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CAFI - COMMODITY AND FREIGHT INTEGRATORS DMCC V GTCS TRADING DMCC [2025] EWHC 1350 (COMM)

BACKGROUND

The dispute arises out of two contracts for the sale and purchase of the same cargo of 28,000 metric tonnes of Russian milling wheat (the "**Cargo**"). Under both contracts GTCS Trading DMCC ("**GTCS**") was the seller and CAFI - Commodity & Freight Integrators DMCC ("**CAFI**") was the buyer. The first contract was entered into on 11 March 2022 and was for the sale of the Cargo for USD 465 per metric tonne (the "**First Contract**"). The First Contract contained the following Arbitration Clause:

"*Any dispute arising out or under this contract shall be settled by arbitration in accordance with Arbitration Rules N.125 of the Grain and Feed Trade Association, in the edition current at the date of this contract. Such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognizant.* […]

Arbitration to take place in London / England."

While the Vessel was on route to the discharge port, CAFI informed GTCS that it was having trouble arranging payment due to the impact of US sanctions and purported to rely on a clause in the First Contract which excluded performance for reasons related to sanctions. When the Vessel arrived, CAFI maintained that it was unable to pay for the Cargo. GTCS purported to terminate the First Contract on the grounds of anticipatory breach.

On 25 March 2022 CAFI and GTCS agreed to enter into a second contract for the sale of the same Cargo for USD 440 per metric tonne (the "**Second Contract**"). The Second Contract contained the same arbitration clause as the First Contract as well as a clause stating that "*Both parties have agreed that Contract No. RMW125-11032022-1 dd.* 11.03.2022 [the First Contract] *is terminated and considered void.*" (the "**Termination Clause**"). The parties performed the Second Contract.

GAFTA ARBITRATION

First Tier Tribunal: GTCS commenced arbitration claiming damages for repudiatory breach of the First Contract. CAFI defended the claim *inter alia* on the basis that (a) the effect of the Termination Clause was to deem the First Contract void, so as to cancel any rights and liabilities arising under the First Contract, including any right to damage for wrongful termination; and (b) the Tribunal had no jurisdiction to consider the meaning of the Termination Clause because the Tribunal had been constituted only under the arbitration agreement in the First Contract.

The claim was dismissed. Notwithstanding the Tribunal's finding that the Second Contract was a stand-alone contract with an arbitration clause and that, therefore, it had no jurisdiction under the Second Contract, the Tribunal considered the effect of the Termination Clause on the basis that it was "*evidence in this arbitration which could not be ignored*". The tribunal concluded that by entering into the Second Contract, GTCS had waived its claim for damages.

Appeal Board: GTCS appealed the First Tier Award. GTCS argued, *inter alia*, that the Tribunal was not authorised to consider the Second Contract and it exceeded its authority when it considered the parties' intentions when concluding the Second Contract.

The Appeal Board found that:

a) Jurisdiction: It had jurisdiction to address all issues arising out of the First Contract, including its validity and termination, and concluded that the parties had agreed that the First Contract would be "*cancelled*" (which, in the absence of evidence that the parties had "*freely negotiated*" the specific wording of the Termination Clause or "*clear discussion*" as to its effect, the Appeal Board interpreted to mean that it was terminated) as opposed to being declared retrospectively "*void*". It also found that neither it nor the Tribunal had any jurisdiction to interpret the terms of the Second Contract but that this remained good evidence of what happened after the termination of the First Contract.

b) Liability: CAFI's failure to pay was a breach of contract entitling GTCS to terminate the First Contract and claim damages.

c) Waiver: CAFI could not point to any clear and unequivocal representation that GTCS would not seek to exercise its right to treat the First Contract as repudiated and therefore CAFI's waiver argument failed.

