June 2023

Navigating Sanctions: Recent Court Decisions in Singapore and England

Introduction

Sanctions imposed by international bodies or individual countries have significant implications for global trade. In recent times, the Courts in Singapore and England have been tasked with addressing the impact of sanctions on contractual obligations. In some cases, this involves interpreting the sanctions clause contained in the contract and in other cases where there isn't a specific clause in the contract dealing with sanctions, determining where parties have allocated the risk. This update aims to examine some notable cases that have cropped up in both jurisdictions, shedding light on how courts have dealt with the complex interplay between sanctions and contractual obligations.

Kuvera Resources Pte Ltd v JP Morgan Chase Bank, NA [2022] SGHC 213:

1. In this case, Kuvera had advanced funds to a seller for the purpose of procuring a shipment of coal which was to be sold to a buyer. The buyer was to make payment for the shipment of coal by issuing two letters of credit ("**LCs**") with Kuvera as the named beneficiary. At Kuvera's request, JP Morgan Chase Bank, Singapore branch, agreed to be the confirming bank of both the LCs. The confirmations by JP Morgan contained a "sanctions clause", which set out that the bank had to comply with US sanctions. This was even though the transaction in question was being carried out by the bank's Singapore branch.

2. Upon Kuvera's presentation of the documents, JP Morgan undertook a "sanctions screening" and informed Kuvera that it would not pay out on the LCs as the transaction fell within the United States Office of Foreign Assets Control ("**OFAC**") sanctions regime with respect to Syria. In this case, the vessel used for shipping the coal was beneficially owned by a Syrian company.

3. The Court had to decide whether a bank was entitled to refuse payment under a letter of credit due to sanctions imposed on the beneficiary.

4. The Court held that JP Morgan's refusal was justified. It ruled that a sanctions clause in the confirmation is valid and enforceable, entitling the bank to deny paying the beneficiary, notwithstanding a complying presentation under a letter of credit. Kuvera Resources has appealed against this decision and the appeal is pending.

5. This case involved a claim by a beneficiary against the confirming bank of the LCs. It is not clear whether Kuvera has commenced proceedings against the LC issuing bank who may not have been able to rely on the sanctions clause contained in the confirmations.

Celestial Aviation Services Ltd v UniCredit Bank AG (London Branch) [2023] EWHC 663 (Comm):

6. This matter involved a dispute relating to an aircraft leasing agreement between 2 aircraft leasing companies and a Russian airline. Several standby letters of credit ("LCs") were issued to secure USD payments which were to be made by the Russian airlines to the leasing companies. The standby LCs were issued by a Russian bank, Sberbank, between 2005 and 2014. UniCredit, a German bank, added its confirmations to the LCs between 2017 and 2021. The LCs were governed by English law.

7. In March 2022, both aircraft leasing companies terminated the leases and issued demands for payment. However, UniCredit, as the confirming bank declined to make the payment citing sanctions imposed on Russia by the United

States, the European Union, and the United Kingdom.

8. The English High Court had to decide whether the UK regulations concerning the Russian sanctions would prohibit the payment under the LCs which had been issued prior to the UK regulations coming into play.

9. The Court held that sanctions will not 'bite' where underlying lease agreements and the LCs themselves were entered into prior to the relevant sanctions' regime coming into effect. The payment by UniCredit was discharge of an obligation undertaken long before the sanctions regulations came into effect. Further, payment did not discharge Sberbank's obligations as the issuing bank as they were still liable to UniCredit, nor did it involve dealing with Sberbank's property, nor did it benefit the Russian entities involved in other elements of the overall transaction.

