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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

> "Whilst the effect of that construction is 'double service' the result is not an absurd one."
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> Global Aerospares Limited v Airest AS

Arbitration – Failure of appointment

An alleged agreement for the supply of aircraft parts contained a clause providing that disputes be referred to arbitration, but gave no details as to the appointment procedure. The claimant supplier purported to commence arbitration by a notice to the defendant proposing the appointment of a sole arbitrator. It subsequently applied to the Court for an order under section 18 Arbitration Act 1996 for directions on the basis that the procedure for appointment of an arbitrator had failed. The court refused to give directions because its jurisdiction under section 18 had not been engaged. The notice to commence arbitration complied with the Arbitration Act 1996 requirements, but not the notice provisions of the contract, which required service by email and personally; it had not been served personally. The notice had not validly commenced the arbitration procedure, therefore the procedure could not yet have failed.

Global Aerospares Limited v Airest AS [2023] EWHC 1430 (Comm), 13 June 2023

Anti-suit Injunction – Breach

The claimant obtained an anti-suit injunction ("ASI") against the defendant that prevented it from commencing or pursuing foreign claims or proceedings for the purpose of delaying payment of certain bonds. The relevant contractual agreements contained London arbitration and English court jurisdiction clauses. The defendant subsequently applied to intervene in Italian proceedings involving one of the claimant's subsidiaries. Those proceedings made a link between the subsidiary and sanctioned individuals, and supported the defendant's position that it was not in breach of the construction contract by suspending performance of its obligations, as the sanctions made it unlawful to continue performance. The claimant was seeking to have the decree in the Italian proceedings set aside. The Court of Appeal agreed with the judge at first instance who rejected the defendant's arguments that, as a matter of construction of the wording, the ASI did not prohibit its participation in the Italian proceedings. The wording of the ASI was very clear and not open to question.

LLC Eurochem North-West-2 v Tecnimont SPA [2023] EWCA Civ 688, 21 June 2023

Arbitration – Security for costs

Following an LCIA arbitration the tribunal made a final award in favour of GE Energy Austria GmbH ("GE") that included a substantial costs award. The defendant Arabian Bemco Contracting Co Ltd ("ABC") had given security for costs and £2.7m had been paid into an escrow account, access to which required the permission of an authorised signatory for each of ABC and GE. Following the award, ABC failed to execute a transfer notice giving effect to any costs award within 20 days, as the escrow agreement obliged it to. GE successfully applied to the English court for an order under section 39 of the Senior Courts Act 1981 obliging ABC to execute the transfer notice. If it failed to do so, GE's solicitors may do so on its behalf. Although an application under section 39 arose following failure to comply with an order of the court, given the history of non-engagement by the defendant and the likelihood of default, the court could and would make a conditional order, which would save time and costs. Therefore, the authorisation of GE's solicitors to execute the notice would only take effect upon default.
GE Energy Austria GmbH v Arabian Bemco Contracting Co Ltd and another [2023] EWHC 1375 (Comm), 21 April 2023 (decision only recently available and not yet publicly available)

CMR Convention – Jurisdiction

DSV transported mobile phones for Huawei by road from the UK to the Netherlands. 300 of the phones went missing during transit. Carriage was subject to the Convention on the Contract of the International Carriage of Goods by Road ("CMR Convention"). DSV sought a declaration of liability from the Dutch courts and obtained a decision that the claim was time-barred. Huawei's insurers sought to bring English court proceedings, that DSV challenged on the basis that the English court had no jurisdiction as the claim was already subject to the Dutch courts' jurisdiction. The English court rejected the insurers' argument that the Dutch court decision was not enforceable under the CMR Convention as it was a decision that the Dutch court did not have jurisdiction as the claim was time barred. The English court held that the Dutch court was a competent court and its judgment that the claim was time barred was of the same nature as a decision on liability and therefore new actions under the CMR Convention were precluded.
Huawei Technologies (UK) Limited and another v DSV Solutions Limited [2023] EWHC 1505 (Comm), 23 June 2023

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

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