Browne Jacobson

Commercial Court considers requests for stay or anti-suit injunction where two competing reinsurance wordings

05 March 2024

In the recent the case of **Tyson International Company Ltd v Partner Reinsurance Europe SE [2023]** the Commercial Court was asked to consider competing applications for a stay of English High Court proceedings under section 9 of the Arbitration Act 1996 on the one hand and for an anti-suit injunction to prevent New York arbitration proceedings on the other hand.

The dispute arose from the parties having concluded two versions of the reinsurance policy but on different forms and providing for different jurisdictions, laws, and forums.

Ultimately Partner Re was successful in defending TICL's application for an anti-arbitration injunction and obtaining a stay of the English proceedings under s9 of the Arbitration Act.

Background

The dispute arose out of Partner Re's reinsurance policy with TICL.

The parties had agreed two documents. The first was a Market Reform Contract (MRC) agreed on 30 June 2021 and providing for English law and jurisdiction. The other was a Market Uniform Reinsurance Agreement (MURA) agreed only eight days later on 8 July 2021 and providing for New York law and arbitration.

Following a claim by TICL under the reinsurance, Partner Re avoided the contract for misrepresentation. TICL commenced a claim in the English court in May 2023 which led Partner Re to seek a stay under section 9 of the Arbitration Act in favour of an arbitration commenced in New York. In response, TICL sought an anti-arbitration injunction in favour of the English court proceedings. .

It was accepted that both contracts in isolation were legally binding and complete reinsurance contracts. Thus, the question for the Commercial Court was which one took precedence and therefore whether the injunction or the stay application should granted.

Commercial Court decision

The applications for the stay and injunction were heard together by Stephen Houseman KC sitting as High Court Judge.

TICL argued that the MURA did not explicitly state that it superseded or altered the MRC. They focused on the commercial absurdity of the arrangement highlighting that several clauses incorporated in the MRC would not have been solely contained in the MURA. They also stated that the MRC contained a "change of contract" provision which contained strict formalities that should be followed if any changes were to be validly made. Finally, they focused on the wording, providing evidence of the MRC's specificity and the more general nature of the wording in the MURA to suggest that the more bespoke MRC wording better reflected the intentions of the parties.

The Judge didn't find any of these arguments persuasive. While he agreed that it was unusual for contracting parties to replace a specific agreement with another in the space of a week, the parties were free to do so and simply chose to do so in these circumstances. The commercial absurdity of their dealings did not detract from the fact that they concluded a new and legally binding contract on the MURA form. The Judge held that TICL's "primary argument of inherent improbability, is no more than an appeal to empirical normality".

In considering TICL's argument that certain clauses are only present in the MRC agreement, the Judge decided that whether specific clauses would or would not be incorporated as part of the MURA was a dispute that should be heard at New York arbitration proceedings.

TICL's submissions relating to the "change of contract" provisions in the MRC were also dismissed. TICL had provided evidence of the previous year's MURA variation, emphasising that the formalities were complied with to vary the contract. However the Judge held that actions of the previous year were insufficient to determine the parties' common intentions in the current context. In any event, the formalities in the previous year were not entirely complied with so in the Judge's view, the parties had previously departed from the wording the year prior.

TICL's final argument regarding the specificity of wordings was also rejected. The Judge held that although the MURA was a shorter document with more general and standard language, this did not challenge the parties' intention to replace the jurisdiction clause in the MRC with the New York arbitration clause in the later MURA.

The Judge commented that even if he had found in favour of TICL on the substantive point in this matter, he still would not have granted them an anti-arbitration injunction. This was on the basis that TICL had failed to commence the English proceedings promptly, and only did so a day shy of six months after Partner Re had already commenced arbitration proceedings in New York. As there was no adequate reason for their delay, TICL's request of injunctive relief would still have been denied in any event.

The Judge granted TICL permission to appeal.

Comment

This judgment re-emphasises the importance not only of careful drafting but also documenting clearly why parties have decided to amend or change a contract in the way that they have.

It also demonstrates that if the parties have freely and validly entered into a second contract to replace a first, no matter how short the time between the two, the Court will take some persuading that the latest in time should not bind the parties.

The Judge also emphasised that an anti-suit injunction is a discretionary equitable remedy that could be lost due to unnecessary delay.

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