Minoutsi Shipping Corp
v
Trans Continental Shipping Services (Pte) Ltd

[1971] SGHC 3

High Court — Suit No 344 of 1970 (Summons in Chambers No 1126 of 1970)
T Kulasekaram J
5 March 1971

Arbitration *— Conflict of laws — Place of arbitration specified — No express choice of law — Law governing arbitration*

Arbitration *— Enforcement — Foreign award — Fresh legal action to recover foreign award — Whether party to award submitting to arbitration — Whether arbitration conducted in accordance with parties' agreement — Whether award was bad — Section 9(1)*(b) *Arbitration Act (Cap 16, 1970 Rev Ed)*

Facts

The plaintiff ("Minoutsi") made a claim against the defendant ("Continental") for a sum of money under a charterparty made between the parties. Clause 50 of the charterparty provided that any disputes arising should be referred to arbitration in London, with one arbitrator to be appointed by each party unless the parties agreed on a single arbitrator. Disputes arose between both parties under the charterparty, and Minoutsi appointed an arbitrator. As Continental failed to nominate an arbitrator, Minoutsi called upon its arbitrator to assume the function of the sole arbitrator under s 7(b) of the English Arbitration Act 1950.

Upon giving notice to both parties, the arbitrator made his award in favour of Minoutsi. Continental did not attend the arbitration. Minoutsi then began an action in Singapore against Continental for the sum awarded by the arbitrator in London. It then applied to the Singapore court for leave to sign final judgment against Continental under O 14 of The Rules of the Supreme Court 1970. Continental opposed the application and argued that the arbitration award was bad. This was because Continental had not nominated an arbitrator, and had therefore not submitted to arbitration. Furthermore, Continental argued that it had not agreed that the law of England would apply to the arbitration. The appointment of the sole arbitrator under s 7(b) of the English Arbitration Act 1950 was thus not in accordance with the terms of the charterparty.

Held, allowing the application:

Clause 50 of the charterparty was silent as to what law should govern the arbitration and also as to what should take place if one of the parties failed to nominate an arbitrator when called upon to do by the other party. As such, with the parties' agreement that the arbitration should take place in London and in the absence of any specific provisions to the contrary, the law of England should apply to the arbitration proceedings. Moreover, s 7(b) of the English Arbitration Act 1950 was *in pari materia* with s 9(1)(*b*) of the Singapore Arbitration Act. In

such circumstances, the arbitration was conducted in accordance with the charterparty and as the award was made pursuant to the provisions of the charterparty, the award was a good one: at [9].

Legislation referred to

Arbitration Act (Cap 16, 1970 Ed) s 9(1)(*b*) (consd)

Rules of the Supreme Court 1970, The O 14

Arbitration Act 1950 (c 27) (UK) s 7(b)

K A O'Connor (Drew & Napier) for the plaintiff;
C Arul (Rodyk & Davidson) for the defendant.

[Editorial Note: On appeal, Continental again contended that Minoutsi should have followed the procedure provided by the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 24, 1970 Rev Ed). The Court of Appeal (Civ App 37/1970, Wee Chong Jin CJ, Tan Ah Tah and Choor Singh JJ) in dismissing the appeal on 17 May 1971, held in a short oral judgment, that the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 24, 1970 Rev Ed) did not apply, since the award, not having been made an order of the English court, was not within the definition of "judgment" in s 2 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 24, 1970 Rev Ed). Minoutsi was accordingly correct in suing on the award at common law.]

5 March 1971

T Kulasekaram J:

1 This is an application by the plaintiffs for leave to sign final judgment against the defendants under O 14 of the Rules of the Supreme Court.

2 The plaintiffs' claim here is for a sum of $26,519.83 being the amount due to them from the defendants under a charterparty dated 16 October 1968 made between the parties with interest and costs.

3 It was provided by cl 50 of the charterparty that any dispute arising shall be referred to arbitration. Now cl 50 of the charterparty reads as follows:

> Any dispute arising out of this contract shall, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrement of two arbitrators carrying on business in London who shall be Members of the Baltic, one to be appointed by each of the parties, with power to such arbitrators to appoint an umpire who shall be a Member of the Baltic. Any claim must be made in writing and claimant's arbitrator appointed within 18 months after redelivery, and where this provision is not complied with, the claim shall be deemed to be waived and absolutely barred.

4 Certain disputes arose between the plaintiffs and the defendants under the said charterparty.

5 The plaintiffs referred the said disputes to arbitration under cl 50 of the said charterparty and appointed Mr Ralph E Kingsley of Kempson House, 35/37 Camomile Street in the City of London as their arbitrator under reference and advised the defendants by registered letter dated 9 October 1969 of such nomination and called upon the defendants to nominate their arbitrator.

6 The defendants, however, failed to nominate an arbitrator and the plaintiffs thereupon under the provisions of s 7(b) of the English Arbitration Act 1950 called upon their arbitrator the said Mr Ralph E Kingsley to assume the function of sole arbitrator in the reference.

7 Mr Ralph E Kingsley assumed the role of sole arbitrator and after due notice to both parties proceeded to make his award on the reference. The defendants, however, did not attend the arbitration. The award was that the defendants should pay to plaintiffs the sum of US$8,573.53 which is equivalent to $26,519.83 with interest at 8% and costs. The full amount of this award is the claim of the plaintiffs in this action.

8 The defendants oppose this application and their main ground of such opposition would appear to be that the arbitration award was bad. They say that under the arbitration clause in the charterparty they had to nominate an arbitrator and as they had not so nominated one they did not submit to arbitration. They further say that though they had agreed that any arbitration under the charterparty should take place in London they had not agreed that the law of England would apply to such arbitration. Therefore the appointment of Mr Ralph E Kingsley as sole arbitrator under the provisions of s 7(b) of the English Arbitration Act 1950 when the defendants failed to nominate an arbitrator was not in accordance with the terms of the charterparty and the arbitration award was bad.

9 I am unable to agree with this submission of the defendants. Here the parties had agreed by the said cl 50 of the charterparty that any disputes between them arising from the dealings on the charterparty shall be referred to arbitration in London. The said cl 50 is silent as to what law shall govern such arbitration proceedings. Moreover it is also silent on what should take place in the event of one of the parties failing to nominate an arbitrator when called upon to do so by the other party to deal with a dispute. In such circumstances as the parties had agreed that the arbitration should take place in London, in the absence of any specific provisions to the contrary in the charterparty the law of England should apply to such arbitration proceedings. Besides the provisions of s 7(b) of the English Arbitration Act 1950 are *in pari materia* with s 9(1)(*b*) of the Singapore Arbitration Ordinance. In these circumstances I find that the arbitration was conducted in accordance with the agreement and the award here was made pursuant to provisions of the said agreement and therefore the award here is a good one.

10 The defendants also took up various other objections of a procedural character against the institution of the action in its present form but having considered them I am of the opinion there is no substance in any of these objections.

11 In the event I allowed the plaintiffs' application and granted them leave to sign final judgment for the amount of their full claim with costs.

Headnoted by Ang Ching Pin.