

COMMERCIAL DISPUTES WEEKLY – ISSUE 176

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

"...a 'matter' is something more than a mere issue or question that might fall for decision in the court proceeding..."

Republic of Mozambique (acting through its Attorney General) v Prinvest Shipbuilding SAL (Holding) and others

Jurisdiction – Arbitration

The dispute between the Republic of Mozambique ("Mozambique") and the defendants ("Prinvest") arose out of supply contracts entered into by the latter and Mozambique's subsidiaries and related guarantees given by Mozambique. Mozambique alleged that Prinvest had paid bribes which exposed it to substantial liability under the guarantees. Mozambique commenced proceedings in the English court pursuant to the jurisdiction agreements in the guarantees. Prinvest unsuccessfully sought to stay the proceedings, arguing that Mozambique should have brought its claims in arbitration (under section 9 Arbitration Act 1996). The supply contracts contained arbitration agreements and it was asserted that, although Mozambique was not party to the contracts, its claims fell within the scope of the arbitration agreements such that it was bound by them. The Supreme Court held that to decide Mozambique's claims under the guarantees, it would not be necessary to examine the validity of the contracts. As a result, Mozambique's claims

were not 'matters' within the arbitration agreements.

Republic of Mozambique (acting through its Attorney General) v Prinvest Shipbuilding SAL (Holding) and others [2023] UKSC 32, 20 September 2023

Enforcement

The first defendant (“D1”) gave personal guarantees to Invest Bank (the “Bank”) in respect of credit facilities provided to two UAE companies. The Bank enforced those guarantees and obtained judgments from the courts of Abu Dhabi for the outstanding debt (“UAE Monetary Judgments”). Subsequently, a material change in UAE law meant that enforcement of the UAE Monetary Judgments was prevented or prohibited in Abu Dhabi. The Commercial Court held that the Bank could enforce the judgments in the UK notwithstanding their lack of enforceability in the UAE. As a matter of English common law, D1 was liable under the UAE Monetary Judgments by reference to their status as a matter of the law of Abu Dhabi. There was no rule of common law that a foreign judgment cannot or should not be enforced here just because it is not presently or fully enforceable in the foreign jurisdiction itself. Further, as a matter of UAE law, D1 was liable under the guarantees as a matter of UAE law. As a result the Bank had capacity to pursue claims under ss. 423-425 of the Insolvency Act 1986 against the other defendants (D1’s former wife and adult children) to whom D1 had transferred assets in this jurisdiction.

Invest Bank PSC v El-Husseini and others [2023] EWHC 2302 (Comm), 20 September 2023

Jurisdiction – Shareholders

The minority shareholders of a company presented a winding up petition for the company on the basis that the majority shareholder’s alleged misconduct made it just and equitable to do so, but with the real aim of forcing the majority shareholder to sell its shares. The majority shareholder sought to prevent winding up with an application under section 4 of the Foreign Arbitral Awards Enforcement Act 1997 to stay the petition on the basis that the dispute should be dealt with under the shareholders’ arbitration agreement unless that agreement was inoperative. Only the court had jurisdiction over the winding up petition, but that did not make the shareholder agreement inoperative. The court granted a stay of all matters so that the issue of whether the relationship between the shareholders had irretrievably broken down could be dealt with by arbitration. Those issues were essential precursors to whether it was just and equitable to wind up the company.

Familymart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp [2023] UKPC 33, 20 September 2023

Enforcement

The applicant obtained an Italian judgment entitling her to a share of her late father’s estate, which had been dealt with according to Chilean law. The respondent (another child of the deceased) failed to pay the ordered sum and the applicant sought to register and enforce the judgment against the respondent in England where he lived. The English court refused to set aside the order registering the Italian judgment under the Foreign Judgments (Reciprocal Enforcement) Act 1933. The judgment satisfied the relevant requirements, namely that a sum of money was payable and the Italian court had jurisdiction to make the judgment. On this latter point, the obligations to be enforced were personal obligations and the judgment was not intended to bind anyone other than the parties to it. Further, it did not relate to immovable Chilean assets. The Italian court had jurisdiction because of the deceased’s citizenship.

Del Curto v Del Curto [2023] EWHC 2106 (KB), 18 August 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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