Société Générale v Goldas
UK Judgements Summary

Société Générale v Goldas Kuyumculuk & Ors [2017] EWHC 667 (Comm)
[2018] EWCA Civ 1093 , UKSC 2018/0125 - 0126

In this case all claims brought by the Claimant bank, in total worth over $480m, and freezing orders obtained in 2008, were struck out. The bank's failure to serve the claim forms by a permitted method in the jurisdictions in question, and its subsequent decision not to take any further steps in the proceedings warehousing them for over 8 years, was fatal.

Background

The Defendant Goldas companies were Turkish and Dubai incorporated entities which carried on business manufacturing jewellery and trading in gold bullion as part of the 'Goldas' Group, once Turkey's largest gold trading entity. In March 2008 and early April 2008, SocGen obtained worldwide freezing orders against Goldas. Shortly after obtaining each freezing order (albeit not as soon as practicable) SocGen issued proceedings in respect of sums said to be due for bullion delivered on consignment, and in respect of guarantees for payment of those sums.

SocGen purported to serve the claim forms in Turkey in March and April 2008 by diverse means including delivery through a Notary Public. However, it did not use the process set out in the Hague Convention, to which Turkey is a signatory. Goldas informed SocGen of the error in service in good time and stated that they did not consider service to have been effective.

SocGen sought to serve Goldas Dubai through the Foreign Process Section of the RCJ in accordance with the relevant bilateral treaty. However, service was not effected in Dubai owing to the refusal of an employee at the relevant offices to accept service. SocGen's lawyers were informed of the failure to effect service in September 2008, but did nothing.

The Judge later found that by mid April 2008 SocGen had taken the decision not to pursue the English proceedings, but instead it chose to pursue Goldas in Turkey and Dubai, primarily through criminal and insolvency proceedings. It was SocGen's contention that it had always intended to keep the English proceedings under review, nevertheless, it took no further steps in the English proceedings from 2008.

In February 2016, Goldas applied to strike out the claims and to discharge the freezing orders *inter alia* on the basis that SocGen had failed to serve the proceedings (which were now time barred); and had abused the process of the Court in failing to progress the proceedings, particularly where freezing orders remained *in situ*. Goldas sought an inquiry as to damages on the cross-undertaking given by SocGen in relation to and as a condition of it being granted the freezing orders.

By cross-applications issued in May 2016, SocGen sought to argue (i) that the proceedings had been served (although in relation to Turkey this argument was later conceded by SocGen); (ii) that in the event service had not occurred for orders remedying the failure to serve by retrospective deemed alternative service under CPR r6.15; dispensing with service under r6.16 and/or extending the time for service of the claim form under r7.6 (which SocGen abandoned at the hearing); and (iii) that SocGen should have summary judgment on the claims.

Decision

In his judgment, Popplewell J found that the claim forms had not been served. He dismissed SocGen's applications to remedy the failure to serve. In doing so, the Judge found that SocGen's failure to serve within time had been culpable and amounted to a breach of undertakings to the Court. The Judge further found that SocGen had abused the process of the Court by (i) failing to progress the action expeditiously where a freezing order had been obtained; (ii) deciding to put the proceedings on hold (or to "warehouse") the proceedings; (iii) breaching the undertakings given to the Court in obtaining the freezing orders. In summary, the Judge held:

"SocGen chose to pursue proceedings in Turkey to recover the price or value of the gold in place of pursuit of the claim in these proceedings which were put on hold for about 8 years until after the validity of the claim forms had expired and after the limitation period had expired, abusively warehousing the English proceedings and improperly maintaining freezing orders in place, in circumstances where it knew that the validity of service in Turkey was disputed, ought to have known that the claim forms had not been served in Turkey and did not believe that the claim form had been served in Dubai. None of those features suggest there is good reason for validating defective service, still less by a method which was contrary to the Hague Convention and Dubai Bilateral Treaty, nor exceptional circumstances justifying dispensing with service. On the contrary they provide good reasons for not doing so."

SocGens Turkish lawyers Pekin and Pekin criticized in Popplewell J Judgment, when he said inter alia: "incorrect advice from Pekin" paragraph 33(3)(c); "failure to do so in Turkey was the result of negligent Turkish law advice" (52); "In relation to service in Turkey, the erroneous advice of Pekin" (64); "the incompetence of SocGen's Turkish legal advisers" (70.4). This scathing criticism was of course for failing to effect service of the original proceedings in Turkey, yet SocGen kept faith with Pekin.

The Judge struck out the claims and discharged the freezing orders. Further, the Judge ordered that there be an inquiry as to damages suffered by Goldas by reason of the freezing orders remaining in place after mid-April 2008.

The judgment will prove a very helpful authority in relation to: (i) the relevant requirements of service in Turkey and Dubai; (ii) the principles of when the Court will order alternative service or dispense with service under rr6.15 and 6.16 (including whether the decision in *Abela v Baardarani* [2013] 1 WLR 2043 (SC) is applicable in the context of a Hague Convention or Bi-lateral Treaty case); (iii) the circumstances in which abuses of process may be committed by failing to prosecute claims with

appropriate diligence or where decisions have been taken to warehouse those proceedings without seeking permission from the Court; and (iv) when the Court will order an inquiry as to damages.

SocGen appealed the above decision and on 15 May 2018 the Court of Appeal agreed that Popplewell had made a ‘balanced and careful judgment’ – including taking into account SocGen’s failure to ‘expeditiously’ progress the hearing and that Turkey was a party to the Hague Convention but reversed the decision to order an inquiry as to damages due to the delay of the application.

On 18 Dec 2018 UK Supreme Court refused the Permission to appeal because the applications do not raise a point of law of general public importance and case finalised.