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INCORPORATION OF STANDARD TERMS INTO A CONCLUDED CONTRACT

In most cases, contracting parties are no longer able to introduce additional terms once the contract has been signed and sealed or concluded in the manner agreed upon by the parties.

However, the Court of Appeal held in the recent decision of *R1 International Pte Ltd v Lonstroff AG* [2014] SGCA 56 that the a party's standard terms which dealt with essential matters such as the governing law of the parties' agreement had been incorporated into the concluded contract.

The contracting parties are members of the rubber industry who entered into a series of contracts with a similar pattern of transaction. The contract in question is for the sale and purchase of SVR, a type of "Technically Specified Rubber" which meet certain technical specifications. The contract was concluded by way of an email confirmation sent by R1 International Pte Ltd ("R1") to Lonstroff AG. After taking delivery of a shipment of the SVR from R1, Lonstroff AG claimed that the SVR emitted a foul smell and alleged that R1 was in breach of contract for supplying defective goods. R1 denied that it was in breach of contract as "smell" was not a contractually specific parameter of SVR.

Lonstroff AG commenced proceedings in Switzerland against R1 in March 2013. R1 then sought an anti-suit injunction to prevent Lonstroff AG from proceeding with the action in Switzerland. In support of its position, R1 claimed that Lonstroff AG was in breach of a arbitration clause contained in a contract note. The said arbitration clause provides for arbitration to be conducted in Singapore and is part of the standard terms contained in the standard terms.

Interestingly, it was undisputed that the contract had been concluded when R1 sought to introduce its standard terms that were contained in the contract note. It is also notable that the contract note was not countersigned by Lonstroff AG in accordance with R1's request.

Turning their attention to the language of the contract note in which the standard terms were contained in, the Court commented that the language did not go as far to suggest that the terms of the contract note would not be binding unless a countersigned copy was returned. It was held that whether the act of returning the countersigned copy of the contract note was an essential act was based on an objective assessment of the circumstances of the case.

The Court took an objective approach, considering, amongst others, the size and scope of the subject matter of the contract, the parties' previous course of conduct in 5 transactions, the nature of the industry which the parties were and found that the standard terms had been incorporated into the concluded contract.

The Court accepted evidence led by witnesses that it was the practice in the international rubber commodities market that the parties contract on the basis of standard terms and that typically, only the commercial terms of each trade such as the specific product, quantity, price and destination at the time the trade was confirmed were discussed and the other specifics would follow subsequently.

It was also pointed out that a failure to agree on the remaining detailed terms does not prevent the contract to be formed based on the agreed essential terms. Further, despite the fact that a contract on the essential

terms has been concluded, the parties may continue with negotiations on the detailed terms. In the present case, the parties had agreed on the quantity, price, terms of payment, method of packing and the estimated date of delivery. The standard terms which were later incorporated into the concluded contract then supplemented the essential terms.

In light of the facts and circumstances, the Court held that the standard terms which provides for arbitration to be conducted in Singapore was validly incorporated into the concluded contract and therefore granted R1 the anti-suit injunction sought.

Conclusion

The objective approach taken by the Court reflects the Court's recognition of the commercial realities, in particular, that contracting parties are unlikely to arrive at an agreement on all the terms within a telephone call, email, meeting or a combination of the aforesaid. This is especially so in when taking into consideration, amongst others, the practice of the industry in which the parties are in.

This update is for general information only and is it not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



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