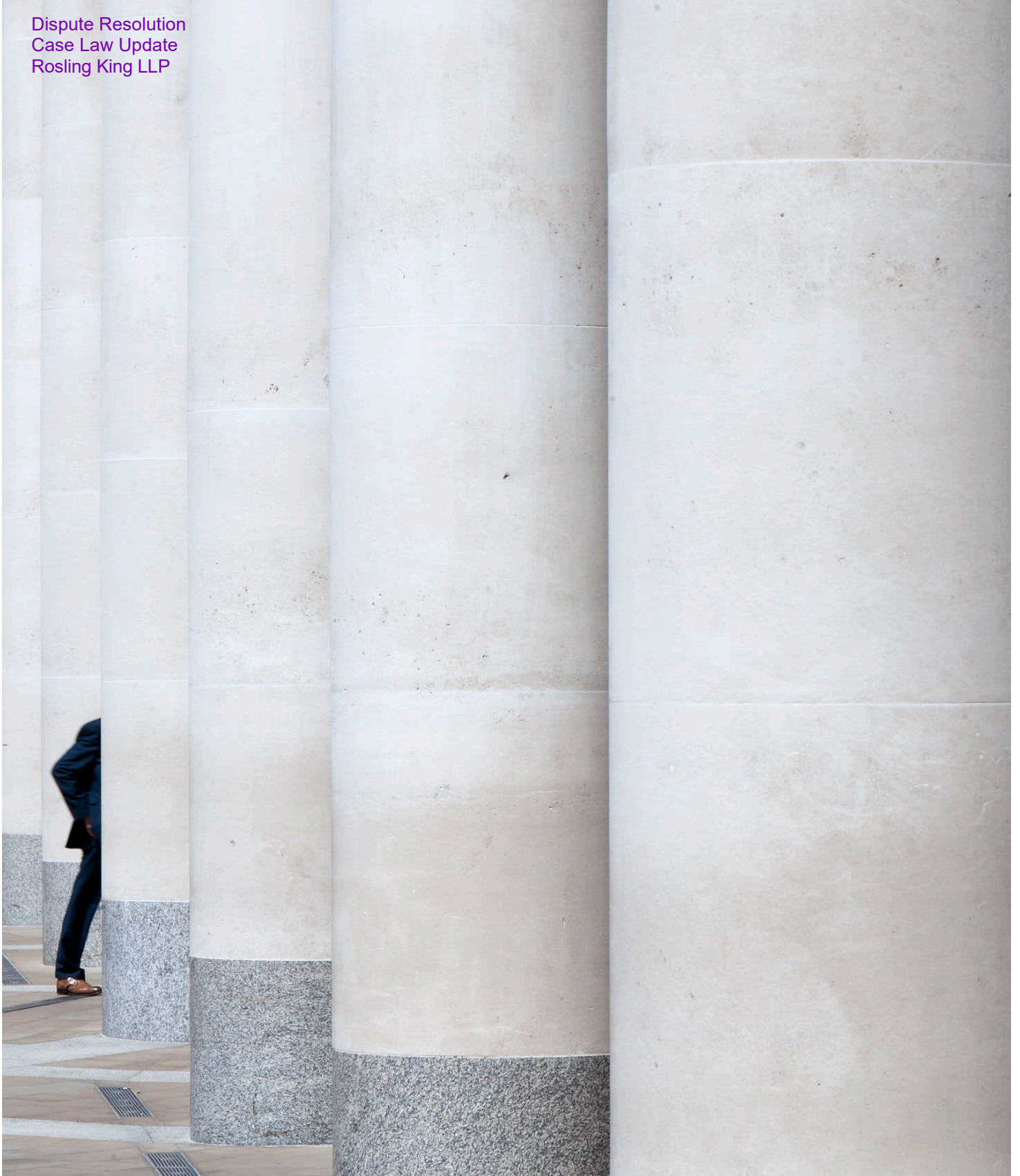


Dispute Resolution
Case Law Update
Rosling King LLP



Case Summary

On 2 August 2023, the High Court handed down another judgment in this long running and hard-fought legal dispute, this time granting an anti-suit injunction against the First and Second Defendants, Mr and Mrs Tyshchenko, requiring them to withdraw a claim in Ukraine against the Ukrainian law expert for the Claimant, WWRT Limited. In exercising this discretionary power under s 37(1) of the Senior Courts Act 1981, Mrs Justice Bacon noted in her judgment that there is “*no case where an anti-suit injunction has been sought on facts comparable to the present*”.

Background

The context of the recent judgment is a claim brought by WWRT in relation to loans made by the now defunct Ukrainian bank, JSC Fortuna Bank, which WWRT asserts were granted to borrowers associated with Mr and Mrs Tyshchenko who had no intention or means of repaying them. The proceedings have been ongoing since September 2020, when Kelyn Bacon QC (as she then was) issued a £65 million without notice freezing injunction against Mr and Mrs Tyshchenko. WWRT’s application for a freezing order was supported by a report from WWRT’s Ukrainian law expert, who has since provided further expert evidence on behalf of WWRT.

In October 2022, Mr Tyshchenko issued a claim in Ukraine against WWRT’s expert, with Mrs Tyshchenko listed as a third party to it. By the claim, they sought an order recognising the conclusions of the expert in certain of his reports in the English proceedings as unlawful and requiring that he recant the evidence provided in those reports. The expert’s application for closure of the claim against him was rejected in rapid succession by the Commercial Court of Kyiv and North Commercial Court of Appeal. His appeal to the Ukrainian Supreme Court was listed for hearing on 15 August 2023.

In late July 2023, WWRT made an urgent application for an anti-suit injunction requiring the claim against the expert to be withdrawn on the basis that it is vexatious, abusive and an illegitimate interference in the practice and procedure of the English Court.

Legal Test

The Court’s power to grant an anti-suit injunction is derived from s. 37(1) of the Senior Courts Act 1981, which provides that the court may grant interim or final injunctions where “*it appears to the court to be just and convenient to do so*”. This power extends to the granting of anti-suit injunctions where the continuation of proceedings in a foreign jurisdiction is “*unconscionable*”: *South Carolina Insurance v Assurantie Maatshappij* [1987] 1 AC 24. A principal example of this is where the foreign proceedings are regarded as “*vexatious or oppressive*”.

The Decision

In this latest development, Mrs Justice Bacon granted the first of its kind anti-suit injunction against Mr and Mrs Tyshchenko, requiring the withdrawal of the Ukrainian claim against the expert, on the basis that it was very clearly both vexatious and oppressive. In making her decision, Mrs Justice Bacon pointed out the likely reason for the lack of authority in this area is that it is “*extremely unusual for a party to proceedings to launch such a direct and unambiguous attack in a foreign court on the substance of the evidence given in domestic proceedings*”.

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Although comparisons were made to *Arab Monetary Fund v Hashim (No. 6)*, Financial Times Law Reports, 23 July 1992, where an order for an anti-suit injunction was not granted because (among other things) there was nothing to suggest that the US action had been commenced to dissuade the witness from giving evidence in the UK, in the present case Mrs Justice Bacon was confident that the claim was brought by Mr Tyshchenko in a “*blatant and clearly abusive attempt to interfere with the due process of the English proceedings which have by now been on foot for almost three years*”.

Commentary

Whilst the facts of this case are highly unusual, the decision demonstrates that the High Court stands ready to exercise its discretion to grant anti-suit injunctions to protect the integrity of the English court and its own processes, even where the case law is undeveloped. The Judge in this case recognised the wider implications of the decision and the need to send “*a strong signal to other litigants that this sort of conduct will not be tolerated*”.

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