

Dispute Resolution
Case Law Update
Rosling King LLP



The Commercial Court recently held that the Defendant, a former majority beneficial owner of the Claimant bank, had acted dishonestly and in breach of duties owed to the Claimant in causing the Claimant to advance monies in eight transactions which had not been repaid or recovered, to a borrower closely connected to the Defendant

Background

The Claimant was a Latvian company, now in liquidation, who operated primarily as a retail bank (the “Bank”). The Defendant, A, was a Russian national who was the majority beneficial owner of the Bank. A was also a member of the Supervisory Council of the Bank and he was therefore responsible for the supervision of the activities of the Bank’s management board, pursuant to Article 291 of the Latvian Commercial Law. As a member of the Supervisory Council, A was required to perform his duties as would an honest and careful manager and would be liable for the losses caused by a breach of this obligation (Article 169 of the Latvian Commercial Law).

Prior to the Bank’s insolvency, the Bank entered into eight transactions, which the Bank contended that A had caused them to enter into. The Bank maintained that the transactions were not within the Bank’s interests and were arranged in order to benefit A and/or others closely associated with him. The Bank alleged that in causing them to enter into these transactions, A acted dishonestly and in breach of his duties owed to the Bank.

At the time when the Bank served proceedings against A, A was living in London and was domiciled in the United Kingdom. A did not dispute the jurisdiction of the English Court in this action and filed his Defence, denying liability. On service of proceedings, A was also made subject to a freezing injunction up to an amount of £70million and had been ordered to disclose information pertaining to these assets. The Court prohibited A from leaving England and Wales until he had complied with the order for disclosure.

A made affidavits in purported compliance with the order but the Bank contended that the information was incomplete. The Court made further orders requiring A to disclose specific documents but A breached these and did not provide the required information. A fled the country after being served with an application seeking his committal for contempt of Court. A was subsequently debarred from defending the Bank’s proceedings and was found guilty of contempt of Court and sentenced to prison for 12 months. A has not returned to the United Kingdom and his sentence remains outstanding.

Notwithstanding A being debarred from defending the proceedings, the trial of the Bank’s claim took place. The Bank’s claim was based upon eight transactions which are described in detail in the Judgment as the Plaznixon, Krapivny, Eagle River, Multikapitals, Clarkson, VTB, Ewub and Davitashvili transactions. A used the transactions to perpetrate a fraud. The majority of the transactions involved the Bank advancing loan monies to companies, in order to facilitate the purchase of a property or other asset, or to purchase shares in, or acquire a specified company. Two of the transactions involved the Bank making arrangements to deposit cash with correspondent banks that would then make loans on the Bank’s direction, as the Bank’s regulator had prohibited the Bank from further lending.

Following inception of the loans, the borrowers defaulted and/or the Bank's sums were not repaid. It transpired that A was involved in all eight transactions in some capacity. A was found to be the beneficial owner of some of the borrower companies or held a beneficial interest in, or was closely connected to the borrower company.

Judgment

It was held that, in each of the eight transactions, A caused the Bank to advance to a borrower closely connected to himself, money which had not been repaid or recovered. The transactions were not made at arm's length and were induced by or perpetrated by A who was therefore found guilty of acting dishonestly and in breach of his duties owed to the Bank.

The Judge held that his conclusions in relation to each of the eight transactions were reinforced when the evidence was considered as a whole. The Judge was satisfied that A had subordinated the Bank's interests to his own and repeatedly abused his position of influence as a member of the Supervisory Council of the Bank, over the Bank's affairs for his own advantage.

It followed that A's wrongdoing amounted to a total loss of EUR 60,499,568 and US\$ 30,762,458 for which A was liable to compensate the Bank under Latvian Law. In addition, the Judge held that the Bank was entitled to recover as damages, profits that would have earned if the money had not been advanced in the eight transactions and had instead been used for other purposes. As the Bank did not adduce evidence in this respect, it was held that the Bank's claim for loss of use of money is a claim for interest. Whilst the Judge concluded that interest is recoverable under Latvian Law, he invited submissions as to whether this rate of interest would be determined by Latvian or English Law and held it was for the Bank to calculate the amount of interest payable by A on its damages

Commentary

Whilst this case involves unusual circumstances, it provides an indication of the type of award the Courts will make when a beneficial owner is found to have acted dishonestly and in breach of duties owed to a company. Furthermore, it is a reminder of the type of circumstances in which English Courts will have jurisdiction to determine foreign disputes.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.