



Jersey jurisdiction: arresting cross-border debts

Service area / [Dispute Resolution and Litigation, Civil and Family Disputes](#)

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A creditor owed money by a debtor who is owed money in turn by a Jersey company can get a court order for payment from the Jersey company direct to the creditor. However, the court order will not be made unless the creditor proves the Jersey company will not have to pay a second time overseas.

In *Tepe Insat Sanayii AS v Boru Hatlari Ile Petrol Tasima AS (Botas)* [2016] JRC 012A Jersey's Royal Court held that Jersey companies' debts to their Turkish parent were situate in Turkey, so Jersey had no jurisdiction to arrest those debts to pay the parent's creditors.

Background

The issue arose in an application to enforce ICC awards in Jersey by Tepe, a Turkish construction company. Botas was a Turkish oil company. Botas had employed Tepe to construct facilities on the Baku-Tbilisi-Ceyhan oil pipeline, but Botas refused to pay. So Tepe took it to arbitration, and won.

Botas' assets included wholly owned subsidiary companies registered in Jersey, TPIC and BIL. Tepe, therefore, applied to register the awards as New York Convention awards under Jersey's relevant arbitration legislation and for *arrêts entre mains*.

Arresting debts: the *arrêt*

An *arrêt* is a traditional Jersey customary law remedy to arrest a debtor's property to satisfy the debt (Guernsey has a similar procedure). An *arrêt entre mains* arrests the debtor's property when it is in the hands of a third party. It extends to debts owed by a third party to a debtor, and is similar, but not identical, to other jurisdictions' third party debt/garnishee orders.

Like many customary law remedies, its existence is well known but its full scope is not. However, previous recent case law in both the Royal Court and Court of Appeal has held that an *arrêt entre mains*:

- has proprietary effect
- is not merely an order telling the debtor's debtor to pay the creditor
- arrests or attaches the debt owed to the debtor, charging it or diverting it to the creditor. By doing so, its effect is not only to direct the third party debtor to pay the judgment creditor, but also his doing so discharges that debt to the extent of that payment.

Location of the debt

As the *arrêt entre mains* is proprietary in effect, the Court will not make an order against property that is not within its jurisdiction. Where the property arrested is a debt, its location is ultimately where the debtor under it is resident, being the place where he can be sued should he not discharge the debt when due.

Where the debt is owed by a company, it may be located in more than one jurisdiction. This is because the company may be resident in more than one place. A company is resident where it is incorporated and has its registered office. It can also be resident where it carries on business, and a company may carry on business in a number of jurisdictions.

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Hence, a company's debts may be situated in more than one place. If so, there is a risk that company may be sued in any of those places. As a result, the Court will not arrest a debt which can be characterised as foreign if the relevant foreign court or law would not recognise payment under the *arrêt* as discharging the debt to be arrested.

Jersey companies' foreign debts

In *Tepe*, both TPIC and BIL were registered and incorporated in Jersey. The debts were therefore subject to the Jersey Court. However, it found they also carried on business in Turkey and were resident there.

TPIC's liabilities to Botas arose solely from Botas' transporting oil from wellhead to refinery by pipeline, all within Turkey. There was no formal written contract, and Botas invoiced TPIC in Turkey according to unit prices set by the Turkish Energy Market Regulatory Board under Turkish law. TPIC paid these from its Turkish bank accounts to Botas' Turkish bank accounts. Accordingly, the Court found the place of performance of the obligation to be Turkey. By implication, the proper law of the contract would be Turkish, and place of performance by payment of the transport fees would be Turkey.

BIL's sole activity was as operator of the Turkish section of the BTC pipeline. Again, it had a Turkish branch office and all its directors were Turkish. Its liabilities to Botas arose under a written contract drafted in Turkish and expressed to be subject to Turkish law with an exclusive jurisdiction clause in favour of courts in Ankara. Under it, Botas supplied natural gas to BIL to fuel pumping stations on BIL's Turkish section of the BTC pipeline, for which Botas invoiced BIL's Ankara office. BIL then settled them by payment from its Turkish bank accounts to Botas' Turkish bank account. Botas had also lent BIL money to settle invoices for natural gas and acquire items for BIL's Ankara office.

Decision: *arrêt* refused

The Court therefore found the location of the debts to be Turkey. It did not accept that TPIC and BIL's incorporation in Jersey made any difference to this, because whether or not subject to Jersey law and jurisdiction, the debts were subject to Turkish law and jurisdiction. That being so the question had to be answered, whether an *arrêt* would be recognised as discharging the debts under Turkish law.

This required evidence of Turkish law. The evidence before the Court was that payment pursuant to the order would discharge TPIC and BIL's debts to Botas, because Turkish law would recognise that payment. The means by which it would do so were that by paying *Tepe*, TPIC and BIL would relieve Botas of a corresponding debt to *Tepe*. Botas therefore could not claim to be out of pocket from not having received money directly from TPIC or BIL.

On that basis, payment under an *arrêt* would appear sufficient discharge of the debt under Turkish law, so that it was safe for the Jersey Court to make an order. However, the Court disagreed. It interpreted this evidence as meaning that Botas would be unjustly enriched and so liable to a restitutionary claim to pay back any double recovery to TPIC or BIL. Referring to English case law, it held that was not enough. It therefore refused to arrest the debts owed by TPIC and BIL to Botas.

Conclusion: extinguish the foreign debt

Previous overseas case law considered that the right of the third party debtor to claim back any double payment from the debtor was not enough to extinguish the foreign debt. To force the third party to pay twice and then claim payment back unfairly put the litigation risk on that third party.

In *Tepe*, the Jersey Court took this one step further. It did not consider whether BIL and TPIC could claim back payment in Jersey, but whether that would be the case in Turkey.

On one view, this is simply the Court's interpretation of the evidence available to it on the day, which could be different in another case (even involving Turkish law as the relevant location of the foreign debt). On another, the Court may have settled a new rule that the debt must be; extinguished, and even a set-off under the foreign law may not be enough.

On either view, the lesson emerging is that the applicant for arrest of a debt with a foreign element should take care to prove that the foreign debt is clearly extinguished abroad as well as in; Jersey.

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