

Kluwer Arbitration Blog

Dubai Award Survives Bribery Challenge in England

Mike McClure (Herbert Smith Freehills LLP) · Monday, May 26th, 2014 · Herbert Smith Freehills

In *Honeywell v Meydan Group LLC* ([2014] EWHC 1344 (TCC)) the High Court in London upheld a DIAC award against the owner of the Meydan Racecourse in Dubai, rejecting allegations that the underlying contract was procured through bribery. The decision is just one of a number of claims arising out of the construction of the racecourse and is a good example of the English courts taking a very robust position to challenges to the enforcement of foreign arbitration awards, even when those challenges relate to allegations of bribery.

Background

In 2007, Meydan (a company incorporated in Dubai) entered into a contract with Arabtec whereby Arabtec agreed to carry out certain works at the Meydan Racecourse in Dubai. Meydan also engaged a consultant, Two A Khing Design (TAK) to assist with the project. TAK invited Honeywell to submit a tender for the supply and installation of an extra-low voltage (ELV) System for the racecourse. However, to secure its nomination as a subcontractor, the tender process required Honeywell to pay around USD142,000 in deposit, documentation and lithography fees to TAK.

In June 2008 Meydan nominated Honeywell to be appointed by Arabtec to install the ELV System. Honeywell commenced work shortly thereafter, but no formal written agreement was entered into between Arabtec and Honeywell. In January 2009, Meydan terminated its contract with Arabtec, but Honeywell continued to work at the racecourse. A contract was then signed between Meydan and Honeywell in June 2009 for Honeywell to complete the supply and installation of the ELV System.

Honeywell suspended work in July 2010 after it had not been paid by Meydan since December 2009. Honeywell then commenced arbitration against Meydan under the rules of the Dubai International Arbitration Centre (DIAC) seeking sums it claimed were owed under its contract with Meydan (DIAC Case 201/2010). Meydan failed to nominate an arbitrator or participate in the proceedings but Honeywell and the tribunal continued to a hearing in February 2012. However, in January 2012 (i.e. a month before the hearing in DIAC Case 201/2010), Meydan commenced a separate DIAC arbitration against Honeywell (DIAC Case 18/2012). Notwithstanding this new arbitration, the tribunal in DIAC Case 201/2010 proceeded to a hearing (Meydan did

not participate) and Honeywell was awarded just over AED75 million (approx. USD20.4 million).

Honeywell then commenced proceedings before the Dubai Courts for ratification of the award in DIAC Case 201/2010. Meydan opposed the application and asserted that the award should be held void and/or invalid. Amongst other things, Meydan asserted (with reference to an opinion submitted in another arbitration between Arabtec and Meydan) that there were concerns that TAK and Arabtec had engaged in criminal acts of corruption, although further evidence would need to be gathered to substantiate the allegations.

In November 2012, before a decision from the Dubai Court of First Instance on Honeywell's application for ratification of the award, Honeywell also made a without notice application before the English courts under the English Arbitration Act seeking leave to enforce the award in the UK. The English court (Mr Justice Akenhead) made an order granting Honeywell leave to enforce the award, but the order also provided that it should not be enforced for 21 days after service of the relevant documents on Meydan or, if Meydan applied within those 21 days to set aside the order, until after such application had been finally disposed of. Meydan was duly served and then applied to have the order set aside. The matter proceeded to a hearing before Mr Justice Ramsey in February 2014.

In the meantime, after Honeywell made its application to the English courts in November 2012 but before the hearing in February 2014, there were a number of developments in Dubai:

- In February 2013, the award in DIAC Case 201/2012 was recognised by the Dubai Court of First Instance. However, Meydan appealed and the appeal proceedings were then stayed by the courts in November 2013 (and remained stayed as at the date of the English court's judgment in *Honeywell v Meydan*). In staying the proceedings, the court referred to a bribery complaint dated 8 October 2013 made to the Dubai Public Prosecutor against Honeywell and a letter dated 11 November 2013 from the Head of the Dubai Public Funds Prosecution Department to the head of a local Dubai police station requesting that investigations be conducted against Honeywell pursuant to the United Arab Emirates (UAE) Federal Civil Procedures Law.
- In August 2013, the tribunal in DIAC Case 18/2012 held that because the parties were the same as in DIAC Case 201/2012 the claims raised by Meydan in DIAC Case 18/2012 were barred by *res judicata* and could not be considered by the tribunal in DIAC Case 18/2012. However, on 12 November 2013, Meydan nonetheless submitted a memorial to the tribunal in Case 18/2012 referring to the same bribery complaint and investigation request that were referred to in the Court of Appeal proceedings.

