

# Toothless vs. Shark-Teeth: How Anti-Suit Injunctions and Anti-Anti-Suit Orders Collide in the UniCredit Saga

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## Background

The dispute in the *UniCredit v. RusChem* saga arose from bonds issued by UniCredit to guarantee performance under contracts for Russian construction projects, where RusChem, after terminating the contracts due to EU sanctions, initiated Russian proceedings for payment in breach of an English-law governed arbitration agreement that mandates resolution in Paris under ICC rules.

UniCredit sought an anti-suit injunction in the UK to stop these Russian proceedings, arguing that the arbitration clause must be enforced under English law. Teare J at first instance held that the English court lacked jurisdiction—finding that the arbitration agreements were governed by French substantive rules and that England was not the appropriate forum—whereas the Court of Appeal reversed this decision by granting a final anti-suit injunction requiring RCA to terminate its Russian proceedings.

## The November 2024 UK Supreme Court's Decision

The Supreme Court addressed the sole issue of whether the English court had jurisdiction over UniCredit's claim by examining (i) whether the arbitration agreements in the bonds were governed by English law (the Governing Law issue) and (ii) whether England and Wales was the proper place to bring the claim (the Proper Place issue). Ultimately, the Supreme Court upheld the Court of Appeal's decision, reaffirming that the arbitration clause is governed by English law and that England is the proper forum to enforce the parties' agreement, thereby confirming the English courts' willingness to restrain foreign proceedings brought in breach of such arbitration agreements.

Importantly for the present note, the Supreme Court, in the last paragraphs of the November 2024 decision, also considered (as part of its discretion) the availability of similar relief from the arbitral tribunal or the French courts (as courts of the seat). The Court explained that arbitration awards lack the coercive force of court orders—they merely create contractual obligations without enforcement powers such as contempt sanctions—so relying on arbitration to restrain RusChem would be ineffective. Evidence at trial showed that French courts would not have the authority to enforce any arbitral order preventing RusChem from pursuing Russian proceedings. Furthermore, such an award would also be unenforceable in Russia. Consequently, the Court concluded that neither the French courts nor arbitration proceedings would provide an effective remedy, and that England and Wales is the proper forum to enforce UniCredit’s contractual rights through an anti-suit injunction.

### **Parallel Proceedings in Russia and the Grant of an Anti Anti-Suit Injunction**

The English anti-suit injunction was instigated by proceedings brought by RusChem against UniCredit in the Russian courts, seeking €448 million under the bonds. The jurisdiction of the Russian courts was established despite the French-seated arbitration clause, as Russia had enacted a law that confers exclusive jurisdiction on Russian Courts over disputes arising from foreign sanctions. In November 2023, the Russian courts dismissed UniCredit’s application to dismiss the claim, ruling that the dispute falls under the exclusive competence of the Russian courts, though the proceedings were stayed pending the outcome of the anti-suit proceedings in England.

Later in 2024, RusChem was successful in getting the Russian courts to seize assets, accounts, and property, as well as shares in two subsidiaries of UniCredit in Russia amounting to €462 million.

RusChem had initially committed to being bound by the final injunctive relief of the English court and to respecting its orders, but following the UK Supreme Court’s decision of November 2024, RusChem secured a ruling from the Russian courts on 28 December 2024. This ruling—effectively an anti anti-suit order—restricted UniCredit from initiating arbitrations or court proceedings against RusChem over the bonds outside the Russian courts, and prevented any ongoing proceedings or judgment enforcement outside of Russia, while also

mandating that UniCredit take all necessary steps to cancel the effects of the English court's order within two weeks of the ruling coming into force, failing which UniCredit would have faced a court-imposed penalty of €250 million.

### **The February 2025 Court of Appeals Decision**

UniCredit applied to the English courts, seeking a variation of the order it had finally secured just a few months earlier. The Court of Appeal considered that UniCredit faced a real risk of incurring a substantial financial penalty if the English injunction remained in force, given the Russian court's ruling that could impose a €250 million penalty. In addition, the Court of Appeal examined whether UniCredit had been effectively coerced into making the application by RCA's actions in obtaining a ruling in Russia, and whether that coercion should weigh against granting the application. The Court concluded that, while the declaratory parts affirming the English court's jurisdiction should remain, the injunctive components should be varied. In fact, the Court of Appeals was very cautious in saying in the last paragraph of the decision [44]: *'I have decided that I would vary, not discharge, the CA's Order. It seems to me that it would be unsatisfactory to discharge the parts of the order that reflect the decisions on jurisdiction made by the Court of Appeal and the UKSC. There is no need to do so. Under English law, this court did indeed have jurisdiction to determine what it determined and its final order reflecting that decision must stand'*.

### **Comment**

This case underscores a critical point: the effectiveness of an anti-suit injunction can shift dramatically depending on the defendant's asset base and geographic ties. When the Supreme Court decided to confirm the English courts' jurisdiction in such cases, it considered whether an equivalent remedy from French courts or the arbitral tribunal would be effective (and ruled them ineffective), but it did not consider the effectiveness of the English remedy itself.

Anti-suit injunctions from English courts have long been hailed as a powerful weapon. However, where the defendant has no assets or connections with England, the practical effectiveness—the “bite”—of such remedies is extremely limited, rendering the injunction “toothless.” By contrast, when the English applicant has assets in another jurisdiction—especially one where local courts, such as the Russian courts, are prepared to issue countervailing anti anti-suit

injunctions backed by substantial penalties—the balance can swiftly tilt, obliging the applicant to seek the revocation of the order it obtained in the first place.

In a broader sense, this dynamic highlights the interplay between different jurisdictions' willingness to grant anti-suit injunctions, potentially leading to a spiralling effect of competing orders—so-called “injunction wars”—that impose significant strategic and economic burdens on litigants. Ultimately, it is clear that the location of assets and the readiness of local courts to enforce relief with penalties determines just how strong the bite of an anti-suit injunction truly is.