

**ENGLISH HIGH COURT CONSIDERS CONSTRUCTION OF ARBITRATION
AGREEMENTS**

Guidance Investments Ltd v Guidance Hotel Investment Company BSC [2013] EWHC 3413

Introduction

In a decision released on 7 November 2013 in *Guidance Investments Ltd v Guidance Hotel Investment Company BSC* [2013] EWHC 3413, the English High Court refused the Claimant's application for a stay under section 9 of the Arbitration Act 1996 and highlighted the importance of ensuring that a contractual arbitration agreement clearly covers the disputes intended to be referred to arbitration.

Background

The Defendant was incorporated in Bahrain and had carried on business since 2006 as an investment company investing in hotel properties and businesses. The Claimant was its investment manager. The parties entered into a management agreement which provided that the English courts had jurisdiction, but that any dispute arising out of or in connection with an Event of Default would be resolved by arbitration under the rules of the London Court of International Arbitration.

The Claimant commenced a claim in the English courts, contending that it was entitled to payment of management fees pursuant to the management agreement. The Defendant denied that such fees were due, on the basis that the accrual of any fees was dependent on the provision of commensurately valuable services by the Claimant, which had not occurred. The Defendant further contended that the Claimant has caused the Defendant substantial loss and damage as a result of its alleged mismanagement of a transaction for the purchase of a plot of land in Cairo for the construction of a hotel in 2007-09. The Defendant sought to rely on these matters in support of a defence of set-off, and also counterclaimed for restoration of the expenditure incurred, damages and restitution of fees previously paid, together with interest.

In the present hearing, there were two applications before the Court:

- An application by the Claimant for a stay of part of the Defendant's counterclaim under section 9 of the Arbitration Act 1996 and/or pursuant to the court's inherent jurisdiction on the grounds that it relates to matters covered by an arbitration clause, and an order that the Defendant be debarred from relying on such allegations by way of defence.
- A contingent cross-application by the Defendant for a stay of the Claimant's claim pursuant to the court's inherent jurisdiction in the event that it was minded to grant the Claimant's stay application.

Decision

The Court held that the allegations made in the Defence and Counterclaim were, as a matter of construction, not caught by the arbitration agreement and the Claimant's application for a stay was dismissed.

In his judgment, Mr Justice Hamblen considered the legal principles applicable to the construction of arbitration agreements, stating:

- The general approach to the construction of arbitration agreements is that there is a presumption of one stop adjudication – the parties, as rational businessmen, are likely to have intended that any dispute arising out of the relationship should be decided by the same tribunal.
- However, there is no presumption where (as in this case) the parties had provided for some disputes to be litigated and others arbitrated.
- An approach such as that taken in the present case (allowing matters relating to events of default to be referred to LCIA arbitration) made good commercial sense as it enabled important but defined disputes to be dealt with by a relatively speedy means with no right of appeal in law, and avoided the resolution of that dispute being caught up with other disputes which may arise between the parties generally.

The full text of the judgment is at:

<http://www.bailii.org/ew/cases/EWHC/Comm/2013/3413.html>

14th January 2014