

Natural Justice in Focus: Sergey Taruta v VTB Bank

The Eastern Caribbean Court of Appeal recently handed down its latest decision in the *Sergey Taruta v VTB Bank* litigation, setting out important principles of natural justice as they apply in the British Virgin Islands (the "BVI").

Maples and Calder, the Maples Group's law firm, represent Mr Taruta in these proceedings.

Background

Mr Sergey Taruta, a Ukrainian businessman and politician, was one of two guarantors for loans provided to a Russian plywood mill, Eniseisky, by VTB Bank. In 2013, VTB Bank initiated proceedings in the Meshchansky District Court in Moscow seeking US\$30 million from Mr Taruta on the basis he and his co-guarantor violated their obligations under the guarantee.

The Russian District Court directed service of the hearing notice on Mr Taruta by sending a telegram to his registered address in Mariupol, Ukraine, five clear days before the date of the trial. The telegram did not come to Mr Taruta's attention as he no longer lived at that address and was, in any event, in Kiev at the time. Notwithstanding that the notice had not come to Mr Taruta's attention, the District

Court ruled in favour of VTB Bank in Mr Taruta's absence, awarding the Bank the full US\$30 million sought.

Mr Taruta appealed to the Russian Appeal Court, which upheld the decision of the court below. No copy of the Russian judgment was served on Mr Taruta.

When VTB Bank came to seek recognition and enforcement of the guarantee against Mr. Taruta in the BVI, he contended that he was never properly served with the originating process or notice of the hearing and therefore that the Russian judgment had been obtained in breach of natural justice, and was therefore unenforceable.

First Instance Decision

The judge at first instance held that, while the decision of the Meshchansky District Court in Moscow was indeed obtained in breach of natural justice, on the basis Mr Taruta had not been given adequate notice of the hearing, that breach was cured by the Russian appeal process.

Through the judge's own interpretation of certain provisions of the Russian Civil Code, assisted by a lay witness of VTB Bank, he held that it was open

to Mr Taruta to run certain arguments before the Russian Appeal Court that would have remedied the breach. The judge went on to apply a materiality test to the breach of natural justice, concluding that such a breach was capable, as (he held) in this case, of being 'immaterial'.

Key Issues on Appeal

The key issues before the Court of Appeal were as follows:

1. Whether the judge was right to conclude that there had been a breach of natural justice in the Russian proceedings, and whether that breach was capable of being immaterial;
2. Whether the breach was 'cured' by the Russian appellate process; and
3. Whether the judge was right to reach the conclusions he did without the benefit of foreign law expert evidence.

Findings of the Court of Appeal

Breach of Natural Justice

The Court of Appeal upheld the trial judge's finding that there had been a breach of natural justice in the Russian proceedings. Specifically, that:

- Mr Taruta had not been served with the originating process or notice of the hearing in accordance with the Minsk Convention, which governs service of process between Russia and Ukraine;
- Even if the telegram notifying Mr Taruta of the hearing had been delivered, the short notice was inadequate, especially given

the political turmoil in Ukraine at the time; and

- The lack of proper service and notification rendered the proceedings fundamentally unfair.

It determined that the trial judge had misapplied the principles of *Grand Pacific Holdings* in reaching his conclusion that a breach of natural justice could be 'immaterial'.

The Court held that the judge's assessment of the underlying merits of Mr Taruta's intended defence was 'inappropriate' because breaches of natural justice are fundamental and cannot be disregarded. The Court emphasised that the focus should be on whether substantial justice was done in the foreign jurisdiction, and not the underlying merits of the claim.

Curing the Breach

The Court of Appeal disagreed with the trial judge's conclusion that the breach of natural justice had been cured by the Russian appellate process. Further, it held that the burden of proving the curative effect of the appeal process lay with the respondent, VTB Bank, and its pleadings lacked the necessary depth to address the specific allegations of breach of natural justice that had been pursued by Mr Taruta.

Expert Evidence of Foreign Law

The Court found the trial judge had erred in interpreting the Russian Code of Civil Procedure without the benefit of expert evidence (something

Mr Taruta had sought permission to rely upon prior to trial, but was refused by the trial judge). It emphasised that independent expert guidance was 'essential' to truly understand the implications of the appeal process in Russia.

In conclusion, the Court found the trial judge's decision on the curative effect of the appellate process to be unsafe, due to a lack of expert evidence on the point.

Conclusion

The Maples Group welcomes the Court of Appeal's decision, which provides helpful guidance on the principles of natural justice as they apply in the BVI.

The decision underscores the importance of proper service and notification in ensuring fairness in judicial proceedings, while also highlighting the need to obtain expert evidence of foreign law where an interpretation of that law might be critical to understanding the consequences of a breach of natural justice.

This decision moves the needle on this important area of law, which is engaged frequently in the BVI, where debtors routinely seek to have foreign judgments recognised and enforced in the Territory.

Further Assistance

For further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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