligations arising out of or in connection with it shall be construed under and governed by English law." That clause and the arbitration agreements in cl.12 are identical to the equivalent provisions considered in UniCredit, and they also fall to be construed against a materially identical contractual matrix.

31. Accordingly, in conformity with the decision in UniCredit and its application of the decision of the Supreme Court in Enka v Chubb [2020] 1 WLR 4117, I consider it clear that the choice of law in cl.11 extends to the arbitration agreements cl.12, such that they too are governed in English law. As to LBBW's bond, the choice of law clause is similar but with one, in my view, immaterial difference. The LBBW bond provides, at cl.10:

> 'Except to the extent it is inconsistent with the express terms of this Bond, this Bond is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758 (URDG). For matters not covered by the URDG this Bond and all non-contractual or other obligations arising out of or in connection with it shall be governed by English law.'

(I note, parenthetically, that similar language is also included in the BL bond and those in issue in the UniCredit proceedings, but split out as a separate clause.)

32. Those references to the URDG in cl.10 do not, in my view, affect the express choice of English law in the bonds, nor its extension to the arbitration agreements. Article 34A of the URDG provides:

> 'Unless otherwise provided in the guarantee, its governing law shall be that of the location of the guarantor's branch or office that issued the guarantee.'

33. Here, in my view, the bonds do provide otherwise. By virtue of the opening words in clause 10 of the LBBW bond, 'Except to the extent it is inconsistent with the expressed terms of this bond,' and by reason of Article 34(a) of the URDG, 'Unless otherwise provided in the guarantee,' the express choice of English law governs. Thus, in my view, the choice of English law in the Bonds is materially identical to that considered in UniCredit and extends to the arbitration agreements in cl.11.

34. As to proper forum, the requirement under CPR 6.37(1)(c), I consider that England is the proper forum for the Banks' claims, just as it was found to be the proper forum for the equivalent claims in UniCredit and in Deutsche Bank v RusChemAlliance [2023] EWCA Civ 1144, and that is for the following reasons. First, the essential question at this stage of the analysis is where the present claims can suitably be tried in the interests of all the parties and the ends of justice. In my judgment, the answer to that question is in the courts of England and Wales. The relevant claim at issue is the Banks' claim for coercive relief to enforce RCA's promise to arbitrate, and only to arbitrate, all disputes arising out of or in connection with the bonds.

35. England is, in my judgment, the natural forum for such an ASI claim, because an ASI is not a remedy that is available in the curial courts of the arbitration, namely those of France. That is apparent from the expert evidence which I have of Jean Christophe Honlet but is also the same as the position which was recognised in UniCredit. There is, in my judgment, no problem as to comity with other courts in this respect. The evidence is that the French court would not regard an English ASI as an interference with its own jurisdictionand would probably also recognise the grant of an ASI by a court which can order one.

36. While it is no doubt the case that an ICC arbitration tribunal seated in Paris could make an award requiring RCA to refrain from or terminate Russian proceedings, that does not mean that England is not the proper place for the Banks' ASI claims. I should say, first, that it

would, in my judgment, be impermissible for RCA to raise such an argument. I would consider it unconscionable for RCA to act in breach of the arbitration agreements by suing the Banks in Russia and seise jurisdiction there on the basis that the arbitration agreements are said to be inoperable, whilst simultaneously suggesting that the pursuit of arbitration in France supplies the correct remedial answer and renders England an inappropriate forum for the Banks' own claims. The position appears to me to be the same as that which Males LJ considered in UniCredit at [78], namely that 'it is abusive for RCA to rely on the availability of substantial justice in France as the seat of arbitration, while simultaneously seeking to pursue proceedings in Russia on the basis that the arbitration clause is unenforceable'.

