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Neutral Citation Number: [2024] EWHC 2840 (Ch)

S.C. SUPREME COURT

Case No: BL-2024-001337

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 6 November 2024

Before :

Mr Justice Rajah

Between :

1) Cape Intermediate Holdings Limited and
2) Cape Plc (a company incorporated under the
laws of Jersey)
- and -
Peter D Protopapas

Claimant

Defendant

Derrick Dale KC and William Willson (instructed by Signature Litigation LLP) for the
Claimant

Hearing dates: **6th November 2024**

RULING

Mr Justice Rajah
(11:00 am)

Wednesday, 6 November 2024

Ruling by MR JUSTICE RAJAH

1. This is the claimants' application for permission to rely on expert evidence at the expedited trial of this claim, which is due to commence on 11 November 2024, which is next week.

The background

2. The first claimant (“C1”) is an English intermediate holding company within what can broadly be described as the Cape Group. The second claimant (“C2”) is the Jersey holding company of the Cape Group.
3. The Cape Group's origins go back to at least 1893 when C1 was incorporated. Until the 1980s, a significant part of the Cape Group's business was in the mining of asbestos and production of asbestos-based products. As the link between asbestos and ill health became known, there were class actions brought in the United States against C1's wholly owned US subsidiary, the North American Asbestos Corporation (“NAAC”). NAAC and its insurance were overwhelmed by these claims, and it dissolved in 1978. Attempts to enforce the US judgments against C1 in this country resulted in the well-known decision of *Adams v Cape* [1990] Ch 433, establishing that as a matter of English private international law the US courts had no jurisdiction to make those orders against C1.
4. That is the backdrop to the asbestosis-related proceedings in South Carolina now, where the claimants are named as defendants. The claimants say they have no connection with South Carolina- they have never conducted business there and they have no assets there. They have not participated in the South Carolina Court; and they have not submitted to jurisdiction of the South Carolina Court. They say that, in the eyes of English private international law, the courts of South Carolina have no jurisdiction to make orders in relation to them.

5. Whatever English private international law may say, the position may be very different when looked at from the perspective of the courts of South Carolina and having regard to the law of South Carolina. This seems to be so, because the South Carolina Court has appointed the defendant to act as receiver of the claimants and to act in relation to their worldwide assets and business. I think technically the order was to appoint him as receiver of one of either C1 or C2, but there has been confusion as to which one. It now seems to be likely that the intended target is C1, but C2 wishes to have confirmation of its position as regards who has control of its business. One of the things which the defendant has done is to commence proceedings in South Carolina on behalf of the claimants against their parent companies, subsidiaries and other group companies, which is due to be tried in February 2025 (“**the 3P proceedings**”). The claimants say that this has given rise to an extremely serious situation.
6. The claimants commenced these proceedings in the English High Court on 6 September 2024, seeking urgent declaratory and injunctive relief directed at establishing that the control and authority of the claimants is governed by English and Jersey law and that the appointment of the defendant as receiver is of no effect on the control and authority which is being exercised by their directors. They seek to injunct Mr Protopapas from acting any further as a receiver of the claimants, whether in South Carolina or elsewhere, and to direct that he has no power or authority to act as such, even in South Carolina, and that he be injuncted from litigating the 3P proceedings in South Carolina.
7. On 9 October 2024, these proceedings were ordered to be expedited by Trower J and a trial, as I have said, is due to be heard by Sir Anthony Mann next week.
8. The defendant is not participating in the English proceedings; he maintains that the South Carolina Courts have exclusive jurisdiction over his receivership and he has launched various applications to the South Carolina Court in relation to the English proceedings. I have heard today that, one those motions which he has issued was granted overnight by Toal J. She has

confirmed that all of the Defendant's actions to date have, in the view of the South Carolina Court, been entirely proper and within the authority which had been conferred by the South Carolina Court. The claimant is not participating in the South Carolina proceedings, so there is a standoff.

9. This sort of standoff is not uncommon when international legal systems bump up against each other. What is important is that, when they do, the English Court always acts with deference and respect to the other court and it always has regard to the principle of judicial comity.

The expert evidence

10. The Claimants were prompted by a suggestion by Trower J to consider whether expert evidence of South Carolina law should be put before Sir Anthony Mann.
11. They have now instructed The Honourable William Wilkins, whose qualifications include being a former judge of the US District Court for the District of South Carolina and the US Court of Appeals for the Fourth Circuit.
12. He has been asked a series of questions about the law of South Carolina to provide background. He has not been asked to advise on the specific facts of this case or the cases which are currently ongoing in South Carolina.
13. This proposed expert evidence has been served on the defendant, as has this application, and indeed seems to have been what prompted the motion for confirmation - perhaps contrary to what was said in parts of that expert evidence - that all of his actions have been within the jurisdiction conferred by the South Carolina Court, and indeed has been so confirmed by the order which was made by Toal J overnight.

CPR 35.1

14. Civil Procedure Rule 35.1 makes it this court's duty to restrict expert evidence to that which is reasonably required to resolve proceedings justly.
15. Expert evidence which is not necessary but would assist the court may be reasonably required to resolve proceedings justly.
16. Mr Dale says it is necessary for some of the arguments which he may take to have this evidence before the court. Without getting into that, I am satisfied that this expert evidence would at least be of assistance because when having regard to the principle of judicial comity, it would assist to have an understanding of the legal context in South Carolina in which various orders have been made and things done by the defendant.
17. In resolving what is reasonably required to resolve proceedings justly, I take into account: (a) the importance of the case to C1 and C2 and their desire to ensure that anything which might assist the judge is before the court; (b) the fact that the defendant is not participating in the proceedings and, if that continues next week, he will be procedurally unaffected and not prejudiced, except in relation to the potential increased costs of having this expert evidence; and (c) the increased costs of this exercise, which I am told are some £30,000, are likely to be insignificant in the overall costs of these proceedings.
18. I will allow the application.