

ENGLISH HIGH COURT RULING ON QATARI SOLE DISTRIBUTORSHIP AGREEMENT

Ghanem Al-Thani Holdings WLL v Jaguar Cars Exports LTD [2012] EWHC 856 (Comm) QBD (Comm)
(Cooke J) 03/04/2012

Abstract:

A supplier can terminate a distribution agreement governed by English law without cause provided he made no promise or misrepresentation not to do so.

Facts:

Ghanem Al-Thani Holdings WLL (“GTH”) sold and maintained Jaguar cars in Qatar; Jaguar Cars Exports Ltd (“Jaguar”) supplied the cars and spare parts. Under a sole distributorship agreement both parties were entitled to termination with at least 12 months’ notice. According to GTH’s evidence, prior to the signing of the agreement in 1998 a representative of Jaguar orally assured GTH that it would only terminate after GTH had recouped its investment (or upon breach of contract by GTH); GTH relied upon this assurance in signing the contract. Jaguar subsequently terminated the agreement in November 2006 even though GTH had not yet recouped its investment and disputed having made such an assurance. At that point GTH had been the distributor for 8½ years and netted a total loss of about £ 7 million.

The Judgment:

The court took into account

(a) that the commercial realities did not support GTH’s evidence. Jaguar’s representative could not alter the written terms of Jaguar’s standard contract and had told GTH this. The Court also held that Jaguar at any rate would have never agreed to such a condition which would deviate from its standard contract and practice in the Gulf;

(b) the lack of a record of an intention to alter the agreement. No minutes of the meeting, no side letter and no notes were produced, even though GTH’s legal advisor was present throughout – as well as a vague and inconsistent witness testimony by GTH’s witnesses; and

(c) that GTH did not raise this alleged warranty upon Jaguar’s termination in November 2006 and only started referring to it in correspondence in June 2007 as an expectation based on Jaguar’s words of comfort and usual business practice. GTH did not rely on it as a contractual provision and binding commitment until issuing the pleaded particulars of claim.

Based on these findings, the legal basis for GTW’s argument (what is known as a collateral contract) was found to have never existed

Comment:

The case shows the importance of ensuring transactions are documented. Although the notion of “word of honour” may have carried considerable weight in Qatar and the surrounding region, it is vital today that in high-value international contracts meticulous notes are always kept.

16th April 2012