



Neutral Citation Number: [2006] EWHC 3276 (QB)

Case No: HQ06X01160

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2006

Before :

THE HON. MR JUSTICE EADY

Between :

**High Tech International AG
P.I.C. Hi-Tech International
Shatha Hussein Ahmed Al-Musawi**

Claimants

- and -

Oleg Vladimirovich Deripaska

Defendant

Andrew Hunter (instructed by **Baker McKenzie LLP**) for the Claimant
Adrienne Page QC and Jacob Dean (instructed by **Bryan Cave**) for the Defendant

Hearing dates: 13 and 14 November and 12 December 2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE EADY

The Hon. Mr Justice Eady :

1. The three Claimants in these proceedings are, respectively, High Tech International AG, P.I.C. Hi-Tech International and Dr Shatha Hussein Al-Musawi. All are involved in the manufacture and sale of aluminium and also in energy trading. They have launched proceedings against the Defendant (“Mr Deripaska”) and seek compensation (put at more than US\$ 30m) in respect of wrongs known to Russian law as “civil injury” and “damage to reputation”. The relevant acts are alleged to have taken place in 1995, in Russia, and with the intention of destroying the Claimants’ business. The delay is explained on the footing that the steps alleged to have been taken only came to the Claimants’ attention in 2003.
2. Mr Deripaska is a Russian citizen. He was born in 1968 and graduated in 1993 from the Lomonosov Moscow State University and, in 1996, from the Plekhanov Academy of Economics. He is Vice-President of the Russian Union of Industrialists and Entrepreneurs, Chairman of the Board of the Russian National Committee of the International Chamber of Commerce and a member of the Russian Federal Business Council. On the appointment of the President of Russia, he represents the country in the Business Council of the Asian-Pacific Co-operation Forum.
3. From 1994 to 1997 he was general manager of Sayanogarsk Aluminium Smelter. From 1997 to 2001 he was President of Sibirsky Aluminium. In 2001 he was elected chairman of the Board of Bazovy Element (in English, Basic Element). He is a member of the board of Rusal, which is the largest aluminium company in the world.
4. At first sight, the claim seems an unlikely one to come before the English court, but it is alleged that Mr Deripaska has a domicile within this jurisdiction for the purposes of Council Regulation (EC) 44/2001 (“the Judgments Regulation”). If this contention is correct then, it is submitted, the Claimants are entitled to sue the Defendant here despite the absence of any factual or legal connection with this jurisdiction: see *Owusu v Jackson* [2005] QB 801 (ECJ).
5. The matter came before me on Mr Deripaska’s application for a declaration that the court has no jurisdiction. The primary issue argued before me, therefore, on 13 and 14 November and 12 December, was whether the Claimants are able to demonstrate a “good arguable case” to the effect that Mr Deripaska does have a domicile here. The material date is that of commencing these proceedings (in April 2006). Although Dr Al-Musawi claimed in her witness statement that the Claimants did not believe that a fair trial of the issues would be possible in Russia, that is not a matter which has been pursued before me.
6. Today the notion of “domicile” has to be construed in accordance with s.41 of the Civil Jurisdiction and Judgments Act 1982:

“For an individual to be regarded as domiciled in the UK, two conditions must be satisfied:

- (i) The individual must reside in the UK; and,

- (ii) The nature and circumstances of his residence must indicate that he has a substantial connection with the UK.”

It is thus clear that these two concepts must be considered separately and independently. It is not necessary to address “substantial connection” unless “residence” has been established.

7. Under this statutory framework, by contrast with the position at common law, it is not necessary to establish the existence of a permanent home in order to demonstrate domicile. It is contemplated that a person may have more than one domicile. In this case, for example, it could hardly be disputed that Mr Deripaska was domiciled in Russia. What is suggested is that he was *also* domiciled in England at the material time.
8. As I have noted, the standard of proof which the Claimants have to achieve is that of “good arguable case”: *Canada Trust v Stolzenberg (No 2)* [2002] 1 AC 1, 13.
9. Although domicile is defined in terms of “residence”, this concept must be construed in accordance with its ordinary meaning and connotes a settled or usual place of abode: *Bank of Dubai Ltd v Abbas* [1997] IL Pr 308. This, in turn, requires “some degree of permanence or continuity”. On the facts of that case, it was held in the Court of Appeal that there was nothing to rebut the Defendant’s claim that he usually stayed with friends or in a hotel. There was thus no “good arguable case” that he owned a property here or that he was registered as an occupier for any purpose.
10. Mr Deripaska, by contrast, owns two valuable homes in this jurisdiction, one in Weybridge and the other in Belgrave Square. He acquired the Weybridge property in September 2001 and Belgrave Square in April 2003. I am told that currently they are together worth approximately £40m. Although they are owned through a corporate structure, largely for reasons concerned with inheritance tax, there is no dispute that Mr Deripaska is beneficially entitled and responsible for the outgoings.
11. It is an important part of the evidence that Mr Deripaska is extremely wealthy, his financial worth being measured in hundreds of millions of pounds. He is one of the world’s most wealthy individuals and has substantial interests in a number of businesses, most particularly Rusal. Moreover, it is also an important part of the background that he has homes in other parts of the world. There are houses under construction in Beijing and Kiev and land acquired with a view to building in Montenegro. There are several homes in Russia itself. There are two houses in France and a further one under construction. There is another in Sardinia and a house under lease in New Delhi. I am told that there are, either completed or under construction, a total of over 20 houses in various parts of the world. It is thus clear that the background circumstances against which my conclusions have to be reached are unusual.
12. I am asked particularly to have in mind the recent decision of Patten J in *Foote Cone & Belding Reklam Hizmetleri v Theron* [2006] EWHC 1585. The learned Judge came to the conclusion in that case that residence had been established. The Defendant was the sole owner of a property in Kingston, which the learned Judge described as one of his real residences at the relevant time. He apparently came to England regularly,

