

Supreme Court rules that English Court has no jurisdiction over \$800 million bank claim

04/07/2018 (Commercial)

In a judgment handed down on 4 July 2018 in *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34, the Supreme Court has held that the English Court has no jurisdiction over a debt claim brought by investors, including Goldman Sachs, against a “bridge institution” set up by the Bank of Portugal.

The case arose out of the collapse of the Portuguese bank Banco Espírito Santo (“BES”). In June 2014 an investment fund named Oak Finance Luxembourg SA entered into a loan facility by which it loaned approximately US\$785 million to BES. The facility agreement contained a choice of English law and jurisdiction. Shortly thereafter, BES ran into serious financial difficulties. On 3 August 2014 the Bank of Portugal established Novo Banco SA (“Novo Banco”) as a “bridge institution” pursuant to the domestic legislation incorporating the EU Reorganisation and Winding-Up Directive (EC/2001/24) and EU Bank Reorganisation and Recovery Directive (EC/2014/59) into Portuguese law, and issued a decision transferring various liabilities of BES to Novo Banco.

An issue arose as to whether the Oak liability was transferred to Novo Banco or remained with BES. By a further decision on 22 December 2014, the Bank of Portugal declared that the liability was not transferred to Novo Banco.

The claimants commenced proceedings in England in February 2015 against Novo Banco, arguing that the decision of 3 August 2014 had been effective to transfer the Oak liability (which they had since acquired) to Novo Banco and that the 22 December 2014 decision did not fall to be taken into account under the Directives, such that Novo Banco was a party to the facility agreement including the choice of English jurisdiction.

This argument was accepted at first instance, but rejected by the Court of Appeal. Goldman Sachs appealed to the Supreme Court. The Bank of Portugal intervened in support of Novo Banco before both the Court of Appeal and the Supreme Court.

In a unanimous judgment, the Supreme Court dismissed the appeal. The Court concluded that, on a proper application of Article 3 of the Reorganisation and Winding-Up Directive, the question of whether the 3 August 2014 decision had been effective to transfer the Oak liability to Novo Banco was resolved by the December 2014 decision, which made clear that the Oak liability was to remain with Novo Banco. As a consequence, Novo Banco was never party to the jurisdiction clause, and the English Court had no jurisdiction.

The judgment is [here](#).

BRICK COURT CHAMBERS

BARRISTERS

Tim Lord QC, Thomas Plewman QC and Max Schaefer appeared for Goldman Sachs International, instructed by Cadwalader, Wickersham & Taft LLP.

Mark Howard QC and Oliver Jones appeared for the Bank of Portugal, instructed by Enyo Law LLP.

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