37. It is true that one potential point of difference between the position of LBBW and the facts in UniCredit is that here, LBBW - albeit not BL - has commenced ICC arbitration proceedings against RCA, seeking declaratory relief as to the validity of the arbitration agreement and damages. That, however, in my judgment cannot affect the jurisdictional analysis. As was said by Lord Mance in AES Ust-Kamenogorsk Hydropower Plant LLP v Ust-Kamenogorsk Hydropower Plant JSC [2013] 1 WLR 1889 at para.48, an interim or final ASI is:

> '…for the purposes of and in relation to the negative promise contained in the arbitration agreement not to bring foreign proceedings, which applies and is enforceable regardless of whether or not arbitral proceedings are on foot or proposed.'

38. Furthermore, and by analogy with what was said in UniCredit, it seems to me that it would be abusive for RCA to seek to rely here on the fact of the LBBW arbitration, whilst at the same time denying the jurisdiction of the LBBW tribunal and pursuing the Russian proceedings in breach of the arbitration agreement.

39. Moreover, I consider that it would be both unrealistic and illusory to consider that the pursuit of anti-suit injunctive relief through Paris arbitration would provide the Banks with substantial justice on the facts of this case. In particular, there is a real risk that the Russian court will grant

judgment on RCA's claims against the Banks on 4 July 2024 or shortly thereafter, and obtaining an award against RCA in the ICC arbitration is likely, by contrast, to take months, and on any view will not realistically happen before the 4 July 2024 hearing in Russia. In any event, an award made against RCA is, on the evidence of Mr Usoskin, unlikely to be enforceable in Russia. Furthermore, an award will not carry the coercive effect of a court order, and the curial court in France has no power to convert a tribunal's ASI into a coercive court order.

40. In addition, there is a real risk that RCA may not permit a Paris arbitration to proceed in any event. The evidence of Mr Usoskin is that if RCA were to apply for an anti-arbitration injunction from the Russian court, there is a significant probability that it would obtain that relief.

41. For all those reasons, I consider that England has been shown to be the proper forum for the Banks' present claims.

Merits of the claim for ASIs

42. Turning to the merits of the claim for ASIs, these appear clear: in the UniCredit proceedings, the Court of Appeal found the equivalent claim for final relief to be straightforward and, once it had allowed UniCredit's appeal on jurisdiction, it granted the ASIs being sought without any separate oral argument on that issue. I have been informed that RCA did not even deny that its equivalent Russian litigation in that case was in breach of the arbitration agreements. The Supreme Court refused to grant RCA permission to appeal the merits aspect of the Court of Appeal's decision in UniCredit.

43. The merits of the claim can be dealt with relatively briefly, therefore, as follows. The principles governing the grant of an ASI are well known and were summarised inter alia by Males LJ in UniCredit, para.81. In summary, the court proceeds on the basis that where court proceedings are brought in breach of an agreement to arbitrate, the court will generally grant an ASI, unless there are strong reasons not to do so. That power is derived from s.37 of the Senior

Courts Act. It does not require an arbitration to be on foot or in contemplation, and it is for the court to determine whether there is a binding arbitration agreement and whether the pursuit of the foreign proceedings constitutes a breach of such agreement. Under s.37, the injunction must also be just and convenient in all the circumstances.

44. Taking those matters in turn, the first issue is whether there was or will be a breach of the arbitration agreements. I have already mentioned the relevant terms of the bonds. Each arbitration agreement was governed by English law and required that all disputes arising out of or in connection with the bond be finally settled by way of ICC arbitration in Paris. As was said in Enka v Chubb [2020] 1 WLR 4117, at [174], 'A promise to arbitrate is also a promise not to litigate.' The pursuit of RCA's Russian proceedings appears to me to be an obvious breach of that promise. Specifically, RCA's statements of claim in the Russian proceedings bring a claim under the bonds. They invoke Russian law to allege the arbitration agreements are unenforceable; but that of itself, as it seems to me, acknowledges the initial applicability of the arbitration agreements. The prayers for relief expressly seek recovery under the bonds.