about once a month, and was registered for council tax and utility bills. The matter was summarised by Patten J at [23] in these terms:

“... The Kingston property is his home when he lives in England ... One can have a residence in more than one place and domicile under the statutory definition depends on residence, not on the old common law test of where one intended to permanently reside in the sense of indefinitely and exclusively”.

13. Mr Hunter for the Claimants places considerable reliance upon the reasoning of Patten J in *Footo Cone*. He argues, in particular, that the Belgrave Square property could be described as Mr Deripaska’s home “when he lives in England”. It should not be forgotten, however, that even in the context of a second or third home the notion of “residence” requires “some degree of permanence or continuity”.
14. In this context, Mr Hunter also prayed in aid the Scottish case of *Cooper v Cadwalader* [1904] 5 TC 101. It illustrates, albeit a long time ago and in a very different social context, how a person can be resident in a place other than that which would generally be considered his principal home or residence. It concerned an American citizen who rented a shooting box in Scotland and spent about two months there each year. He was held, on those facts, to have been resident in Scotland as well as in the United States. The shooting box was kept in readiness for him when he was not there, and his occupation was described by the Lord President as not being of a casual or temporary nature but as “substantial” and, as regards some of its incidents, “continuous”.
15. So too, in *IRC v Lysaght* [1928] AC 234, someone who was living in Ireland would come regularly to England for a total of less than three months a year, and would spend a week or so in a hotel for the purpose of board meetings. It was noted by Lord Buckmaster at pp. 247-8:

“Though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the commissioners to find that in fact he does so reside, and if residence be once established ordinarily resident means in my opinion no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life”.
16. The evidence discloses over the past few years, and particularly in 2005 and 2006, that there is a pattern of regular visits to England by Mr Deripaska. They are almost always for business purposes and may be described as “flying visits” in one or other of his privately owned jet aircraft. He has not apparently visited the Weybridge property for some years but, if spending the night in England, will generally stay at Belgrave Square. Mr Hunter argues that, when the days are totalled together, it is appropriate to speak of residence of between two and three months a year. The pattern

is, however, much more fragmented than that which emerged from the evidence in *Cadwalader, Foote Cone or Lysaght*.

17. Miss Page summarised the position over the last two years, on the basis of the totality of the evidence, in this way. The records show that during 2005 Mr Deripaska spent 207 days away from Moscow. Of that total, a minimum of 37 and a maximum of 47 were spent (or partly spent) in the United Kingdom.
18. Turning to nights, as opposed to days, it would appear that Mr Deripaska spent a minimum of 20 and a maximum of 27 nights here. That is to be compared to a total of 155 nights away from Moscow.
19. If one considers the matter in terms of “trips” as opposed to days and nights, there were a total of 63 trips away from Moscow during that year. There were between 17 and 20 such trips to the United Kingdom. Miss Page made it clear that she includes any trip involving landing on the soil of the United Kingdom. On some occasions, it seems that Mr Deripaska did not leave the airport. She made it clear also that “days” spent in the United Kingdom includes any part of a day so spent.
20. I turn therefore to 2006. The figures relate to the period up to 13 November.
21. There were 63 trips away from Moscow, of which 11 only involved the United Kingdom.
22. There were 181 days away from Moscow, of which only 31 involved presence in the United Kingdom.
23. There were 138 nights spent out of Moscow, of which 20 only were in the United Kingdom.
24. Mr Hunter accepted that the matter of residence is not to be judged according to “a numbers game”, and that it is appropriate to address the quality and nature of the visits in question. Mr Deripaska is, if I may say so, very much a modern phenomenon. It makes it very difficult to draw useful comparisons with precedents from a different era. He is truly an international businessman and jets about the world for frequent and brief business meetings. Miss Page may have hit the nail on the head when she considered the ordinary meaning of “residence”. While it may make sense to speak of Mr Cadwalader being resident in Scotland for the months of August and September, or of Mr Theron being resident during his monthly visits, it hardly rings true to say of Mr Deripaska that he was resident for (say) last Tuesday afternoon or next Thursday morning. It would be a misuse of language.
25. Although Mr Deripaska owns two very substantial properties in England, is responsible for the council tax and utility bills, and keeps them “ready for use” through staff employed for the purpose, it would not be right, in the case of a man so wealthy, to make the leap from property owning to “residence”. There is undoubtedly permanence and continuity in ownership and (indirect) occupation, but not necessarily when one comes to address “residence” or “abode”. There is certainly no regular pattern comparable to the situation in the earlier cases cited to me. Although Mr Hunter appeared to be suggesting that a presumption of residence arises from the mere fact of ownership, I find no authoritative support for this proposition. It seems to

