

Free case study about developments in international arbitration

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International arbitration allows international business persons from different legal backgrounds to amicably solve their grievances. Parties to a contractual agreement or in an international relationship seek an impartial party who carries out the adjudicatory process. The resolution by the arbitrators is usually binding and carries a provision of arbitration in future contractual disputes. International Arbitration has over the last half century gained popularity because of the expeditious nature of the method.

Businesses and international traders prefer international arbitration to the domestic legal process. A dispute would usually be handled under the judicial system under which the dispute occurred. Resolving the dispute under the domestic law is usually hindered by the complexities of the legal system, which one of the parties might not be familiar with.

The Titan Unity was a vessel owned by Singapore Tankers. Singapore tankers had entered into a contractual agreement with the Oceanic. The contract was a demise charter party. Oceanic Unity in return got into another demise charter party with the Onsys Energy Pte Ltd. Titanic unity was chartered by Oceanic to transport goods that were purchased by the Onsys. The plaintiff, Portigon, provided the requisite financing for the cargo. He was also the owner of the bill of lading for the cargo that was transported by Onsys's cargo.

The goods that were transported by Titan Unity were delivered without the bill of lading and Portigon sued the Singapore Tankers and Oceanic for the unlawful delivery of cargo. Portigon requested the court to order for the arrest of the Titan Unity. Oceanic applied for the matter to be referred to the arbitration of the conflict. The court held that the bill of lading Portigon elide

on was part of the contractual agreement between Oceanic and Onsy's limited. The contract between the Oceanic preferred arbitration of any future disputes in accordance to the Arbitrations rules that have been enacted by the Chamber of maritime commerce of Singapore.

As a consequence issued by the Singapore court, the Singapore Tankers applied to be excluded from the legal action that had been instigated by Portigon and instead Portigon to be included in the Arbitration process.

Singapore Tankers filed a motion in court requesting Portigon to be included in the Arbitration proceedings between Oceanic and Onsys.

When the dispute was presented before the Admiral court in Singapore, it was held that the international Arbitration Act had not formulated the procedure for the inclusion of a third party in the arbitration proceedings through a court order. The international Arbitration Act required the express consent of the member of the contractual agreement to allow another party to be included in the Arbitration proceedings. The Assistant Registrar argued that the matter could only be settled amicably by referring to the Model law because the International Arbitration Act had not envisioned such a scenario.

Oceanic and Onsys argued that Singapore Tankers (STG) was not part of the contract that led rise to the current dispute. It was a dispute between Oceanic and Onsys that led to the rise of the dispute and subsequently to the Arbitration proceeding and, therefore, could not be included into the Arbitration proceedings. Both Oceanic and Onsys had not consented to the inclusion of Portigon into the Arbitration proceedings. The Assistant Registrar held that by the implied conduct Singapore Tankers had wished to be bound

by the outcome of the Arbitration. The Assistant registrar agreed that that the court had to look into the conduct of both Oceanic and the Onsys Limited to determine as to whether the two parties had implied by their conduct for the inclusion of Singapore Tankers into arbitration proceedings. The Assistant Register found that the Oceanic had objected the inclusion of Singapore Tankers (STG) into the Arbitration Proceedings. With respect to the bill of inclusion of Portigon into the Arbitration proceedings, the court argued that although the bill of lading was closely associated with the Oceanic and Onsys, Portigon had entered a contractual agreement with the Singapore Tankers. He had expected to solve the issues that might arise from the maritime affair with the Singapore Tankers and, therefore, he could not be included into the Arbitration Proceedings.

The Assistant Registrar ascertained that the Portigon, Oceanic and Onsys had agreed to be bound by the decision made by the Arbitration Tribunal. The Court held that the According to the Singapore Chamber of Maritime commerce Rules the parties could request the tribunal to be included in the Arbitration Proceedings. The Application by the Singapore Tankers was dismissed, and the court ordered the parties to the Titan Unity dispute to try negotiations in regard to the inclusion of third party in the Arbitration Proceedings.

The decision by the Singapore court cast questions on the nature and application of international Arbitration law in Singapore. The most outstanding question was whether the court had the power to compel a third party to join arbitration proceedings. In the Obiter dicta, the court argued that the International Arbitration Act had failed to envision the probability of

a third party to a contractual agreement requesting for the inclusion in the arbitration proceedings. The court did not dwell on the power of the court to order a party to be included in the arbitration proceedings. The court took a deep and detailed analysis of the conduct of the parties to ascertain that the parties had at any point consented to the inclusion of the Singapore Tankers into the Arbitration Proceedings. From the decision made by the Assistant registrar, it was clear that the registrar implied that the court had the power to order the parties to accept the inclusion of Singapore tankers into the arbitration Proceedings. The Court was restrained from making this legal proclamation by the rejoinder provision of the Singapore Chamber of Maritime Commerce rules that required the parties to expressly consent to the inclusion of a third party to the proceedings. By the way of implied conduct, both Oceanic and Onsys had consented to the inclusion of Singapore tankers into the agreement. Although it is included in the decision by the admiralty court, it was clear that the court was willing to make an order override the rejoinder clause of the Singapore Chamber of Commerce rejoinder clause by the virtue of the implied conduct of both Oceanic and Onsys limited.

