DISPUTE INVOLVING CONFLICTING JURISDICTION CLAUSES RESOLVED IN FAVOUR OF THE ENGLISH COURTS

Trust Risk Group SpA v AmTrust Europe Ltd [2015] EWCA Civ 437

Introduction

In a judgment handed down on 30 April 2015 in *Trust Risk Group SpA v AmTrust Europe Ltd* [2015] EWCA Civ 437, the English Court of Appeal considered the scope of the 'one stop, one jurisdiction presumption' in English law and the approach to be adopted by appellate courts on interlocutory appeals on challenges to the court's jurisdiction where the only issue was one of contractual construction.

Background

The appellant insurance broker and the respondent insurer were in a business relationship concerning the placement of medical malpractice insurance in the Italian market.

The relationship between the parties was governed by multiple contracts. These included:

(1) a Terms of Business Agreement ("TBA") dated 20 July 2010 which contained a jurisdiction and choice of law clause in favour of English law and the English courts.

(2) a Framework Agreement ("FA") dated 27 January 2011, which was expressed to be governed by Italian law and that disputes arising would be resolved by arbitration in Italy.

When the FA was entered into, the TBA was appended to the FA as a schedule.

Subsequently, a dispute arose between the parties under the terms of the TBA. Arbitral proceedings were commenced in Milan and an arbitrator appointed in November 2014. Jurisdiction was disputed and the matter came before the English court to decide the issue of jurisdiction. The key question for the court was whether the TBA and FA were one composite agreement (the result of which would be that the terms of the FA had displaced or subordinated those of the TBA) or whether they were two freestanding contracts.

The English Commercial Court (Blair J) held that there was a "good arguable case" that the TBA and FA were two freestanding contracts and therefore, as regards disputes arising out of the TBA, the English law and jurisdiction clause in the TBA operated.

On appeal, the appellant argued that the 'one stop, one jurisdiction' presumption provided that in constructing an arbitration clause or dispute resolution clause the court should start from the assumption that the parties, as rational businesspeople, are likely to have intended for any dispute arising out of their relationship to be decided by the same tribunal.

Decision

The Court of Appeal upheld the decision of Blair J, finding that the contracts had been intended to be freestanding but related. In particular, this was evidenced by the fact that the TBA had been freestanding and fully operational for around 6 months before the parties entered into the FA.

Beatson LJ agreed that the 'one stop, one jurisdiction' principle was a useful starting point. But, importantly, that principle was not to be treated as a presumption in a situation where the overall contractual arrangements between the parties contained multiple differently expressed choices of jurisdiction and/or governing law in respect of different agreements.

The court was required, in assessing whether the contracts were freestanding or not, to take a "careful and commercially-minded construction of the agreements", and to assess whether the dispute naturally arose out of one particular agreement rather than the other.

The Court of Appeal also considered that existing case law showed that an appellate court should be slow to interfere with judicial assessments of interlocutory jurisdictional challenges. Christopher Clarke LJ held that this was a case for a circumspect approach by the Court of Appeal because it was not being asked to consider a judicial discretion exercised with regard to clashing documentary evidence. Rather the issue was one of contractual construction and so there was "only one 'right' answer".

Accordingly, the jurisdiction clause in the TBA remained operational for disputes arising out of the TBA. The English courts had jurisdiction over the dispute.

Concluding Remarks

First formulated by Lord Hoffmann in *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40, the 'one stop, one jurisdiction' principle is an important aspect of English case law concerning arbitration and dispute resolution.

Beatson LJ's judgment contains helpful guidance on how the principle is to be applied in different situations and in complex business arrangements concerning multiple related contracts.

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