MUR Shipping BV v RTI Ltd [2022] EWCA Civ 1406:

10. In this case, the owners, MUR Shipping BV, had concluded a Contract of Affreightment ("**COA**") with the charterers, RTI Ltd, in 2016, to ship bauxite from Guinea to Ukraine on a monthly basis. When the US Office of Foreign Assets Control ("**OFAC**") included RTI's parent company, Rusal, to the US Sanctions list, MUR tried relying on the COA's force majeure clause to suspend performance and alternatively argued that performance of the COA was frustrated. They contended that continuing to perform would be in contravention of the sanctions, and that due to the OFAC's designation, payment could not have been made by RTI in USD as required under the COA. MUR rejected RTI's proposal to pay freight in Euros instead, which included RTI covering the bank's conversion charges for the change in currency.

11. The issues before the Court of Appeal were (i) whether MUR could rely on the force majeure and separately (ii) whether the defence of frustration was made out in this instance i.e. whether a shipping contract became impossible to perform because of sanctions imposed on one of the parties.

12. The Court of Appeal held that in this case the sanctions did not frustrate the contract, and that a force majeure clause in the COA could not be relied upon to suspend performance of the contract. Since RTI's parent company was subject to US sanctions and thus the payment could not have been effectuated in USD, MUR was obliged to accept the payment of freight in Euros instead.

13. Further, the court emphasized the importance of making reasonable attempts to effectuate the completion of the transaction including accepting payment in an alternative currency than the one contractually agreed, so as to overcome the effect of a potential force majeure. MUR has appealed against this decision and the appeal is pending.

Gravelor Shipping Ltd v GTLK Asia M5 Ltd [2023] EWHC 131 (Comm):

14. In this case, Gravelor had financed the purchase of two of their vessels by entering into a bareboat charterparty with GTLK, who were Russian lenders. These charters were similar to finance leases. The vessels' owners, GTLK Asia M5 & M6 were owned by the JSC State Transportation Company which was controlled by Russia's Ministry of Transportation. Gravelor was required to make payment for the hire of vessels to GTLK subsidiaries in USD, and eventually purchase the ships at the end of the bareboat charter. As per Clause 19, Gravelor could also purchase the ship during the charter once it paid a "termination amount" in addition to all sums due under the charter. Clause 18 of the charter gave the right to GTLK to cancel the charter and insist on selling the ships to Gravelor once it satisfies all dues.

15. In response to the Russian Ukraine conflict, GTLK came under the ambit of Russian sanctions imposed by the EU. It thus became illegal for Gravelor to effectuate any sort of payment to GTLK, and it exercised the purchase option contained in the bareboat charter. GTLK nominated an account which was held with JSC Gazprombank in Moscow and sought payment. Gravelor argued that doing so would be in breach of the sanctions, and instead sought an order for specific performance for GTLK to nominate a Euro account. GTLK argued that if the payment was

made into a Euro account, the same would lead to the funds falling squarely into the scope of the EU sanctions, leading to them being frozen.

16. The English High Court considered that the charterparties contained a clause requiring them to take "all necessary steps" to complete payment and held that tendering payment in Euros into a frozen account, effectuated the contractual obligation to pay, and thus an order for specific performance to transfer title to the vessels, should be granted.

Conclusion

17. The above cases highlight the complexities surrounding the impact of sanctions on contractual obligations. While the courts in Singapore and England have provided guidance on various aspects, there is no one-size-fits-all approach. The interpretation of sanctions clauses and their effect on contractual performance requires a case-by-case analysis, considering the specific circumstances and the intention of the parties involved.

18. The decisions rendered in these cases underscore the need for clear and explicit contractual provisions regarding sanctions. Parties should carefully consider the potential impact of sanctions when drafting contracts, including the allocation of risks and responsibilities. It is advisable to seek legal advice to ensure contractual clauses adequately address the risks posed by sanctions.

19. As global political and economic landscapes continue to evolve, the significance of court decisions which address the impact of sanctions on contractual obligations will become increasingly important. Close attention to developments in this area of law will help businesses and individuals better understand their rights and responsibilities when facing the challenges posed by sanctions regimes.

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If you require any legal advice on sanctions related matters, please do not hesitate to get in touch with:

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