

Insights

ARE THIRD PARTIES EXCLUDED FROM EXCLUSIVE JURISDICTION CLAUSES?

THE HIGH COURT HAS THE ANSWER IN *CAMPEAU V GOTTEX* [2025]

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EXECUTIVE SUMMARY

The High Court has recently handed down a further interesting decision in relation to the “service out” jurisdictional gateways in CPR 6.33(2B).

In *Campeau v Gottex Real Estate Fund I (OE) Waste S.À R.L* [2025]^[1], the Court held that the Claimant, Mr Campeau, had a “good arguable case” that his claim fell within the scope of the exclusive jurisdiction clause in the Sale and Purchase Agreement even if he was not actually a party to that agreement.

The Claimant was therefore entitled to serve the Claim Form out of the jurisdiction without the Court’s permission on the basis that he could rely (at a minimum) on CPR 6.33(2B)(b) and, potentially, also on (a) and (c). Accordingly, the Court dismissed the Defendant’s jurisdictional challenge on this basis.

The judgment provides useful clarification regarding the scope of CPR 6.33(2B) and includes a helpful analysis of the principles on privity of contract and their relationship with exclusive jurisdiction clauses relied on by third parties to the agreement containing such clauses.

Finally, the case is also a good reminder of the principles relating to the “good arguable case” test in a jurisdictional context, as well as the English court’s approach to the construction and interpretation of commercial contracts.

For another recent decision of the High Court relating to the scope and application of the gateways in CPR 6.33(2B), please refer to our previous [in-depth analysis of the decision in *White Rock Corp Ltd v Middle Volga Shipping Co* \[2025\]](#).

BACKGROUND

The dispute arose from a Sale and Purchase Agreement (the “**SPA**”) to which Mr Campeau was not party. Pursuant to the SPA, the Defendant, Gottex Real Estate Fund I (OE) Waste S.à.r.l. (“**OE Waste**”) as Seller, sold the entire issued share capital of Granville Ecopark Holding Company Ltd (“**GEHCL**”) to Geco Holdco Ltd (“**Geco**”), as Buyer. Mr Campeau was a director of GEHCL at the time of the sale and, as alleged by OE Waste, also a *de facto* director of OE Waste.

LUXEMBOURG PROCEEDINGS

In 2023, OE Waste brought various claims (alleging negligence and breach of duty) against Mr Campeau in Luxembourg. Subsequently, Mr Campeau contested the jurisdiction of the Luxembourg courts. Mr Campeau’s fundamental objection was that OE Waste had brought the claim in breach of Clause 10.3 of the SPA (the “**Rights Clause**”), which conferred certain rights on Mr Campeau and which, in Mr Campeau’s submission, was subject to the Exclusive Jurisdiction Clause (as defined below) in the SPA.

ENGLISH PROCEEDINGS

In 2024, Mr Campeau commenced Part 8 proceedings in England seeking (among others) a declaration that OE Waste had waived any right to bring the claim which it was asserting in the Luxembourg proceedings.

Mr Campeau served the Part 8 proceedings on OE Waste out of the jurisdiction, in Luxembourg, without having obtained the Court’s permission to do so, on the basis that the gateways in CPR 6.33(2B) applied. Mr Campeau relied, in particular, on the exclusive jurisdiction clause in favour of the courts of England and Wales, in the SPA, namely Clause 18 (the “**Exclusive Jurisdiction Clause**”).

Subsequently, OE Waste applied to set aside service of the Claim Form on the basis that the courts of England and Wales did not have, or should decline to exercise any jurisdiction which they may have over the claim.

The Defendant’s principal jurisdictional argument was anchored in privity of contract. In particular, OE Waste argued that Mr Campeau was not entitled to rely on the Exclusive Jurisdiction Clause as he was not a party to the SPA and that there was no other basis, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 (the “**Act**”), or as a matter of construction of the SPA which would allow Mr Campeau to rely on this clause.

It is important to highlight that the SPA included a clause excluding third party rights under the Act, *except* as expressly provided in the SPA. The Rights Clause, in turn, conferred certain rights on Mr Campeau.

DECISION

The Court first analysed the scope of CPR 6.33(2B)(a), (b) and (c) and concluded that the fact that Mr Campeau was not a party to the SPA did not necessarily preclude his reliance on any of those gateways.

The Court considered that what Mr Campeau had to show, instead, was that his claims fell within the scope of the Exclusive Jurisdiction Clause. The applicable test in this regard was the “good arguable case” test.

The Court noted that, in practice, the test means that a party would be able to show a good arguable case *“only if the court considers, on the basis of the material before it, that that party has the better argument in relation to the question of law or construction involved.”*

CONSTRUCTION AND SCOPE OF THE SPA

After careful analysis of the authorities on the approach to the construction of commercial contracts, the Court summarised its conclusions as to the applicable principles as follows:

- The question of whether a jurisdiction clause covers claims by or against a non-party depends only on an exercise of contractual construction and implication.
- In the absence of express words as to the jurisdiction clause extending to claims by and against third parties, the starting point in interpreting a jurisdiction clause is that only the parties to the contract are covered.
- Nevertheless, the issue is one of construction, which is to be conducted on a conventional basis.^[2] There will be cases in which the terms of the contract as a whole, *“dictate an interpretation of the exclusive jurisdiction clause whereby, even though it does not deal expressly with claims by and against non-parties, nevertheless it covers such claims.”*

The Court considered both parties’ respective arguments on the construction of the Exclusive Jurisdiction Clause and concluded, in agreement with Mr Campeau’s submissions, that the language of that clause was *“wide enough to embrace claims by and against third parties.”*

Indeed, the Court was of the view that that interpretation *“accords with the commercial sense of the provision, in context”* and that a different interpretation would lead to a number of anomalies, including the fact that the same issue could end up being litigated in different courts (and jurisdictions) otherwise.

THE ACT

Specifically with regard to the effect of the Act, the Court concluded that its effect was to oblige Mr Campeau to enforce rights under the SPA given to him by the Act subject to the Exclusive Jurisdiction Clause.

In light of the above, the Court held that Mr Campeau had a good arguable case that the Exclusive Jurisdiction Clause did extend to a dispute over the extent of a third party's rights under the Rights Clause and that the parties were agreed between themselves that such a dispute should indeed be subject to the jurisdiction of the English Courts.

The case therefore fell at least within the scope of the gateway in CPR 6.33(2B)(b) namely that the SPA contained "*term to the effect that the court shall have jurisdiction to determine th[e] claim.*" Although it was not necessary to decide this, the Court thought it was likely that the gateways in CPR 6.33(2B)(a) and (c) would also apply.

CONCLUSION

The High Court decision is important as it provides helpful guidance as to when a third party will be able to avail itself of an exclusive jurisdiction clause. The decision also confirms that each of CPR 6.33(2B)(a), (b) and (c) can, in principle, assist a third party to the relevant agreement. The crucial issue will be a matter of contractual interpretation and construction of the agreement at hand and the jurisdiction clause contained in that agreement.

BCLP routinely advise on litigation with an international dimension, including jurisdictional challenges, and are also experts in corporate disputes, including those arising out of SPAs. Should you have any questions, please reach out to Andrew.street@bclplaw.com and Catalina.diaconeasa@bclplaw.com.

[1] EWHC 2322 (Comm).

[2] E.g. see the summary by Lord Hamblen JSC with regard to the basic approach to construction of a commercial contract, in *Sara & Hossein Holdings Lrd v Blacks Outdoor Retail Ltd* [2023] UKSC 2 at [29], set out at paragraph 39 of the High Court judgment in *Campeau*.

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