Claim No. CL-2024-000477

Claim No. CL-2024-000478

Claim No. CL-2024-000479

Claim No. CL-2024-000480

NCN: [2024] EWHC 2212 (Comm)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

Before His Honour Judge Pelling KC

B E T W E E N:

(1) GOOGLE LLC
(a company incorporated under the laws of the State of Delaware, USA)

(2) GOOGLE IRELAND LIMITED
(a company incorporated under the laws of the Republic of Ireland)

Claimants in the first Part 8 Claim

- and –

NAO TSARGRAD MEDIA

(a company incorporated under the laws of the Russian Federation)

Defendant in the first Part 8 Claim

GOOGLE LLC

(a company incorporated under the laws of the State of Delaware, USA)

Claimant in the second Part 8 Claim

-and –

NO FOND PRAVOSLAVNOGO TELEVIDENIYA

(a company incorporated under the laws of the Russian Federation

Defendant in the second Part 8 Claim

GOOGLE LLC

(a company incorporated under the laws of the State of Delaware, USA)

Claimant in the third Part 8 Claim

-and –

ANO TV-NOVOSTI

(a company incorporated under the laws of the Russian Federation)

Defendant in the third Part 8 Claim

GOOGLE IRELAND LIMITED

(a company incorporated under the laws of the Republic of Ireland)

Claimant in the Part 62 Claim

- and -

ANO TV-NOVOSTI

(a company incorporated under the laws of the Russian Federation)

Defendant in the Part 62 Claim

STEPHEN HOUSEMAN KC, KABIR BHALLA and LORRAINE ABOAGYE (instructed by or of King & Spalding International Ltd), appeared on behalf of the Claimants

THE DEFENDANTS did not attend and were not represented

JUDGMENT
19th AUGUST 2024

JUDGE PELLING:

1. This is a without notice application for anti-enforcement injunctions and anti-suit injunctions which arise in the following broad circumstances. The claimants in the four actions are Google LLC, and in two of the actions so is Google Ireland Limited. Each of the Google entities are contractually bound to the defendants who they respectively sue in the four claims now before the court for the provision of internet and social media services to the Russian entities concerned. The reason why these actions have been brought in the form they are is because there are multiple different contractual regimes which apply, and because in *Google Ireland v TV-Novosti*, there is an arbitration agreement which the Claimants seek to rely upon.

2. The circumstances giving rise to the claim can be summarised relatively shortly. Each of the entities, or those who are their ultimate beneficial owners, have been sanctioned under one or more of UK, EU or US law. It is alleged by the claimants that the various channels to which they have access by contract with the claimants have been used by the defendants for the purpose of advancing material which is contrary to the controls which the claimants seek to impose upon those who use their facilities. The claimants therefore exercised contractual powers to suspend or terminate the provision of services to the defendants. The Russian entities then commenced proceedings in the Arbitrazh Court of the City of Moscow ("Moscow Court") for orders requiring the Google entities to restore the services that have been withdrawn by Google in the way I have described. Google maintain that this is in breach of either exclusive jurisdiction, agreements, requiring any claims for alleged breach to be brought before the Courts of England and Wales, or an arbitration agreement requiring disputes to be resolved by arbitration under the LCIA rules in London.

3. The Google entities did not apply for anti-suit relief when the proceedings were commenced in Russia, but challenge the jurisdiction of the Moscow Court in the Russian proceedings. The Russian entities sought to rely upon article 248 of the Arbitrazh Court Procedural Code ("Code") which, as it is well-known, is a procedural mechanism created after sanctions were introduced, which has the effect of giving to the Arbitrazh courts in Russia exclusive jurisdiction to hear claims where a sanctioned party is involved, even though there are contractual arrangements which require the dispute to be litigated, either in a foreign court or in arbitration proceedings outside Russia.

4. The key point, for present purposes, is that article 248 at least on the basis of the Russian law evidence that has been obtained by Google, is permissory, not mandatory, in effect. In entitles the Russian sanctioned party to commence proceedings in Russia, taking advantage of the jurisdiction conferred by article 248(1), but does not oblige it to do so. The Russian parties having commenced proceedings relying upon article 248, the Moscow Court, the appeal court and in the Supreme Court, all upheld their right to do so.

5. A significant feature of the claims that have been brought by the Russian entities before the courts in Russia, has been the imposition of Astreinte penalties – a form of financial penalty which is penal by design and is imposed to force compliance with court orders. It can best be described as a compounding fine which the Russian courts have imposed, and which accumulates at a frankly alarming rate. To date the evidence suggests that the total value of these compounding fines imposed on the

claimants at the suit of the defendants collectively exceed what is described in the evidence as 1.8 octillion dollars; which is, as I understand, it a billion cubed. Asa such it exceeds the national debt of many nation states.

