CONFLICTING DISPUTE RESOLUTION PROVISIONS: ENGLISH COURT STAYS ITS OWN PROCEEDINGS IN FAVOUR OF INTERNATIONAL ARBITRATION IN AVIATION LEASE DISPUTE

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SUMMARY

In *Helice Leasing S.A.S. v PT Garuda Indonesia (Persero) TBK [2021] EWHC 99 (Comm)*, the English Commercial Court has interpreted conflicting dispute resolution provisions and ordered a stay of court proceedings in favour of arbitration pursuant to section 9 of the Arbitration Act 1996. The decision emphasises the desirability of avoiding inconsistencies in dispute resolution provisions and demonstrates pragmatism on the part of the Commercial Court in reconciling apparently conflicting provisions.

FACTS

PT Garuda Indonesia (Persero) TBK (*Garuda*) and Helice Leasing S.A.S (*Helice*) became the lessee and lessor of a Boeing 737-800 aircraft following a novation by a previous lessor. Helice commenced court proceedings in England against Garuda for non-payment of rent in April 2020.

Garuda applied to stay the proceedings pursuant to section 9 of the Arbitration Act 1996, on the basis that Helice had breached the parties' agreement to arbitrate under the aircraft lease.

CONFLICTING DISPUTE RESOLUTION PROVISIONS IN AIRCRAFT LEASE

The lease contained two apparently contradictory dispute resolution clauses:

- Clause 15.2 provided that “any dispute arising out of or in connection with this Lease Agreement, […] shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration.”
- In contrast, Clause 13.2 provided that “if an Event of Default occurs, […] Lessor may at its option […] proceed by appropriate court action or actions to enforce performance of this Lease Agreement or to recover damages for the breach of this Lease Agreement.”

Helice contended that Clause 13.2 gave it an additional, unilateral, option to commence litigation proceedings, and relied on the widely drafted references to available remedies.

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Garuda argued that the rights in Clause 13.2 were subject to the agreement to arbitrate in Clause 15.2. Garuda further contended that a more reasonable interpretation of the reference to "court action" is that this was an erroneous remnant of the original Lessor's template lease agreement, which contemplated the law and courts of New York, such that the reference to "court" is a slip.

HOW THE COMMERCIAL COURT RESOLVED THE ISSUE

The Commercial Court noted that Clause 13.2 was “not happily worded” and held that:

1. In order to give the contract a business common-sense construction, the “court action” referred to in Clause 13.2 must reasonably have been intended to mean action before the London Court of International Arbitration, in accordance with Clause 15.2;
2. Helice's construction of Clause 13.2 (i.e., that Helice, as lessor, had the right to commence court proceedings following an Event of Default) would be “difficult to operate” if a dispute arose as to whether an Event of Default had occurred in the first place. The court held that the parties intended to submit such issues to arbitration under Clause 15.2; and
3. Cross-claims by Garuda in arbitration would be a “recipe for confusion, cost and delay” if Helice were able to obtain damages following Events of Default in court proceedings.

The court rejected any suggestion that “court action” referred to in Clause 13.2 was intended to mean interim or enforcement action in support of arbitration, since that clause contained broad language about enforcing performance of the lease agreement.

The court therefore granted Garuda a stay of the proceedings in favour of arbitration, in light of the parties' agreement to arbitrate under Clause 15.2 of the lease.

COMMENT

This case is a good illustration of why it is important that jurisdiction and dispute resolution provisions in commercial agreements should be clear and consistent, to avoid the risk of lengthy and costly disputes.

The English Courts will try, in the first instance, to construe the terms of the relevant contract, including the dispute resolution provisions, so as to give effect to the parties' objective intentions. However, where drafting is unclear or provisions are contradictory, the courts will adopt a “business common-sense” approach to construction - but what is business common-sense to one party may not be to another.

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