me that it must be a question of fact and degree in each case, according to the appropriate standard of proof. No doubt in many cases it would be relatively easy to draw an inference of residence from the possession of a substantial house in this jurisdiction. Here, however, the total picture permits no such inference. There are footholds in several jurisdictions which are there for convenience when it is necessary to hold business meetings. They may perhaps also have some incidental value as investments, but the uses to which they are put suggest to me that they are “stopovers” rather than homes in any conventional sense. Mr Deripaska’s visits to England can generally be classified as merely ancillary to the conduct of his Russian businesses.

26. I need to consider other aspects of the evidence. First, I was told of some of the movements of Mrs Deripaska and her two children. In 2005 she spent 11 days in England and the children spent five.
27. In 2006, (up to 13 November) Mrs Deripaska made five trips to England and the children made two.
28. The visits of Mrs Deripaska do not necessarily overlap with those of her husband. In 2005 they overlapped only for two days and one night. In 2006, exceptionally, there was a visit from 29 October to 6 November when they were all present at the same time. Mr Deripaska was taking what would be regarded, for him, a break. There were still business meetings during the period in question, but he did spend time with his family. He does not normally take holidays in England.
29. Mrs Deripaska, now aged 26, was educated in England at Millfield and has friends in England. When she comes to England, it is normally to visit shops and to meet up with friends.
30. Some attention was focussed on the use to which the Weybridge house is put. The pattern appears to be that Mrs Deripaska’s father and step-mother visit twice a year, for four weeks at a time approximately, in February and November. They are both Russian (the step-mother being, I was told, the daughter of Mr Boris Yeltsin). Whereas this evidence might be relevant on the subject of “substantial connection”, I cannot see that it casts any light on the primary issue of Mr Deripaska’s residence. Independent visits by his wife or by his parents-in-law do not render him resident in this jurisdiction if his own pattern of behaviour suggests otherwise.
31. I was also invited to focus attention on Mr Deripaska’s business connections with this country. Again, I am not sure that they help directly on “residence” for the purpose of s.41(i). According to the evidence, Mr Deripaska has introduced into his Russian business some western business expertise and, correspondingly, some personnel who would not regard Russia as their home. They work, however, primarily in Moscow. They include Dr Nigel Kenny, Herr Horst Peters, Mr Philip Lader, Mr Andrew Michelmores and Mr Daniel Major. It emerges that the substantial proportion of Mr Deripaska’s business visits and meetings in London are taken up with banking and financial matters concerning the Russian businesses. He does not, however, run a business in England. In the light of my conclusion, there is no need for me to address the arguments concerning whether service was validly effected or whether there is or was “a substantial connection” with the United Kingdom for the purposes of s.41(ii) of the 1982 Act.

32. Nevertheless, some attention was focussed on a Jersey company, a British Virgin Islands Company and a United Kingdom company which has not traded. It does not seem that they contribute anything to the real issue I have to decide. The companies En + Group Ltd, Basic Element Finance Ltd and Element Resources Ltd are either service or holding companies. There is nothing to show that there are businesses in England – still less that Mr Deripaska comes here to run them. Indeed, the evidence introduced on his behalf positively demonstrates in my judgment that he has no business interests in the United Kingdom in any ordinary sense.
33. In the light of the evidence compiled on Mr Deripaska's behalf, I can give little weight to Mr Hunter's speculative question, "how can he spend up to 90 days a year on business in England if none exists?"
34. I turn, therefore, to the ultimate question I must answer. Have the Claimants established a good arguable case that Mr Deripaska "resides" in the United Kingdom within the ordinary meaning of the that term? I have concluded that it would not be realistic to describe him as residing here in the sense of having a settled or usual place of abode. I will accordingly grant the declaration.