Article five of the Model law expressly states that the courts should not interfere with the contractual agreement except the circumstances that have been outlined in the Model law. The International Arbitration Act also states that the court can only intervene in the contractual agreement in the situations provided by the Model law. That poses the question as to whether the court has the jurisdiction to make an order for the rejoinder to the arbitration proceedings. The Court of Appeal held that the court can only

intervene in the arbitration process, in residual matters such as the source of the Model Law. The aforementioned decision was made in *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* (2013). There is a consensus that the silence of the international arbitration act on the issue concerning arbitration tribunal proceeding is to be interpreted to mean that the issue is beyond the scope of the local jurisdiction. Since the international arbitration does not expressly give the courts the authority to intervene in situations that are questionable such as the Titan Unity case, the Assistant registrar made a very strongly worded statement about the questionable conduct of the Oceanic and the Onsys. A decision of this nature is likely to have extra judicial impact on the proceedings of the Arbitration Tribunal.

Legal commentators have argued that Singapore Tankers should have relied on the Arbitration agreement between the Portigon and Singapore Tankers. If SGT had relied on that clause, it would mean that it is automatically relieved of the legal action that the Portigon was planning to institute against Singapore Tankers (SGT). Portigon would, therefore, have considered being included in the Arbitration Proceeding on his own accord. Alternatively, Portigon would have instigated different proceedings against Singapore Tankers.

It was clear that the Admiral court sought to protect the integrity of the Arbitration Tribunal from unwarranted circumvention by some unscrupulous litigants who seek to undermine the authority of the arbitration tribunal. The Court consciously protected the function of the arbitration tribunal by applying the principle of Kompetenz-Kompetenz. If the court had granted a rejoinder to SGT, it would have opened a legal leeway for litigants to

interfere with contractual agreements. Portigon had requested the court to exercise its discretion on the cross application, which are provided under section six and seven of the Arbitration Act. Alternatively, the court could also exercise the authority if by allowing the plaintiff to stay of the on the arbitration proceedings under certain circumstances. Oceanic relied on the Hague-Visby article 3 defense. The plaintiff in turn obliged the court to impose a limitation on Oceanic in order not to rely on The Hague Visby articles three defenses. The court held that the proper legal authority that is supposed to determine the issue of the Hague-Visby Time bar defense would be the arbitration tribunal. The plaintiff was requested to present an argument on the Hague-Visby defense before the arbitral tribunal for the proper legal consideration.

The International Arbitration Act expressly requires a written agreement to be included into the contract. The concept of purely implied contract is considered as an anathema to the basic requirement of the International Arbitration Act. The court quoted the New York Arbitration convention which states that an arbitrary award should be granted to alter the ego of a signatory. It is supposed to be granted in accordance of the written consent that allows the necessity of a rejoinder. The court outlined the requirement of implied consent that the parties should display consent through implied conduct. The criteria had earlier on been outlined by the Swiss Federal Supreme Court. The Recognition and the Foreign Arbitral Awards Convention (New York Convention) expressly stated that arbitrary awards can only be given to a third party if there is a written agreement to confirm the subject matter. An arbitral award could also be denied if the subject matter were not

present in the arbitrary submissions to the court.

Arbitration courts and legal scholars all over the world have stated that consent is paramount to an arbitration agreement. It was free consent that gave arbitration tribunals the authority to carry out arbitration proceedings. Consent was necessary for the furtherance of arbitration aims. If a court of law offers a rejoinder to a party that is not catered for in the arbitration clause, would it be making an intrusion into the jurisdiction of the arbitrary tribunal. The party will take its grievances to a court that has no jurisdiction over the issues that are being addressed. That would mean that the arbitrary award given by the court will not be legally enforceable since the court does not have the legal mandate to issue the order. The aggrieved party will be denied the right to access the courts if the matter is handled in an arbitration tribunal. Parties that present their grievances before an arbitration tribunal wave their rights of accessing the court system.

In the case, Portigon had pleaded that Oceanic and Singapore Tankers are related companies. Portigon argued that the two companies were controlled by the Tsoi Tin Chu and Tsoi's associates. Tsoi was the sole shareholder of Oceanic. Singapore Tankers was a subsidiary of the Oceanic Titans which was a company that was owned by the same shareholder; Tsoi Tin Chu and Tsoi's associates. The court argued that it would be inequitable and unfair for the plaintiff to claim that the Oceanic and Singapore Tankers were liable for the failure to perform contractual obligations in a contract that had an arbitrary clause.

This case is a classic example of the complexities that accompany the formation of multi-contracts and multi-party agreements. The multi-contract

disputes create scenario where a rejoinder to the arbitration agreement is cast into consideration. The increased international trade and globalization has created a situation where the rejoinder to an arbitrary agreement may arise. Multi-contract may also lead to the consolidation of cases in the multiple court proceedings. Unlike in the mainstream legal systems where courts have the legal authority to consolidate multiple and related cases, this scenario is unlikely in arbitration since the process required consent to include another party into the arbitration proceedings. It presents a huge challenge to the courts because they cannot interfere with the free will of parties to an arbitration agreement and force an aggrieved party into arbitrary proceedings. The courts face such challenges in the modern era of international contracts.

The International Arbitration Act has strictly forbidden courts from violating the freedom of contract making by forcing an arbitration tribunal to consider a third party. The privity of contract comes into question. Legal experts across the world have argued that in the process of drafting contracts lawyer should address the potential issues that might arise as a result of strict rules in the contract. Lawyers can build effective rejoinder clauses and consolidation provisions in the initial contractual agreements to eliminate the possibility multiple court proceedings in the future.

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