

CASE UPDATE

COURTS TO ADOPT PRINCIPLE OF LIMITED CURIAL INTERVENTION IN ARBITRATION PROCEEDINGS

NCC International AB v Alliance Concrete Singapore Pte Ltd [2008] SGCA 5

Executive Summary

The Court of Appeal recognises that Singapore courts should only play a supportive role in arbitration proceedings and will adopt a policy of limited and cautious curial intervention. Accordingly, parties in arbitration should, where possible, seek interim relief or measures from the arbitral tribunal, even though the court may have concurrent jurisdiction to order the same.

Background

NCC International AB (the “**Appellant**”) is the main contractor for the construction of certain segments of the Circle Line of the Mass Rapid Transit system. Alliance Concrete Singapore Pte Ltd (the “**Respondent**”) supplied ready-mixed concrete to the Appellant at fixed prices. The contracts entered into between the parties (the “**Contracts**”) provided that any disputes that arose would ultimately be referred to arbitration in accordance with the rules of the Singapore International Arbitration Centre.

In late January 2007, the Indonesian government announced its decision to ban the export of sand to Singapore. In February 2007, the Building and Construction Authority (the “**BCA**”) took steps to release sand from the Singapore government’s stockpile to contractors. However, the Appellant and the Respondent were unable to agree on how to collect and pay for the sand distributed by the BCA. Accordingly, the sand allocated to the Appellant went uncollected and the supply of ready-mixed concrete by the Respondent to the Appellant was disrupted.

In March 2007, the Appellant applied for an interlocutory mandatory injunction (the “**Interim Injunction**”) to compel the Respondent to deliver ready-mixed concrete under the terms of the Contracts.

Decisions of the High Court and the Court of Appeal

The High Court dismissed the Appellant’s application because the Appellant failed to show that it deserved the court’s assistance in the issuance of the Interim Injunction. The judge took into account the fact that the Appellant had failed to follow the contractual process of dispute resolution.

On appeal, the Court of Appeal affirmed the High Court’s decision to refuse the Appellant’s application for the Interim Injunction and dismissed the appeal.

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Principle of Limited and Cautious Curial Intervention Applies

Where possible, parties in arbitration should seek interim relief / measures from the arbitral tribunal even though the court may have concurrent jurisdiction to order such relief / measures.

The Court of Appeal noted that the court's assistance in arbitration proceedings should be sought only when arbitration is "*inappropriate, ineffective or incapable of securing the particular form of relief sought*". VK Rajah JA, who delivered the judgment, also emphasised that the court would "*scrupulously avoid usurping the functions of the arbitral tribunal*" and would only order interim relief where this will "*aid, promote and support arbitration proceedings*".

Examples of situations where a court may intervene include cases where third parties whom the arbitral tribunal has no jurisdiction over are involved, where matters are very urgent or where the court's coercive powers of enforcement are required.

However, the Court of Appeal also observed that the court plays a "*relatively more interventionist*" role in domestic arbitration as compared to international arbitration. This is on account of policy reasons, namely, "*for the development of domestic commercial and legal practice, and for closer supervision of decisions which may affect weaker domestic parties*". That said, the court's role in domestic arbitration still remains grounded on the principle that the court must step in only in the limited situation where curial intervention would support the arbitration.

Comments

The regime governing domestic arbitrations was amended in 2002 and brought in line with that governing international arbitrations. This timely decision provides guidance on the court's role and stance in arbitration proceedings. As this decision demonstrates, care should be taken to avoid the pitfalls associated with being too quick to seek interim relief from the court; this may, in certain circumstances, unwittingly give rise to an abuse of the court's process.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or:

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