

District court examines scope of arbitration agreements and arbitrability of dispute

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Arguments Decision

In the recent case of *Russian Television and Radio Broadcasting Network v Trevano Pictures Limited*, the applicant applied to the Limassol District Court for the recognition and enforcement of two arbitral awards dated 23 January 2017, which had been issued by the International Commercial Arbitration Court (ICAC) at the Russian Chamber of Commerce and Industry.⁽¹⁾ The dispute concerned the breach of two film licensing agreements by the respondent.

Arguments

The respondent raised several arguments against the recognition of the arbitral award, including that:

- the award concerned a dispute that was not contemplated by or did not fall within the terms of the submission to arbitration, or contained decisions on matters beyond the scope of the submission to arbitration pursuant to Article V(1)(c) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention); and
- the subject matter of the dispute could not be settled by arbitration under Cyprus law pursuant to Article V(2)(a) of the New York Convention.

Decision

In respect of the first argument, the court referred to the relevant clauses of the two arbitration agreements, which read as follows:

8.1. Any disputes or controversies arising out of, or in connection with this Agreement shall be settled by negotiations between the Parties.

8.2. In the event the Parties fail to reach an agreement, the dispute shall be submitted to the consideration of the Arbitration Court in accordance with the Regulations of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation.

And:

11.1. All the disputes, disarrangements and claims arisen from the Agreement) as well as any of its integral parts) or related to its performance shall be settled by the Parties by negotiations.

11.2. In case it is impossible for the Parties to reach an agreement, all the disputes arisen from the Agreement (as well as any of its integral parts) or related to its performance shall be submitted to International Arbitration Court at the Chamber of Commerce and Industry of Russian Federation in accordance with its Rules.

The court cited the following passage from *Premium Nafta Products Ltd v Fili Shipping Company Ltd*,⁽²⁾ in which the Court of Appeal for England and Wales had adopted an expansive approach to the interpretation of an arbitration clause: "a proper approach to construction therefore requires the court to give effect, so far as the language used by the parties will permit, to the commercial purpose of the arbitration clause".

Further, the court referred to *Redfern and Hunter on International Arbitration* (21st edition), which states that:

the generic words 'claims', 'differences' and 'disputes' have been interpreted by the English

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Courts in such a way as to have broad jurisdiction over the content of the contract at hand. Paragraph 2.61 makes reference to connecting phrases such as 'in connection with', 'with respect', 'with regard' and 'arising out of' as having their meaning in the scope of the arbitration agreement. The English Courts have again afforded a broad interpretation to the phrase 'arising out of' which usually covers all disputes which may be referred to arbitration.

Consequently, the court reasoned that the wording of the arbitration clauses in both licensing agreements concerned any dispute that may arise. In particular, one of the agreements specifically referred to the scenario of a dispute arising from the performance of the licence agreement. The court dismissed the respondent's argument that these clauses had the effect that only disputes relating to the interpretation of the terms of the licensing agreements should be arbitrated. The arbitral awards clearly stipulated that the subject of the dispute between the parties was the alleged failure to comply in part with the performance of the payment obligations under the terms of the agreements.

In light of the above, the court reasoned that the respondent, which bore the burden of proof, had failed to demonstrate that the dispute fell outside the ambit of the arbitration agreements.

The court proceeded to consider the second ground of objection, whereby the respondent argued that the dispute concerned the imposition of a fine by a licensor of films (the applicant) and, as a result, was a matter of administrative law which could not be legally arbitrated in Cyprus.

In assessing this argument, the court observed that the film licence agreements provided for payment of the licence fee and imposed a fine in cases of non-payment as per the agreement. Further, both parties had freely consented to refer any dispute or claim arising therefrom. The court also noted that the arbitral awards unambiguously stated that both the licence fee owed and the fine imposed were clearly derived from the agreements and that the penalty was additionally imposed pursuant to Article 330 of the Russian Civil Code.

In dismissing this argument, the court stated that neither the Cypriot Arbitration Act nor the Cypriot Courts of Justice Law limit in any way the arbitration of matters relating to exclusive licences. In addition, the International Commercial Arbitration Law (101/1987) – which applies in Cyprus with regard to international commercial arbitrations in which the parties to an agreement have their seats in different countries – defines the word 'commercial' as "any arbitration regarding matters that arise from a commercial contractual nature", whereas the term 'commercial contractual nature' expressly includes the granting of licences. Therefore, the subject of the dispute – namely, the claim under the agreements – could undoubtedly be the subject of arbitration in Cyprus.

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Endnotes

- (1) Originating Application 2/19, 4 October 2019.
- (2) (2007) EWCA Civ 20.

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