DESTIN TRADING INC V SAIPEM SA

[2025] EWHC 668 (Ch)

KEY TAKEAWAYS:

1. Dispute resolution clauses in a settlement or termination agreement should generally be construed on the basis that they are intended to have a superseding or overriding effect in respect of dispute resolution clauses in an earlier agreement.
2. Although it is readily inferred that the parties intended the later clause to supersede the earlier clause, it is not a hard and fast rule.
3. The factors underlying the presumption in favour of one-stop adjudication are reinforced where parties have agreed on a dispute resolution clause in a settlement/termination agreement.

ISSUE

Whether a dispute resolution clause in a settlement agreement is to be construed on the basis that it supersedes a different dispute resolution clause in a prior agreement.

FACTUAL BACKGROUND

Destin and Saipem had a longstanding partnership. The parties entered into a series of Memoranda of Understansing relating to various projects, before concluding three more specific Frame Agreements concerning some of these projects. Each of the Frame Agreements provided that the parties were bound by Saipem's General Terms and Conditions for Agreement Documents, which incorporated ICC arbitration clauses providing for ICC arbitration seated in London. A dispute arose over the amount owed to Destin. The parties entered into a Settlement Agreement under which they settled Destin's claim, gave a mutual release of claims and terminated the Framework Agreements. A clause provided for the Courts of England and Wales to have exclusive jurisdiction to settle any dispute arising out of or in connection with the Settlement Agreement. Destin commenced a claim seeking to rescind the Settlement Agreement and restitution of all sums due to them (the "Monetary Claims"). Saipem subsequently sought a stay pursuant to s9(1) Arbitration Act 1996 of parts of Destin's claim on the ground that they are matters to be referred to arbitration.

ARBITRATION ACT 1996

SECTION 7
Separability of arbitration agreement

Unless otherwise agreed by the parties, an arbitration agreement which forms or which was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective and it shall for that purpose be treated as a distinct agreement.

SECTION 9
Stay of legal proceedings

(1) A party to an arbitration agreement against whom legal proceedings are brought … in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter

(4) … the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.

RELEVANT DISPUTE RESOLUTION CLAUSES

Frame Agreements

"50.2 Unless otherwise stated in the AGREEMENT, all disputes arising out of or in connection with the AGREEMENT DOCUMENTS which are not settled amicably under the preceding paragraph of this Clause within forty-five (45) Calendar Days after receipt of the above-mentioned written request, shall be submitted by either PARTY to arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said rules.

50.3 Unless otherwise stated in the AGREEMENT, the arbitration proceeding shall be held in London (United Kingdom) and conducted in the English language."

Settlement Agreement

"10. The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement)."

THE PARTIES' POSITIONS

DESTIN (Claimant/Respondent)

Authorities support a GENERAL PRINCIPLE that a dispute resolution clause in a settlement or termination agreement is to be construed on the basis that the parties are LIKELY TO HAVE INTENDED IT TO SUPERSEDE a different dispute resolution clause in a prior agreement.
Therefore, the jurisdiction agreement in the Settlement Agreement was therefore to be construed as embracing the Monetary Claims.

LEADING CASE on the application of this principle is Monde Petroleum v Westernzagros Limited [2015] 1 Lloyd's Rep 330:
"…the dispute resolution clause in the termination/settlement agreement should be construed on the basis that the parties are likely to have intended that it should supersede the clause in the earlier agreement and apply to all disputes arising out of both agreements. Whether it does so in any particular case will depend upon the language of the clause and other surrounding circumstances." (Popplewell J at para 39)

In construing Clause 10 of the Settlement Agreement, it was to be inferred that the parties, as rational businesses, would have intended that Clause 10 would govern all aspects of the parties' relationship, including disputes relating to the Settlement Agreement and disputes relating to the Frame Agreements.

SAIPEM (Defendant/Applicant)

The court is NOT BOUND BY ANY GENERAL PRINCIPLE that a dispute resolution clause in a settlement agreement supersedes a prior dispute resolution clause.
Whether or not a dispute resolution clause has such an effect TURNS ON THE CONSTRUCTION OF THE LANGUAGE used by the parties in any given case.

