



LEGAL BRIEFING

Golden Ocean Group Ltd v (1) Salgaocar Mining Industries PVT Ltd (2) Mr Anil V. Salgaocar [2012] EWHC Civ 265

This appeal concerned whether a contract of guarantee is enforceable where contained not in a single document signed by the guarantor but in a series of documents duly authenticated by the electronic/email signature of the guarantor.

The Facts

Golden Ocean Group Ltd ("Golden Ocean") was a shipping company. The second defendant, Mr Salgaocar, was a majority shareholder in the first defendant, Salgaocar Mining Industries PVT Ltd ("SMI").

In early 2008 Golden Ocean offered to charter a vessel to SMI. SMI agreed to enter into negotiations to charter the vessel on a 10 year contract through the chartering arm of SMI, Trustworth Shipping Pte Ltd ("Trustworth"). During January and February 2008 negotiations took place, conducted primarily by email, and proceeded on the basis of the charters being "Trustworth fully guaranteed by SMI." Negotiations were in the main concluded by the end of February 2008.

In late 2009, Trustworth and SMI refused to take delivery of the vessel and denied existence of the charterparty and the guarantee.

In 2010, Golden Ocean brought a claim under the guarantee for circa \$54 million on the basis that Trustworth had failed to honour its obligations and claimed that the chain of emails were sufficient to establish the guarantee. SMI denied the existence of the guarantee on the basis that the email chain was too disjointed and insufficient to constitute a guarantee within the meaning of s4 of the Statute of Frauds 1677 ("Statute of Frauds").

Proceedings were initially in the form of an application to set aside an order granting permission for Golden Ocean to serve its claim on the defendants in Goa.

In the High Court, Christopher Clarke J dismissed the defendants' arguments and held that Golden Ocean had a "well arguable case" that the guarantee was in writing and did not fall foul of the Statute of Frauds.

The Issues

Whether a contract of guarantee is enforceable where contained not in a single document signed by the guarantor but in a series of documents, here an email chain.

The Decision

The Court of Appeal upheld the High Court's ruling that an enforceable guarantee can be created by a series of emails authenticated by the online signature of the guarantor.

In reaching its decision the Court made a comparison with the requirements for sale of land under the Law of Property (Miscellaneous Provisions) Act 1989 that contained language at section 2(1) requiring all the terms of the contract to be incorporated into one document, albeit noting that the purity of this requirement was compromised by sub section (2) which allowed incorporation of terms by "reference to some other document".

The Court held that section 4 of the Statute of Frauds contained no express indication that the agreement in writing required to satisfy its terms must be in one or even a limited number of documents. It was noted that the conclusion of commercial contracts by an exchange of emails in which terms agreed early on are not repeated verbatim in the exchanges is entirely common place.

As to the intention of the parties, the Court stated that the expectation that there would be drawn up, in ordinary course, a further formal document did not demonstrate an intention not to be bound until such document was issued. The Court distinguished the circumstances of the current case from the well-understood position where parties negotiated subject to contract and the shared intention is clear that neither party is to be bound until execution of the formal document.

On the issue of whether the email thread had the required signature, the Court held that an electronic signature on an email was sufficient and furthermore that a first name, initials or perhaps a nickname would also suffice. The chartering brokers may have communicated with each other in a familiar manner, however, that did not detract from the seriousness of the business they conducted. The Court stated that where a person puts a name to an email as to indicate that it came with his authority and that person took responsibility for its contents, this was an assent to its terms and was sufficient authentication.

Comments

This case illustrates that relatively informal forms of communication, such as a string of emails, will suffice to satisfy the requirements of section 4 of the Statute of Frauds, provided that the parties intend to be bound. Parties should exercise caution when conducting negotiations by email to avoid entering into binding obligations. During such negotiations parties should make clear on all correspondence that negotiations are subject to contract and that the parties do not intend to be bound until a formal document is executed.

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