6. The unusual aspect of this application is that the anti-suit injunctions which are sought are anti-enforcement orders which are sought for the purpose of preventing the enforcement of the Astreinte orders ("AO") in foreign jurisdictions including but not limited to those the defendant appear so far to have approached. The jurisdictions which have been identified as being ones where the Russian parties are seeking to enforce the orders obtained from the Russian courts are Turkey, Serbia, Kyrgyzstan and South Africa. The proceedings that have been commenced in each of those jurisdictions are in their infancy, with substantive return dates likely to occur either in October or November of this year. South Africa stands out as being a jurisdiction in which, without notice, relief had been obtained, be it noted against Google entities, or a Google entity other than the Google parties in this litigation and the Google parties in the Russian litigation.

7. A signal feature of what is objected to by the Google parties is the attempt by the Russian entities to seek to enforce what the Google parties maintain is an obviously exorbitant financial penalty on entities within the Google group of companies that are not parties to the relevant contracts, or indeed parties to the Russian litigation. This is not mere sabre rattling. In Russia the result of the orders made by the Russian courts has been that the orders obtained from the Russian courts have been enforced against the Russian subsidiary of Google, even though the Russian subsidiary of Google is not a party to the litigation, with the result that the Russian subsidiary of Google has been placed in liquidation and assets of the order of 51 million dollars seized as part of the liquidation process. It would appear that the Russian Courts do not recognise such subsidiaries as having independent juridical standing or if they do, they have ignored it.

8. In those circumstances the question which arises is whether or not, and if so what, relief should be granted?

9. The first question I have got to ask myself is whether or not the Claimants have demonstrated, and to the high level required of an application of this sort, the existence of the exclusive jurisdiction and/or arbitration agreements on which they rely. I am satisfied on the evidence that that has plainly been made out, not least because the relevant standard terms and conditions on which the Claimant relies were themselves relied upon by the Russian parties in the proceedings before the Moscow Court and, further, reliance was placed by the Russian entities when appearing before the Moscow Court on the iteration of the standard terms and conditions current when the Russian entities sought relief from the Moscow Court, where it was accepted by the defendants that the effect of the contractual arrangements between the parties was to render applicable the then current iteration of the relevant standard terms.

10. The other issue which, potentially, is of importance, concerns whether article 248 of is mandatory in its terms. That is important, because the exclusive jurisdiction clauses recognise that where local law imposes a mandatory requirement which contradicts the contractual election of the parties, then effect should be given to local law.

11. The expert report of Mr Kryvoi, dealing with the Russian law issues, makes it abundantly apparent that article 248 is permissive in its effect, because it entitles a party that is sanctioned to take advantage of it, but does not require it to do so. This reflects decisions made by the English courts in relation to the same provision, including as I recall it, although it has not been cited, one of the decisions I have made in the *Sovcombank* litigation. In those circumstances, I have no difficulty whatsoever in accepting, at any rate to the evidential standard that applies to an application of this sort, that Mr Kryvoi is correct in his analysis of article 248 of the arbitrage procedural road.

12. For these reasons, the first and threshold condition in relation to an application of this sort is satisfied.

13. The much more difficult issue which arises on an application of this sort is that this is an application which is made for anti-suit relief for the purpose of restricting enforcement of orders that have been obtained, in circumstances where, as I have explained, no anti-suit relief was sought prior to the judgments having been granted by the Russian courts. The next issue is therefore whether it is appropriate to grant the injunctive relief sought, in circumstances where an anti-suit order was not sought prior to judgment having been obtained by the Russian entities before the Russian courts. As Mr Houseman KC, on behalf of the Claimant, submits such an order is treated in English law as a thing apart, because it engages particularly acute issues concerning comity, and the risk of a potentially significant but avoidable waste of time and resource which has been expended in relation to the proceedings in front of the relevant foreign court down to judgment.

14. In my judgment that factor is one of relatively minor concern in the circumstances of this case, because it is not suggested that the orders sought are ones which will be given effect to in Russia, or which the Claimants will even seek to enforce in Russia, because of the high level of improbability demonstrated by previous decisions in other cases that the Russian courts will give effect to orders of that sort. The purpose of obtaining the orders is to inhibit enforcement of what the Google parties maintain is an obviously exorbitant and escalating financial penalty in proceedings in foreign jurisdictions around the world, particularly against Google entities that are not parties to the relevant contracts, and are not parties to the relevant litigation either. I accept that on the evidence available the AOs impose exorbitant penalties and even if enforceable at all (which I doubt) are only enforceable against the entities against which the AOs has been made. In my judgment that is a massively distinguishing factor, which take these cases outside the general run of cases in which the English courts have expressed themselves reluctant to grant post judgment anti-suit injunctions. I am also satisfied that resources wont be wasted in the sense that the case law is concerned about because there is no real prospect of the order sought being enforced by the Moscow Court and no prospect of an ASI being enforced by that court it if had been applied for earlier.

