Kluwer Arbitration Blog

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Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Saturday, March 22nd, 2025

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The ITA Board of Reporters have reported on the following court decisions.

Australasian Global Exports Pty Ltd v. The Ship 'M/V Yangtze Fortune', the Proceeds of Sale, and Yangtze Fortune Co. Ltd [2024] FCA 614, Federal Court of Australia, New South Wales District Registry, NSD 597 of 2024, 07 June 2024

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

Australasian Global Exports Pty Ltd (AGE) sought to enforce an arbitral award under the International Arbitration Act 1974 (Cth) (IAA) against Yangtze Fortune Co. Ltd. after a breach of contract related to a voyage charterparty. Despite procedural issues with service and citation, the Court ruled in favour of enforcing the award but stayed its enforcement to give Yangtze time to challenge it.

With related cases, all of which concern the vessel, a precedent was established by allowing an owner to successfully claim against its own vessel under a bareboat charter, based on s 18 of the Admiralty Act. It clarified the owner's right to bring in rem actions against their vessel when the charterer defaults, impacting future maritime claims in similar situations.

Hansell v. Noorinya Holdings Pty Ltd atf the Noorinya Holdings Trust (ACN 132 347 883) [2021] NSWSC 1479, Supreme Court of New South Wales, 2021/158430, 17 November 2021

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

Court determined that proceedings are not required to be stayed under s 7(2) of the IA Act but should be stayed as an abuse of process pending the conclusion of the arbitration proceedings, subject to conditions.

Chevron Australia Pty Ltd v. CBI Constructors Pty Ltd and Kentz Pty Ltd [2021] WASC 323, Supreme Court of Western Australia, ARB 8 of 2020ARB 9 of 2020, 28 September 2021

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The WA Supreme Court has successfully granted an order that arbitration proceedings be bifurcated into separate hearings for all issues of liability and a separate hearing for quantum issues, highlighting the importance of clearly and precisely identify the liability issues to be determined in advance of quantum to avoid key aspects of a case from being barred from being brought before a decision-maker.

LLC BryanskAgrostroy v. Mackies Asia Pacific Pty Limited [2021] FCA 1180, Federal Court of Australia, New South Wales District Registry, WAD 153 of 2021, 20 September 2021

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The Federal Court of Australia (FCA) has found a party is entitled to enforce a foreign arbitral award made in the Russian Federation, as if the award were a judgment of the Court.

HongKong Henson Industrial Limited v. Victorian Ferries Pty Ltd [2021] FCA 1450, Federal Court of Australia, Queensland District Registry, QUD 297 of 2021, 18 November 2021

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

Applicant obtained arbitral award overseas against a respondent Australian proprietary company, with principal address in Victoria requiring payment of moneys in Australian dollars and USD.

EBJ21 v. EBO21 [2021] FCA 1406, Federal Court of Australia, New South Wales District Registry, NSD 403 of 2021, 12 November 2021

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The Federal Court of Australia dismissed an application for recognition and enforcement of an arbitral award which was maintained despite the award having been paid

Tesseract International Pty Ltd v. Pascale Construction Pty Ltd [2024] HCA 24, High Court of Australia, A9/2023, 07 August 2024

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

On 7 August 2024 the High Court of Australia confirmed that the proportionate liability regime applied in arbitration unless expressly excluded by the parties.

The judgment highlights how courts assess the applicability of proportionate liability laws in the context of arbitration and the contractual intentions of the parties. It is a judgment with profound impact. It is likely to encourage lawyers to consider whether and to what extent the liability regimes of the respective states can be modified or excluded, when drafting contracts that include arbitration clauses.

CPB Builder Pty Ltd and Hansen Yuncken Pty Ltd v. State of Southern Australia [2024] SASCA 130, Supreme Court of Southern Australia, Court of Appeal, CIV-24-003861, 14 November 2024

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The South Australian Supreme Court upheld the decision of the primary court, which dismissed the appellants' claims for additional costs arising from delays. The appeal concerns less than 100 documents that were claimed to be protected by public interest immunity. The appellant sought to inspect these documents to substantiate his claim, but the primary judge upheld the claims of immunity, preventing their inspection.

The ruling reflects a key principle of legal proceedings: the importance of maintaining a balance between ensuring justice and transparency in legal disputes while also safeguarding sensitive government information. The court ruled in favour of the State, upholding the claims of public interest immunity and parliamentary privilege, deciding that these protections outweighed the Builder's need for the withheld documents.

CBI Constructors Pty Ltd v. Chevron Australia Pty Ltd [2024] HCA 28, High Court of Australia, P22/2023, 14 August 2024

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The High Court, by majority, dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Western Australia, thus determining that an interim award renders the arbitrator functus officio

Guangzhou Huada Venture Capital No. 1 Investment Enterprise (Limited Partnership) v. Lifang Zhu and Binbin Jin [2024] FCA 938, Federal Court of Australia, New South Wales District Registry, NSD 209 of 2024, 16 August 2024

Damian Sturzaker, Marque Lawyers, ITA Reporter for Australia

The Federal Court of New South Wales sets out the requirements to be met if an party seeks to enforce a foreign arbitral award under the International Arbitration Act 1974 (Cth).