COMMERCIAL COURT

CAFI challenged the Appeal Award under s.67 and/or s.68 Arbitration Act 1996 (the "**AA 1996**") and sought leave to appeal pursuant to s. 69 of the AA 1996. CAFI's grounds of challenge were:

1. Challenge 1 (s.67): The Appeal Board was wrong to determine that it had no jurisdiction to interpret the terms of the Second Contract or how they impacted the First Contract because the arbitration agreement in the First Contract and the notice of arbitration were sufficiently wide to encompass a dispute as to whether a claim for damages under the First Contract had been waived by the Second Contract.
2. Challenge 2 (s.67 / s.68 / s.69): Alternatively, the Appeal Board exceeded its jurisdiction by finding that CAFI was liable because that finding necessarily involved interpreting the terms of the Second Contract and how they impacted the First Contract.

   This challenge was also made in two further alternatives (a) under s. 68 of the AA 1996, on the basis that it was a serious irregularity for the Appeal Board to hold CAFI liable while a live issue as to whether that liability was extinguished under the Second Contract had yet to be determined; and (b) under s. 69, on the basis that it was an obvious error of law for the Appeal Board to find that a party can be liable in circumstances where there is a live issue as to whether liability has been extinguished and that issue has not yet been determined.

3. Challenge 3 (s.69): The Appeal Board made obvious errors of law in concluding that (a) CAFI had to show that the Termination Clause was freely negotiated or the subject of clear discussion in order to rely on it, and/or (b) the Termination Clause did not extinguish any right to damages in respect of the First Contract.

The Commercial Court found that Challenges 1 and 2 succeeded and the Appeal Award should be set aside or varied in so far as it addresses the waiver issue and the award of damages against CAFI. Specifically, the Commercial Court held that:

1. Challenge 1 succeeds because the Appeal Board did have jurisdiction to determine how the Termination Clause affected the First Contract and the parties' rights and liabilities under it.
    a. A dispute about whether CAFI was liable to GTCS for breach of contract, or whether the parties had subsequently reached an agreement to treat the contract as void and waive any liabilities that might have arisen, is a dispute arising out of or under the First Contract (whether or not it may also fall within the Second Contract).
    b. The Appeal Board would have had jurisdiction to determine a dispute about the contractual effect of the Termination Clause if the Second Contract had contained (i) no jurisdiction or arbitration clause at all; (ii) an English jurisdiction clause; or (iii) an arbitration clause providing for a regime other than GAFTA.
    c. A second, separate arbitration need only be commenced under the Second Contract if the relevant dispute falls outside the scope of the arbitration clause in the First Contract.
1. Challenge 2 succeeds under s. 67 of the AA 1996.
    a. The Second Contract was not merely a piece of factual evidence to be evaluated as part of the circumstances as a whole, it was a binding contract and the 'waiver' argument could not be determined without interpreting it as such. If the Appeal Board did not have jurisdiction to consider the impact of the Termination Clause then it lacked jurisdiction to determine the waiver issue and exceeded its jurisdiction by purporting to do so.
    b. The Commercial Court also determined that, if its conclusion that Challenge 2 succeeds under s.67 is wrong, it would succeed under s. 68 and s.69 of the AA 1996 and leave to appeal on a point of law was granted.
2. Challenge 3 does not arise because it was plain from its award that the Appeal Board did not attempt to construe the Second Contract. However, had it arisen, CAFI would have had a strong case that the Appeal Board had gone obviously wrong on a point of law by searching for 'free negotiation' and 'clear discussions' beyond the terms of the Second Contract.

COMMENT

The Commercial Court's decision confirms that a dispute may fall within more than one arbitration agreement and the Court is entitled to make a finding to that effect (rather than being required to determine which clause takes precedence over the other). However, this judgment stops short of offering any guidance as to how such an eventuality would work in practice and it will be interesting to see the procedural approach adopted by litigants with more than one arbitration agreement available to them.

The judgment is also an unusual example of the Court finding that a challenge to an award succeeds on each of the three bases under the AA 1996. In considering whether CAFI's Challenge 2 succeeded, the Court has provided useful guidance as to what will be considered a "*question* [...] *which the court was asked to determine*" for the purpose of an appeal under s. 69 AA 1996. There is now authority for the proposition that the issue does not need to be expressly pleaded by the parties and instead it is sufficient for the parties' submissions to have "*crystalised an issue*" which a tribunal or appeal board had to determine.

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