THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

3 May 2019

K v A
[2019] EWHC 1118 (Comm)

BEFORE: THE HON. MR JUSTICE POPPLEWELL

CASE SUMMARY

[*A contractual obligation to pay a contract price into a seller's bank account was not simply an obligation to pay the bank, which would be commercially absurd. A finding on agency had not been argued before the Tribunal, was a serious irregularity under s.68 Arbitration Act and should be remitted rather than dealt with under s.69 Arbitration Act*]

The Claimant, K, appealed an award of the GAFTA Board of Appeal ("the Tribunal") dated 2 October 2018 ("the Award") under ss. 67, 68 and 69 of the Arbitration Act 1996 ("the Act"). The Award ordered the Claimant to pay the Defendant US$161,616.93 plus interest. This represented a shortfall in the price due from the Claimant to the Defendant, A, under a contract incorporating GAFTA Form 119.

The shortfall arose because emails between the parties were manipulated by a hacker. The effect was that K did not receive emails from A (or an email from A to the intermediary broker, Vicorus, which it forwarded to K) communicating its correct bank details for payment, instead receiving details of another bank account ("the Fraudulent Account"). Likewise, A did not receive certain emails from K confirming payment to the Fraudulent Account, instead receiving confirmation of payment to A's account. As a result, K credited the Fraudulent Account. The payment to the Fraudulent Account was reversed but exchange-rate movement led to the shortfall that A claimed in the GAFTA arbitration.

K submitted there was an obvious error of law and the true construction of the payment provision only required K to pay A's bank, not A's specific account. The judge found that, although technically any payment to a bank account is a payment to the bank, of which the customer is a creditor, it is impossible to make a payment without specific account details. An over-literal reading of the Award to the effect that K guaranteed the bank's payment process was not correct. The contractual obligation was to make payment to K's bank for A's account, that is, accompanied by A's account details.

The Tribunal found that notification to Vicorus (as K's agent) of A's bank details was notification to K under clause 18 of GAFTA Form 119. K argued this was a serious irregularity under s.68 of the Act because A did not argue the agency point, alternatively it was an error of law under s.69. K had not been able to address it, which was a serious irregularity. If the Tribunal was wrong there was substantial injustice to K which, having paid the full price, would be liable to pay a further sum to correct the shortfall. The agency point was at the heart of the Tribunal's reasoning. For s.68 purposes it was enough that the Tribunal might well have reached a different view with the benefit of argument, and that test was met. Since the s.68 grounds succeeded, it was appropriate to remit the issue to the Tribunal, rather than deal with it under s.69 of the Act (and permission to appeal under s69 of the Act was refused).

K argued that the Tribunal had not dealt with several other arguments. That was not correct; the Award referred to the points and the Tribunal's corrected Award (under s.57 of the Act) recorded that it took into account all arguments.

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments of the Commercial Court are public documents and are available at: https://www.bailii.org/ew/cases/EWHC/Comm/