Decision

Meydan raised a number of arguments before the English courts to support its claim that Akenhead J's order from November 2012 should be set aside. Its first argument was based on Section 103(2)(b) of the English Arbitration Act which provides that the court may refuse to enforce a foreign arbitral award if the arbitration agreement was

not valid under the law to which the parties subjected it to. Meydan alleged that the award in DIAC Case 201/2012 was not valid under UAE law because it resulted from a contract procured by Honeywell bribing public servants in Dubai (the defendant Meydan being a public body and/or a body administering public funds). In particular, Meydan asserted that the tender invitation from TAK was evidence of an agreement between Honeywell and TAK for Honeywell to pay a bribe under the false cover of lithography, tender and document fees. However, this argument was dismissed by Ramsey J for a number of reasons (including):

- Senior Meydan personnel had been made aware of the payment within days of the tender invitation and Meydan had even filed criminal complaints in the Dubai Courts in November 2011 against TAK. Accordingly, Meydan could have advanced its current case on bribery at the time of the arbitration and prior to the award being made in March 2012.
- The alleged bribe arose in the context of a tender by which Meydan nominated Honeywell as a subcontractor to Arabtec. It was not alleged that Honeywell had paid the alleged bribe in order to secure its 2009 contract with Meydan and therefore Ramsey J concluded it was difficult to see how the payment could affect the validity of that contract. Honeywell also submitted that, in any event, the evidence put forward did not make a cogent basis for an allegation of bribery (notably the payment was made on the face of a clear invitation to tender which was copied to Meydan).
- Even if a causative link between the alleged bribe and the contract between Honeywell and Meydan could be established, it would have to be shown that as a matter of UAE law the arbitration agreement contained within the contract was itself procured by bribery. That was not even alleged, although Ramsey J noted that Article 6.1 of the DIAC Rules provides that unless otherwise agreed by the parties, an arbitration agreement which forms part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid and the arbitration agreement shall be treated as a distinct agreement.

Ramsey J also rejected Meydan's contention that enforcement of the award would be contrary to English public policy. Indeed, even if Meydan could prove bribery, the court noted that contracts procured through bribery – as distinct from contracts to commit bribery or fraud – are not unenforceable as a matter of public policy.

Meydan also raised a number of other procedural challenges, which included:

- The request for arbitration wrongly named “Meydan LLC” and not “Meydan Group LLC” as the respondent. Ramsey J held that this did not matter as the request was addressed to Meydan LLC as a party with all the attributes of Meydan Group LLC and this meant that the request would reasonably have and did come to the attention of Meydan Group LLC.
- Section 103(2)(f) of the English Arbitration Act also provides that the English courts may refuse to recognise and enforce a foreign arbitral award where the award has been suspended by a competent authority in the country in which it is made. Meydan therefore argued that because Honeywell's application for ratification of the award

had been stayed by the Dubai Court of Appeal that proceedings had been suspended by the competent authority in Dubai. However, Ramsey J noted that under the DIAC Rules the award was final and binding. Moreover, there was no requirement for anything to occur in the local courts for the award to be given some further status in terms of its binding nature. The issue of whether the award had become binding was a question for the enforcing court, and proceedings in the local court were of no relevance as to whether the award is binding. In any event, the process currently being followed in the Dubai Courts had not led to the award being set aside or suspended. The English court's discretion was not triggered automatically by a challenge brought before the court in the country where the award was made.

Conclusion

This decision is yet another example of the English courts being unwilling to refuse recognition and enforcement of foreign arbitration awards, even in the face of bribery allegations in the country where the award was made. It is particularly noteworthy given the allegations of bribery are still currently playing out before the Dubai courts and yet the English courts concluded this was no reason to resist enforcement in England. A significant amount of litigation and arbitration has arisen out of the development of the Meydan Racecourse and this decision is unlikely to be the last. As the saga unfolds, it is one for arbitration practitioners to watch with interest in both London and Dubai.

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