15. The next question which arises concerns whether, or not, delay is a factor which I ought to take account of by refusing the orders sought. The explanation for the delay which occurred prior to judgment in the Russian courts is something I have already addressed and I am satisfied that that explanation means that the effect of the delay that occurred during that period of the chronology is immaterial. Post judgment, I am satisfied that none of the delay merits refusing the orders sought. Essentially, the

enforcement steps that are being taken, or the enforcement procedures of which the Claimants currently have knowledge, are in their infancy as I have explained.

16. Finally in relation to the discretion issue, in my judgment it is not even arguable for the Russian parties to maintain that there is a legitimate juridical advantage for them in commencing proceedings in Russia. There is no sensible bar on the entities concerned defending proceedings, or indeed bringing proceedings, in England and Wales. There is a general licence which permits expenditure of up to half a million pounds in relation to legal expenses. Applications are regularly made to the relevant Treasury department for individual licences permitting expenditure beyond those sums in relation to litigation, and those appear to be relatively readily granted, albeit with some delay. Furthermore, it has become apparent as a matter of practice that the English courts will permit delays in the conduct of litigation in order to allow such applications to be made, and similar procedures are adopted by arbitrators in London. In those circumstances, it seems to me that it cannot sensibly be said that there is any legitimate juridical advantage in permitting the proceedings to be commenced, or continued, in Russia.

17. Therefore, and in those circumstances, I am satisfied it is appropriate in principle that there should be the anti-enforcement orders which are sought.

18. So far as full and frank disclosure is concerned, I record that I have read the affidavits sworn in support of the applications, I have taken account of the points which have been identified in reaching the conclusions I have reached so far.

19. The other order of substance which is sought in each of the cases is for an anti-anti-suit injunction designed to prevent applications to the Russian courts to preclude the commencement of continuation of this litigation. Again, I have no hesitation whatsoever in granting the injunction sought for the reasons, essentially, that I have already identified. The evidence which has been filled in support of the applications demonstrates there is a plain risk that the Russian courts will be approached for such orders, and if approached are likely, overwhelmingly likely, to grant the orders sought. Whilst it is doubtful that effect would be given to that order in Moscow either by the defendants or the Moscow Court, it has practical utility in the protection it confers on the Google parties.

20. The final issues which remain are concern whether this hearing should be without notice and the privacy and confidentiality issues.

21. So far as the without notice nature of this application that is necessary, even subject to the point I am about to mention, for the purposes of avoiding the risk of an anti-anti-suit application before the Moscow Court. The particular circumstances which have arisen, which give rise to concern, is that although the Claimants' parties sought to ensure that there was full anonymity in relation to these proceedings when they were issued, for reasons which at the moment are unclear to me, the parties names became available on the court record. There is, therefore, a serious risk of an urgent anti anti suit application being made in Moscow. That makes it necessary, first, to deal with this application much earlier than had been planned, and maintain the without notice nature of the application. So far as privacy is concerned, it is plain that these proceedings should be subject to a full blanket privacy requirement until after the orders have been served, and I direct accordingly. Finally, permission is required to rely upon the four expert reports which have been relied upon by the

Claimant. I give that permission. Those reports are concerned with Russian law, which I have already dealt with. There are also reports on Turkish, Kazak and South African law, and I have Serbian law as well. I have read those reports prior to this hearing. I have not felt it necessary to refer to them in any detail in the course of this judgment.

22. The final point I think which arises concerns whether, or not, permission to serve by an alternative means should be granted. So far as that is concerned, where service out of the jurisdiction is to be ordered, as it must be in the circumstances of this case, the question which arises is whether, or not, service by an alternative means should be permitted where the relevant parties are to be found in countries that are parties to the Hague Service Convention. So far as that is concerned there is now a very substantial body of first instance decisions of the Commercial Court, making clear that where orders are made which engage the coercive jurisdiction of the court it is of critical importance that the orders, together with the evidence used in support of the application for the orders and associated originating applications and claim forms, should be served at the first opportunity, so that respondents are fully aware of the position they find themselves in. That applies with full force and rigour in the circumstances of this case, and I have no hesitation in concluding that alternative service is appropriate in the exceptional circumstances of this case.

23. Subject to any matters of detail which remain to be resolved on the form of the order, I am prepared in principle to make the order sought.

This transcript has been approved by the Judge