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ISU Specialty Chemical Co Ltd v C&D (Singapore) Business Pte Ltd [2024] SGHC 285

This case, which was heard in the Singapore High Court, involved a dispute between ISU Specialty Chemical Co Ltd ("**ISU Specialty**") and C&D (Singapore) Business Pte Ltd ("**C&D**"), over the existence of a contract for the purchase of Light Cycle Oil ("**LCO**"). ISU Specialty alleged that C&D had agreed to purchase the cargo at a certain price during a telephone conversation. C&D denied that any agreement had been reached.

The Singapore Court held that a contract had been formed. In reaching its decision, the Court considered industry practices in the LCO trade, including the rapid acceptance of bids and offers, as well as the C&D's failure to object to a deal recap sent by email by ISU.

Background

ISU Exachem Co Ltd and ISU Specialty (referred to collectively below as "**ISU**"), both South Korean companies, are wholesalers trading in liquid fuel and related products. Pursuant to a spin-off merger agreement, ISU Exachem Co Ltd transferred its rights and obligations, including its entitlement to pursue the present claim, to ISU Specialty.

C&D, a Singaporean company, engages in the wholesale trade of various goods. Between July 2020 and January 2021, C&D purchased LCO from ISU on six occasions. The first five transactions were conducted through a tender process, while the sixth transaction was concluded following private negotiations between ISU and C&D's agents via WeChat and voice calls. Following the sixth transaction, the Parties entered into discussions for the purchase of an additional 300,000 barrels of LCO (the "**March Cargo**"), also via WeChat and voice calls between the Parties' representatives.

The issue in dispute was whether the private discussions in relation to the March Cargo resulted in

the formation of a contract of sale between the Parties.

The dispute

Discussions between ISU and C&D, via their representatives, in relation to the March Cargo culminated in two phone calls at 3:48pm and 3:54pm on 2 February 2021 (the "**February Calls**"). It was ISU's position that during the February Calls, C&D had offered to purchase the March Cargo at a cost, insurance and freight ("**CIF**") price of US\$8.50/BBL above Mean of Platts Singapore ("**MOPS**")¹ for March. C&D denied that the February Calls involved any discussion of price or other terms related to the March Cargo.

Subsequently, ISU made a back-to-back offer to Hyundai Korea on this basis for the supply of the contractually agreed amount of LCO. This offer was accepted by Hyundai Korea on 3 February 2021.

ISU contended that this constituted automatic acceptance of the Defendant's back-to-back offer, thereby concluding a contract between the Parties

¹ MOPS is the price based on the average of Singapore-based oil product prices of the entire month, usually published in the following month by Platts.

for the March Cargo of which a recap was then promptly sent to C&D confirming the transaction.

C&D disputed the ISU's account and argued that ISU's agent was acting in self-interest and C&D had not made any offer at all. Consequently, no contract could have been formed. C&D also relied on the fact that ISU failed to confirm the transaction via email, as specifically requested by C&D.

Ultimately, C&D did not take delivery of the March Cargo, nor did they make payment for the same.

ISU claimed that C&D had repudiated the contract for the March Cargo and sought damages of US\$1,667,507.91 in respect of that breach, taking into account steps taken in mitigation of its losses in selling the March Cargo to another buyer.

C&D denied the claim and counterclaimed for US\$33,947.61, representing legal costs incurred as a result of wrongful arbitration proceedings initiated by ISU under SIAC Rules.

The Court was asked to decide whether a contract had been concluded for the March Cargo, which entailed, among other things, an analysis of which Party's account of the February Calls was accurate.

The Court's decision

In reaching a conclusion, alongside an examination of the Parties' specific evidence, the Court reviewed expert evidence on common industry practice surrounding transactions involving LCO. In particular the evidence showed that:

1. Sales of LCO were commonly engaged on a back-to-back trade basis involving a middleman, a refinery and a buyer such that any contract is usually formed when the refinery accepts an offer. This point was agreed by both Parties' experts. A deal recap will then be sent to the buyer confirming the transaction which will then serve as notification to the buyer that its offer was accepted.
2. Refineries accept bids or offers very quickly. This is due to their significant bargaining power and the competitive nature of the market. Bids are offered on a time-limited basis, as traders seek to avoid exposing themselves to the risks of a volatile market.
3. The industry's understanding is that a deal recap is considered a record of a concluded deal. If a deal recap is inaccurate or asserts a non-existent deal, the recipient is expected to object promptly. Failure to object is a factor pointing to a concluded deal.

WeChat messages from February 2021 showed discussions between ISU and C&D regarding the laycan date for the March Cargo, with ISU agreeing to check with Hyundai Korea about the C&D's proposed laycan period, prior to the Spring Festival. The Court found that these messages were contrary to C&D's assertion that it was only able to purchase further LCO after the Spring.

The Court found:

1. It was common in LCO trades, and both the Parties would have understood, that trades were entered into quickly and on a back-to-back basis once a seller had secured a contract with the relevant refinery. This practice was consistent with the first six trades between the Parties.
2. An oral contract was formed on 2 February 2021, as evidenced by the WeChat discussions between the Parties' representatives. C&D's failure to respond to or protest the deal recap once sent further supported the existence of a contract.
3. C&D's denial of a contract was a repudiatory breach of contract, which entitled ISU to damages. These were awarded, accounting for the sale made in mitigation, for loss of profits, additional costs and laytime differences.
4. C&D's counterclaim was dismissed due to a lack of evidence in support and since SIAC itself had made a costs order in the abortive proceedings.

Comment

This decision highlights the importance of understanding the specific commercial context in which agreements are negotiated and formed.

As readers will be aware, the trade in a number of commodities operates using certain industry practices that may not be seen elsewhere but will be second nature to market participants. Accordingly, the analysis of contract formation will necessarily take these customs and practices into account. The volatility and uncertainty inherent in the oil and gas industry necessitate swift decision-making, with bids and tenders moving at a rapid pace. In such a dynamic environment, the Court's consideration of industry norms and practices was crucial in establishing the existence of a contract between the Parties in this case.

Ultimately, contracting parties would be well-advised to document any calls contemporaneously, if trades are often concluded over the phone, so as to support any subsequent claim, should the contractual relationship break down.

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