KEY PRINCIPLES relevant to the application of s9 those summarised in Mozambique v Privinvest [2023] UKSC 32:
"First, as I have stated…the court in considering such an application [to stay proceedings pursuant to Section 9] adopts a two-stage process. First the court must determine what the matters are which the parties have raised or foreseeably will raise in the court proceedings, and, secondly, the court must determine in relation to each such matter whether it falls within the scope of the arbitration agreement. In carrying out this exercise the court must ascertain the substance of the disputes between the parties." (Lord Hodge at paras 72 and 73)

The words "in connection with this Agreement" in Clause 10 were REFERRING EXCLUSIVELY to the Settlement Agreement and the Monetary Claims were in substance claims under the Frame Agreements.

RULING (Andrew Lenon KC)

Saipem's stay application was DISMISSED.

The Monetary Claims were within the scope of Clause 10 of the Settlement Agreement, they were properly brought before the court in the proceedings and there was no ground for staying the claims pursuant to s9(1).

COMMON GROUND that the issue of whether or not the Monetary Claims are within the scope of Clause 10 of the Settlement Agreement turns ultimately on the CORRECT CONSTRUCTION of the parties contractual provisions rather than on the application of a hard and fast principle that dispute resolution clauses in a subsequent settlement or termination agreement supersedes a dispute resolution clauses in an earlier agreement.

Monde is, nevertheless, CLEAR AUTHORITY for the proposition that dispute resolution clauses in a settlement or termination agreement should GENERALLY be construed on the basis that they are INTENDED TO HAVE A SUPERSEDING OR OVERRIDING EFFECT.

The factors underlying the Fiona Trust & Holdings v Privalov [2007] UKHL 40 PRESUMPTION IN FAVOUR OF ONE-STOP ADJUDICATION, in particular the desirability of having all questions arising out of parties' legal relationship determined by a single tribunal, are REINFORCED where parties have agreed on a dispute resolution clause in a settlement/termination agreement.

In such a situation, it may be READILY INFERRED that the parties intended that the dispute resolution clause in the settlement/termination agreement would replace and supersede such a clause in an earlier agreement.

It is likely that the CENTRE OF GRAVITY of the relationship has changed and become a relationship centred on the settlement/termination agreement (Carr J in C v D [2015] EWHC 2126 (Comm)).

Monde is NOT distinguishable as:

- CENTRAL ISSUE was as to whether monetary claims referable to the parties' earlier agreement were within the scope of the jurisdiction clause in the parties' settlement/termination agreement rather than being subject to an arbitration clause in an earlier agreement.

- Clause 10 expressed to be an "EXCLUSIVE" JURISDICTION CLAUSE and therefore to be construed as excluding, rather than sitting alongside, any other dispute resolution agreement between the parties.

- ENTIRE AGREEMENT CLAUSE which suggested that the parties had in mind that the jurisdiction clause would include disputes as to rights under the parties' prior contractual arrangements because such rights were the subject matter of the settlement agreement.

The wording of Clause 10 makes clear that it has the WIDEST POSSIBLE SCOPE ("any dispute").

OBVIOUS COMMERCIAL RATIONALE for including an exclusive jurisdiction clause in a relationship-ending agreement which is intended to WRAP UP PARTIES' FUTURE RIGHTS AND OBLIGATIONS IN ONE PLACE and AVOID THE RISK OF A FRAGMENTED DISPUTE RESOLUTION PROCESS.

Even if the court were to approach the stay application on the basis of the Mozambique v Prinvinvest two-stage process , rather than by reference to Monde, the OUTCOME of the stay application would be NO DIFFERENT.

ALEXANDER'S PRACTICE ENCOMPASSES INSOLVENCY, ARBITRATION AND COMMERCIAL CHANCERY. THIS INCLUDES CONSIDERABLE CROSS-BORDER AND OFFSHORE EXPERIENCE.

IF WE CAN ASSIST FURTHER, PLEASE FEEL FREE TO CONTACT -

NO5 CLERKS - BP@NO5.COM
ALEXANDER HEYLIN - AHE@NO5.COM
0845 210 5555