Société Todini Costruzioni Generali S.p.A. v. Roads Department of the Ministry of Regional Development and Infrastructure of Georgia, Court of Appeal of Paris, 04 June 2024

Nataliya Barysheva, Valentine Chessa and Yoshie Concha Takeshita, MCL Arbitration, ITA Reporters for France

The Paris Court of Appeal confirms its well-established case law pursuant to which compliance with multi- tier arbitration clauses is a matter of admissibility rather than jurisdiction. As such, it is not ground for annulment of the award. The Court also confirms its position regarding the arbitrator's mission and procedural estoppel.

Juki Corp. v. Tusken Corp. et al., District Court of Sapporo, Reiwa 3 (WA) 106, 08 February 2022

Akiko Inoue and Koki Yanagisawa, Nagashima, Ohno & Tsunematsu, ITA Reporters for Japan

Non-parties were bound by arbitration agreements in a construction dispute. The court granted a motion to dismiss by Defendants holding that the arbitration agreements shall bind Defendants who were non-parties to the agreements, taking into consideration various circumstances such as the history of the conclusion and performance of the relevant construction contracts and heavy involvement of the Defendants in conclusion and performance of the contracts.

The Kingdom of Spain v. The London Steam-Ship Owners' Mutual Insurance Association Ltd (The M/T Prestige) [2024] EWCA Civ 1536, Court of Appeal of England and Wales, Civil Division, Appeal Nos CA-2024-000178, CA-2024-000180, CA-2024-000182, CA-2024-000597 & CA-2024-000588, 12 December 2024

Nicholas Fletcher, 4 New Square, ITA Reporter for the United Kingdom of Great Britain and Northern Ireland

An arbitral tribunal has the power to award equitable compensation for breach of the obligation to arbitrate in lieu of an injunction pursuant to s. 50 of the Senior Courts Act under both the 'conditional benefit principle' and a 'derived rights obligation'. However, the arbitration tribunal has first to have the power to grant an injunction in order for the entitlement under section 50 to arise. No such power exists where the matter involves a state entity and section 13(2)(a) of the State Immunity Act applies.

The categories of case for which equitable compensation may be available are not closed, but indemnities of the kind awarded by the arbitrators in this case should not have been awarded. They disregarded the nature of the conditional benefit principle as not creating a conventional cause of action and the costs incurred did not flow from a breach of the equitable obligation to arbitrate.

Barclays Bank PLC v. VEB.RF [2024] EWHC 3088 (Comm), High Court of Justice of England and Wales, King's Bench Division, Commercial Court, Claim Nos. CL-2024-000524 & LM-2024-000030, 28 November 2024

Nicholas Fletcher, 4 New Square, ITA Reporter for the United Kingdom of Great Britain and Northern Ireland

The right to refer a dispute to court rather than arbitration under an asymmetric exclusive jurisdiction agreement must be properly exercised in accordance with its terms. The fact that an anti-suit injunction is worded to require a dispute to be referred to arbitration does not prevent the party entitled to make an election to refer the matter to the English courts from exercising that right or render it impossible for the right to be exercised.

Waiver of the right to refer a dispute to court rather than arbitration under an asymmetric exclusive jurisdiction agreement requires a clear and unequivocal representation and evidence of detrimental reliance.

Tyson International Company Ltd v. Partner Reinsurance Europe SE [2024] EWCA Civ 363, Court of Appeal of England and Wales, Civil Division, Case No. CA-2023-002576, 15 April 2024

Nicholas Fletcher, 4 New Square, ITA Reporter for the United Kingdom of Great Britain and Northern Ireland

Where the parties to a reinsurance contract entered into two separate standard form market contractual documents with conflicting dispute resolution provisions it was a question to be answered by reference to an objective assessment of the parties' words and actions whether they intended the second contract to have the effect of superseding the first. In an appropriate case, a stay would be ordered in favour of arbitration pursuant to s.9 of the Arbitration Act 1996.

In considering whether or not to issue an injunction against arbitration proceedings commenced improperly, the court should have regard to the potential duplication of trouble and expense in permitting arbitration and court proceedings to run side by side.

Tyson International Company Ltd v GIC RE, India, Corporate Member Ltd [2025] EWHC 77 (Comm), High Court of Justice of England and Wales, King's Bench Division, Commercial Court, Case No. CL-2023-000760, 21 January 2025

Nicholas Fletcher, 4 New Square, ITA Reporter for the United Kingdom of Great Britain and Northern Ireland

The principles to be applied in determining whether there was any confusion between a competing jurisdiction clause and an arbitration agreement are that there should be no predisposition to find a conflict and the court should, where possible, strive to give effect to an arbitration clause in the presence of a competing jurisdiction clause, even if by doing so the jurisdiction clause is deprived of virtually all purpose. The exercise to be carried out is ultimately one of routine construction applying the ordinary principles of contractual construction. The Parties are to be assumed to have

agreed on a single tribunal for the determination of all their disputes. On the particular facts of the case the two provisions were irreconcilable and, given the presence of the ‘Confusion Clause’ in the Facultative Certificates, the court was required to give effect to the prevailing clause, being the jurisdiction clause.

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