

CHALLENGES UNDER THE ARBITRATION ACT 1996: TWO RECENT CASES

Beijing Jianlong Heavy Industry Group v Golden Ocean Group Ltd & Ors
[2013] EWHC 1063 (Comm)
Compton Beauchamp Estates Ltd v Spence [2013] EWHC 1101

Introduction

In two recent cases, *Beijing Jianlong Heavy Industry Group v Golden Ocean Group Ltd & Ors* [2013] EWHC 1063 (Comm) and *Compton Beauchamp Estates Ltd v Spence* [2013] EWHC 1101 (both released on 1 May 2013), the English courts considered challenges to arbitration awards under sections 67 and 68 of the Arbitration Act 1996.

Background

Beijing Jianlong Heavy Industry Group v Golden Ocean Group Ltd & Ors

This case concerned a challenge, under Section 67 (lack of substantive jurisdiction), to various partial awards which had been handed down in five separate arbitrations. The substantive claims in all five arbitrations contend that HXS, a subsidiary of Beijing Jianlong, repudiated its obligations under the charterparties and that Beijing Jianlong was liable to the Defendants under the guarantees.

The issue for the Court concerned one point which arose in respect of each of the arbitrations - if an English law guarantee is (or, as in this case, is assumed to be) unenforceable because it involves the commission in a foreign country of acts that are unlawful under local law, is its provision for London arbitration also unenforceable?

Compton Beauchamp Estates Ltd v Spence

In *Compton Beauchamp Estates Ltd v Spence*, the applicant challenged the arbitration award under Section 68 (serious irregularity) that on the grounds that (1) the arbitrator failed to comply with the general duties of an arbitrator under section 33 of the 1996 Act; (2) he failed to conduct the proceedings in accordance with the procedure agreed by the parties; (3) he failed to deal with the issues that were put to him; (4) there is uncertainty and ambiguity as to the effect of the award; (5) the arbitrator failed to comply with the requirements as to the form of the award, in particular, because the reasons for the award were inadequate.

Judgments

In *Beijing Jianlong v Golden Ocean and ors*, Judge Mackie QC considered whether there was anything which would be undermined by allowing the issue of whether it applied to be determined by arbitration, and held that in this case, there would not. In reaching his decision, Judge Mackie QC attached particular weight to the commercial factors in support of upholding the arbitration provisions, respecting the parties' choice and providing a one stop

process. The decision in this case emphasises the importance to which the English courts will attach to the parties' agreement to arbitrate.

In *Compton Beauchamp Estates Ltd v Spence*, Morgan J rejected the challenge to the award. In his judgment, the Court dealt predominantly with the issues arising as to the adequacy of the reasons given by the arbitrator, and in particular, the legal position as to an arbitrator's duty to give reasons for his award. Despite criticising the "poor" reasoning of the arbitrator, Morgan J held that the reasoning in the award, although unimpressive, was "just about enough" to explain the conclusions reached. The other grounds of challenge were dealt with swiftly, with Morgan J finding that there was little evidence of irregularity, let alone injustice

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