

Commercial Court grants Anti-Suit injunction in respect of Lebanese proceedings in support of English Arbitration

26/06/2018 (Commercial)

Perkins Engines Company Ltd v. Ghaddar [2018] EWHC 1500 (Comm)

The Applicant (“Perkins”), a wholly owned subsidiary of Caterpillar Inc., had terminated a Distributor Agreement (“DA”) with the Respondents (“Ghaddar”) following Perkins’ discovery that Ghaddar had been selling engines supplied under the DA into Syria.

Ghaddar started proceedings in Lebanon. Perkins countered that those proceedings were a breach of the DA’s arbitration agreement which provided, “*To the extent there is no reciprocal enforcement procedures between the United Kingdom and the country in which the Distributor is located, the Parties agree to submit any dispute arising between them that cannot amicably be settled to arbitration. The arbitration shall be held in London, England ...*”. Perkins sought an urgent interim anti-suit injunction from the English Court restraining the continuation of the Lebanese proceedings.

It was common ground that if Ghaddar had acted in breach of the arbitration agreement, Perkins was entitled to the relief sought. However, Ghaddar denied any breach had occurred, contending that there were “*reciprocal enforcement procedures*” between the UK and Lebanon (where Ghaddar was located) because an English judgment would be enforceable against Ghaddar in Lebanon to “*substantially the same extent*” that a Lebanese judgment would be enforceable against Perkins in England.

In response Perkins contended that Ghaddar’s construction of the arbitration agreement was wrong and that the words “*reciprocal enforcement procedures between the United Kingdom and [Lebanon]*” required a binding bilateral or multilateral treaty between the UK and Lebanon containing the rules or procedures subject to which judgments of one state would be enforced in the other, and no such treaty existed. Furthermore, Perkins denied on the facts of the parties’ specific dispute, and in any event, in general that there was substantial reciprocity between English and Lebanese enforcement procedures.

Bryan J. agreed with each of Perkins’ arguments. On construction of the arbitration agreement, the Judge agreed with Perkins that the ordinary and natural meaning of the word “*reciprocal*”, as well as the use of the words “*between*” and “*United Kingdom*” (which is the entity

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that concludes treaties on the international plane), all favoured Perkins' construction, as too did considerations of business commonsense. In Bryan J's view, Perkins' construction produced a simple, certain scheme which allowed the parties to know with speed and ease whether the DA's arbitration agreement was engaged, whereas Ghaddar's construction, which required a difficult assessment of whether the rules on enforcement in the UK and Lebanon were "*substantially similar*", did not.

The Judge also would have found, had it been necessary, that even if Ghaddar's construction was right, there were not in fact "*reciprocal enforcement procedures*" between the UK and Lebanon, either in the case of the specific underlying dispute between the parties or more generally.

Lastly, and perhaps of the broadest general significance, the Judge indicated, on the basis of the limited argument he had heard, that if the arbitration agreement had not been engaged, the DA's jurisdiction agreement, while non-exclusive in the sense that it did not prohibit Ghaddar commencing proceedings in Lebanon, did bar Ghaddar from continuing them if Perkins began English Court proceedings. The DA's jurisdiction clause provided, "...*the Parties hereby submit to the jurisdiction of the English Courts.*". The Judge indicated he would have been inclined to follow the reasoning in the decisions of Males J in ***BNP Paribas SA v. Anchorage Capital Europe LLP*** [2013] EWHC 3073 (Comm) and Teare J in ***Global Maritime Investments Cyprus Limited v. O.W. Supply & Trading A/S*** [2015 EWHC 2690 (Comm)], in which jurisdiction agreements in similar terms to the DA's were held to bar proceedings abroad once English proceedings had been commenced.

The link to the judgment is [here](#).

Jasbir Dhillon QC and Edward Ho appeared on behalf of Perkins, instructed by Mayer Brown International LLP

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