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Precedent set in Guernsey as Court defies English decisions

Collas Day has successfully represented investment company Winnetka Trading Corporation before the Guernsey Court of Appeal, and in doing so set a precedent in the law relating to anti-suit injunctions and jurisdiction clauses. The decision taken by the Court is also likely to impact upon English law in this area.

A decision was first taken in November by the Royal Court of Guernsey to apply an 'anti suit' injunction to stop Winnetka taking proceedings against Bank Julius Baer in England. This injunction was enforced as a result of a 'jurisdiction clause' in favour of Guernsey, contained within the investment agreement between the two companies.

However, representing Winnetka in the Guernsey Court of Appeal this month, Advocate Christian Hay argued that the clause was a non-exclusive jurisdiction clause and that proceedings should be permitted to continue outside of Guernsey. His position concentrated on the difference between 'exclusive' and 'non-exclusive' and came down to what the parties meant by the word "submit" when they agreed to "submit to the jurisdiction of the Guernsey Courts".

On the one hand, it could be argued that "submit" meant the parties would refer all disputes to Guernsey, giving Guernsey exclusive jurisdiction. On the other hand, as successfully argued by Winnetka, by agreeing to "submit" to Guernsey courts, all that the parties had agreed was to 'yield' to the Royal Court in the event that proceedings had commenced in Guernsey, but had not agreed that proceedings couldn't be commenced in another equally convenient jurisdiction if necessary or desirable.

In agreeing with Advocate Hay's submissions, the Court of Appeal also criticised and refused to follow several recent English decisions which suggested there might not be much difference between the effect of exclusive and non-exclusive jurisdiction clauses. This judgment creates a significant new precedent in the common law relating to anti-suit injunctions in Guernsey and is highly persuasive in England and many other common law jurisdictions.

Advocate Hay said: "The decision by the Court of Appeal sets a strong and unambiguous Guernsey precedent. It means that Guernsey companies will, now more than ever, need to take extra care when drafting client agreements and carefully consider the wording of jurisdiction clauses to ensure that the intended meaning is clear."

Release Ends

Notes to Editors

An **'anti suit' injunction** is an order issued by a court that prevents an opposing party from commencing or continuing a proceeding in another jurisdiction or forum.

A **jurisdiction clause** is a provision in a contract that refers disputes arising under the contract to a country, territory or place for hearing and determination

For the full case notes or a copy of the judgment, please contact Christian Hay or Michael Adkins at Collas Day via Hannah Wakefield on hannah.wakefield@collasday.com or +44 (0)1481 734251.