45. Furthermore, following the dismissal of RCA's appeal in the UniCredit proceedings by the Supreme Court, RCA has engaged in further breaches of the arbitration agreements by seeking and obtaining the freezing orders, which I have mentioned, against the Banks. Those freezing orders were obtained to facilitate the enforcement of judgments which, if granted, will have been made in violation of the arbitration agreements. Thus, there appears to me no doubt that there have been, and are likely to be further breaches of the arbitration agreements.

46. There is, by contrast, turning to the second aspect, no strong reason to refuse an ASI. The burden to show such a strong reason is on RCA. That burden has not been met and, in my judgment, could not be met, particularly in circumstances where the Court of Appeal rejected the three matters which were relied on by RCA in front of the Court of Appeal in UniCredit as constituting strong reasons as to why a final ASI should not be granted.

47. Thus, in paras.84-85 of the UniCredit, Males LJ said:

> '84. RCA relied on three matters as constituting strong reasons why a final injunction should not be granted in this case. The first was that the French courts would not recognise or enforce an English order. However, this is irrelevant in circumstances where it is most unlikely that UniCredit would ever seek recognition or enforcement of an English anti-suit injunction in France. What matters, as in Deutsche Bank, is that a French court would not regard an English anti-suit injunction as an interference with its own jurisdiction, which is a different point. The second reason was that as a matter of English law, Article 11 of EU Regulation 833/2014 imposing sanctions on Russian entities provides UniCredit with no defence to RCA's claim on the bonds. But whether that is so is a matter which the parties have agreed should be decided by arbitration in Paris applying English law. Even if RCA is right, as to which I say nothing, it does not amount to a reason justifying RCA's breach of its agreement to arbitrate. The third reason was that the English court has no sufficient interest in or connection with the matter to justify the indirect interference with a foreign court which an anti-suit injunction entails. I do not accept this. The fact that the contract, including the agreement to arbitrate, is governed by English law, together with the policy of English law that those who agree to arbitrate should adhere to their bargain, provides a sufficient interest or connection in this case.
>
> 85. For these reasons, I conclude that the 'strong reasons' on which RCA relied carry no weight at all. On the contrary, there can be no doubt (and RCA has not denied in these proceedings) that by commencing and pursuing its Russian proceedings, RCA is in breach of its agreement to arbitrate. In my judgment a final injunction requiring RCA to terminate those proceedings is necessary.'

48. Thus, the only three matters which were relied on by RCA in those proceedings as constituting strong reasons for refusal of an injunction were trenchantly rejected as such by the

Court of Appeal. I should, nevertheless, deal with certain additional arguments which were drawn to my attention by the Banks' counsel as arguments which RCA might conceivably put forward as reasons for the refusal of relief.

49. First, there is the fact that, as I have already mentioned, LBBW has commenced an ICC arbitration against RCA, but BL has not. However, as I have already said, it is not of significance in a case such as this whether an applicant for an ASI has commenced, or intends to commence, an arbitration. It is to be noted that in the Commerzbank case, final relief was granted by Jacobs J against RCA in circumstances where that bank had commenced arbitration.

50. Second is that in the ICC arbitration, which LBBW has commenced, RCA seeks to contest the jurisdiction of the ICC Arbitral Tribunal based on the application of Russian law and, in particular, Article 248.1 of the APC, the argument being that, pursuant to that provision, the Russian court has exclusive jurisdiction over the dispute between the parties. That point has not, in fact, been raised by RCA to resist enforcement of the arbitration agreements and was not raised by RCA in the Court of Appeal in UniCredit.

51. I should nevertheless express my view that any reliance by RCA on Article 248.1 of the APC, or on an alleged public policy arising from the application of Russian law, would be misplaced. Applying English conflicts of law rules, the arbitration agreements are governed by English, not by Russian, law. It is English law that must determine whether the arbitration agreements can or should be enforced. Under English law, there are no considerations of public policy which would render the arbitration agreements invalid, inoperable, or otherwise unenforceable. On the contrary, there is a strong presumption in English law in favour of upholding arbitration agreements.

