



LEGAL BRIEFING

Heifer International Inc v (1) Helge Christiansen Arkitekter KS MAA PAR (3) Haslev-Hansson VVS (4) Stevns El-Service A/S (5) Listed El-Teknik APS

QBD (TCC) HHJ Toulmin [2007] EWHC 3015

The Facts

Heifer International Inc (Heifer) is a company registered in the British Virgin Islands and is owned by the family of a wealthy Russian who lives in England. Heifer engaged Helge Christiansen (HC), a Danish architect and his firm, Christiansen Arkitekter KS MAA PAR (CA), to refurbish a substantial home it owns in Surrey. Heifer gave HC power of attorney to enter into contracts with workmen (preferably Danish) and authorise payments to them. HC accordingly engaged the remaining three defendants, all of whom were Danish. Significantly, the agreement between Heifer and HC and / or CA although party in writing, was not finalised.

A dispute arose as to the work carried out on the property, namely its design, level of completion and the standard of workmanship applied. Heifer issued proceedings in the TCC against HC, CA and the three other defendants. Heifer claimed an account of moneys paid to the architects and the contractors and also claimed damages for defects in the works and the design of the works.

HC claimed that he did not enter into any agreements personally. The remaining defendants (including CA) applied for a stay of proceedings, claiming that their respective building contracts contained an arbitration clause which referred disputes to arbitration in Denmark, to be governed by Danish law. Accordingly, they argued, the English Courts had no jurisdiction. Heifer opposed that application, arguing that the arbitration clause was not incorporated into the contracts, or, in the alternative, the terms of the arbitration clause were unfair and not binding pursuant to the Unfair Terms in Consumer Contracts Regulations 1999 No. 2083 reg, 8.

The Issue

A number of issues arose at trial: (1) whether any agreement was made between Heifer and HC personally (2) whether the arbitration provisions referred to by the defendants were incorporated into their respective contracts such that they were caught by the Arbitration Act 1996 (3) if they were incorporated, whether they were unfair terms and therefore not binding on Heifer under to Unfair Terms in Consumer Contracts Regulations 1999 No. 2083 reg, 8.

The Decision

With respect to the first issue, His Honour Judge Toulmin QC found that there was no agreement between Heifer and HC personally; there was however an agreement between Heifer and CA.

The Judge then went on to consider the impact of the Arbitration Act 1996 on the proceedings. The primary rule under the Act is that when parties have agreed in writing that disputes relating to a contract which they have made should be resolved in another court or tribunal, the English courts will 'stay'

proceedings so that effect can be given to that agreement.

Thus the Judge had to decide whether the agreements in question were caught by the Act. He had to decide whether there was a written contract between Heifer and each of the defendants and if so, whether the arbitration clause was incorporated into it. After a close analysis of the facts, he decided both questions in the affirmative: the Arbitration Act applied and, subject to his assessment of Heifer's claim under consumer legislation, the proceedings would be heard before Danish Arbitration Court.

The Judge then had to assess Heifer's claim that the arbitration clause should not be given effect because Heifer is a "consumer" and the term is unfair under the terms of the Unfair Terms in Consumer Contracts Regulations 1999 No. 2083. On that point, he concluded that the clause was not inherently unfair. Heifer had chosen to follow the advice of its Danish lawyers over its English lawyers, and whilst the place of performance was England, much of the work was carried out in Denmark. Heifer wanted to retain a Danish Architect and Danish workmen, and Heifer's Danish lawyers actually prepared the agreement.

In addition, whilst the Arbitration proceedings would be conducted in Danish, The Judge found that it was likely that an interpreter would be made available. There was no suggestion that Heifer was not in the position to be able to pay an interpreter or that the Arbitration Board would not give Heifer a fair hearing. The Judge also found that the arbitration agreements were not unfair on any of the defendants. The dispute was therefore found to fall within the exclusive jurisdiction of the Arbitration Court of Copenhagen.

Comment

This case illustrates just how important it is to clarify what will happen in the event of a dispute under a contract from the outset. In the building industry in the UK, in many circumstances it is fairly straightforward: parties either adjudicate under the Housing Grants, Construction and Regeneration Act 1996 or march off to the TCC. However it becomes more complicated when some of the parties (or all, in this case) are domiciled overseas or some or all of the work under the contract is performed overseas; which is an increasingly popular phenomenon in today's global market.

Parties to a contract with an international dimension would be well advised to think very carefully about where they want any disputes to be heard and which country's laws will apply to that dispute. Otherwise they run the risk of being subject to foreign laws and languages which might be unfamiliar and obtaining an outcome which may, in the same set of circumstances, differ from that which might be obtained under English law.

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