Court upholds tribunal's jurisdiction over settlement agreement lacking express arbitration clause

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Arbitration & ADR, United Kingdom

Introduction

In *Sonact Group Limited v Premuda SPA*,**(1)** the High Court found that a tribunal had jurisdiction over a dispute that arose from a settlement agreement lacking an express arbitration clause. Mr Justice Males held that the parties had intended that the arbitration clause contained in the underlying charterparty would continue to apply to the informal settlement agreement. The court took into account industry practice and found that it would be extraordinary if the parties had not intended to remain bound by the arbitration clause.

Section 67

Section 67 of the Arbitration Act 1996 allows a party to an arbitration to apply to court challenging an award on the basis that the tribunal lacked substantive jurisdiction. A challenge under Section 67 involves a complete rehearing of the case rather than an isolated review of jurisdiction or the tribunal's reasoning.**(2)** An application under Section 67 can result in the court confirming, varying or setting aside in whole or in part the tribunal's award.

Facts

The arbitration in *Sonact* arose out of a charterparty entered into between the owner of a motor tanker and a charterer. The owner chartered its tanker, Four Island, to the charterer for a voyage between two Russian ports. The charterparty contained an express arbitration clause that was stated to apply to "any and all differences and disputes of whatsoever nature" arising out of the charter. Arbitration was to be conducted in either New York or London, whichever was specified in Part I of the agreement.

Subsequently, the owner made a claim for demurrage and heating costs that the parties eventually settled by an exchange of emails in which the charterer agreed to pay $600,000.

When the charterer failed to pay the agreed sum, the owner served a notice of arbitration, relying on the arbitration clause in the underlying charterparty. The notice of arbitration did not make explicit reference to the sum of $600,000.

The charterer contended that the tribunal did not have jurisdiction to determine the claim because:

- the settlement agreement did not contain an express arbitration clause; and

- the charterparty had been novated such that the charterer was not the correct defendant.

The tribunal held that it had jurisdiction.

With regards to the charterer's first argument, the tribunal noted that the settlement agreement – an exchange of emails – was not set out in a self-contained document. As was "usually the case" in the industry, negotiations had been conducted through a broking channel, before one party put forward a position that the other accepted. Given the nature of the negotiations, the tribunal concluded that the "objective but unexpressed" intention of the parties was that the settlement agreement should be governed by the same provisions for dispute resolution as set out in the original charterparty. The arbitrators held that it would be an "extraordinary" result if, in the absence of an express dispute resolution provision, none would be applicable and the parties would have to pursue their dispute through the courts.**(3)**

The arbitrators rejected the charterer's second argument, finding that they had jurisdiction even though the charterparty had been novated and awarded the sum claimed.

The charterer issued proceedings in the High Court, challenging the award pursuant to Section 67.

Decision

The court dismissed the application.

Applicability of the arbitration clause

The court held that the parties had intended for the arbitration clause to apply to the settlement agreement. Although the email exchanges could be described as a "settlement agreement", they were an informal and routine arrangement to finalise the sums due under the underlying charterparty. The wording of the arbitration clause in the charterparty ("any and all differences and disputes of whatsoever nature") was wide enough to encompass a claim under the settlement agreement even if the claim for $600,000 was a new cause of action under a new agreement.**(4)**

The court further held that it was obvious that the parties had intended the choice of English law to apply to the settlement agreement and the same was true of the arbitration clause. However, it was "inconceivable" that the parties had intended that, if the agreed sum was not paid, the owner would be unable to pursue a claim in arbitration and would have to commence court proceedings.**(5)** As to the fact that the settlement agreement gave rise to a new legal relationship, there was "no bright line rule" that once parties enter into a new legal relationship "an arbitration clause in the underlying contract necessarily can no longer apply".**(6)**

Notice of arbitration

The court found that the notice of arbitration was effective to refer the claim to arbitration. Although the notice had not referred explicitly to the sum of $600,000, it had referred to a claim for "demurrage and heating costs", which could properly be regarded as relating to the agreed sum.**(7)** Males noted that this decision was in line with the "broad and flexible approach" to notices of arbitration followed in earlier cases.**(8)**

Comment

The decision is a further illustration of the commercially minded and pragmatic approach of the English courts in determining the application of dispute resolution clauses. However, in reaching its decision, the court took account of the specific facts of the case and, in particular, standard maritime industry practice. It cannot be assumed that, in every case, a dispute resolution mechanism set out in an underlying contract will necessarily apply to a settlement agreement reached in connection with the original contract.

The decision serves as a reminder of the delays and additional costs that may be incurred if an agreement is unclear as to the applicable dispute resolution mechanism. Parties can reduce the risks of such delays and costs by including an express dispute resolution clause in settlement agreements.

The court's approach in this case is consistent with the English court's support for the independence of the arbitral process and lack of appetite for reopening a tribunal's decisions except in limited circumstances.

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Endnotes

(1) [2018] EWHC 3820 (Comm).

(2) *Dallah Real Estate & Tourism Holding Company v Ministry of Religious Affairs of the Government of Pakistan* [2010] UK SC 46, [2011] 1 AC 763.

(3) [2018] EWHC 3820 (Comm), 9.

(4) *Ibid*, 15.

(5) *Ibid*, 16-17.

(6) *Ibid*, 20.

(7) *Ibid*, 22.

(8) See, for example, *The Lapad* [2004] EWHC 1273 (Comm), [2004] 2 Lloyd's Rep 109.

Olivia Johnson, trainee solicitor, assisted in the preparation of this article.

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