Browne Jacobson

Arbitration Clauses

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The case of **Tyson International Company Limited vs Partner Reinsurance Europe SE** concerned an appeal against the High Court decision to stay English proceedings issued by Tyson International Company Limited ("Tyson") in favour of an arbitration clause providing for New York law and arbitration.

On 1 July 2021, the parties entered into a contract of reinsurance which contained an English law and exclusive jurisdiction clause. Eight days later, at the request of Tyson, Partner Reinsurance Europe SE ("Partner Re") issued another contract of reinsurance which covered the same risks but contained a clause providing for New York law and arbitration.

At first instance Mr Stephen Houseman KC, sitting as Deputy High Court Judge, held that the latter document was intended to replace the previous contract and that the arbitration clause was valid and binding. Tyson appealed the decision.

The Court of Appeal, led by Lord Justice Males, affirmed the decision of lower court that the subsequent contract was intended to be the final contract of reinsurance between the parties. This was based on an objective assessment of what the parties said and did, rather than their subjective intentions. Males LJ found that the second contract was a widely used form of reinsurance contract in the US market, and it was abundantly clear that it was an appropriate document to be used to record the terms of a contract governed by New York law and subject to New York arbitration. It contained an entire agreement clause, which stated that it would supersede all contemporaneous or prior agreements and understandings, both written and oral, between the parties with respect to the subject matter. Further, the absence of an endorsement in similar terms to the endorsement that had been used for the prior policy year was no oversight, and the change in the "Service of Suit" clause to provide for service on a New York law firm was deliberate.

Males LJ concluded that the earlier contract was superseded by the subsequent document as it was so fundamentally inconsistent with the earlier contract that the only inference that could be drawn was that the parties no longer intended the earlier contract to be performed.

Tyson's appeal was dismissed.

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