52. A further possible argument is that the Court should not grant relief because RCA will not abide by any order made. However, any difficulty in enforcement of an order which I may make is not, in my view, a strong reason against the grant of an ASI. As Foxton J said in

RiverRock Security v International Bank of St Petersburg JSC [2020] 2 Lloyd's LR 591 at para.108:

> 'The first [matter to be considered] is that it is said that it is highly probable that the injunction will not be obeyed, and that the court should not act in vain. AS Blair J noted in Impala Warehousing and Logistics (Shanghai) Co Ltd v Wangxiang Resources (Singapore) PTE Ltd [2015] 2 All ER (Comm) 234 at para.137, it will be a rare case in which difficulties in enforcing an English injunction in the country where proceedings have been commenced will constitute a strong reason to refuse to grant an ASI. Further, if any judgment obtained against RSL in the St Petersburg action was obtained in breach of an injunction of this court, that might well have implications so far as attempts to enforce such a judgment or hold RSL to its findings were concerned (National Navigation Co v Endesa Generacion SA (The "Wadi Sudr") [2010] 1 Lloyd's LR 1933 at para.125).'

53. The fact that RCA may pursue the Russian proceedings does not, in my judgment, mean that the final relief sought by the Banks would be futile or otherwise lack any practical utility. On the contrary, on the basis of the evidence before me, I consider that final anti-suit injunctive relief is likely to help to maximise the protection afforded to the Banks, particularly if RCA attempts to enforce the Russian judgments against the Banks in other jurisdictions.

54. As to a potential argument about comity, I have already largely dealt with this. There are, in my judgment, no comity concerns which would justify the Court's refusal to grant anti-suit injunctive relief. As has been said on many occasions, in a contractual ASI case such as this, comity is of little, if any, relevance. Certainly, I do not consider that the Russian courts would have any legitimate grounds for taking offence at the grant of an ASI. If the Russian courts fail to grant a mandatory stay of the Russian proceedings and assert jurisdiction, it appears to me that that would be a breach of Russia's obligations under the New York

Convention. In my judgment, what comity requires in this case is that the arbitration agreements should be enforced.

55. As to the French courts, as I have said, there does not appear to me to be any comity concern. I consider it likely, in fact, that the French courts would welcome the grant of an ASI, the effect of such relief being to uphold the New York convention, to which France is a party, and to support arbitration in Paris, being the seat provided for in the arbitration agreements. In any event, whether or not I am right as to the welcome which the French courts might give its grant, the evidence before me is that the French court would not be hostile to or offended by such relief. I have already mentioned the evidence of Monsieur Honlet and the fact that that was the position recognised in UniCredit.

56. Finally, in relation to whether the application has been prompt, Foxton J held in his ruling on the interim orders that there had been no appreciable delay on the part of the Banks in this case. I agree. The interim orders were obtained on 15 February 2024, which was substantially in advance of the first substantive hearings in the Russian proceedings on 14 March 2024, and shortly after the Court of Appeal on 25 January 2024 reversed the decision of Sir Nigel Teare given in late September 2023 in the UniCredit proceedings, thereby clarifying that the English Court did have jurisdiction to grant such relief in this sort of case.

57. Thus, I turn to the last issue, which is whether it is just and convenient to grant an order. Given all that I have already said, and in the absence of any other considerations or circumstances which militate in the other direction, I consider that it is clearly just and convenient to grant an order of final anti-suit injunctive relief.

58. I will consider now in rather more detail the terms of the order, albeit it is right to say, as I have already said, that the order made by the Court of Appeal in UniCredit was upheld by the Supreme Court, and that that of itself goes a long way towards establishing the appropriateness of significant parts of the order which is sought.