

Anti-suit injunctions to enforce arbitration agreements are held to be in breach of EC law

Allianz SpA & Generali Assicurazioni
Generali SpA v West Tankers Inc.

Court of Justice of the European
Communities (Grand Chamber) – 10
February 2009

The European Court of Justice (ECJ) has ruled that anti-suit injunctions granted by the Court of one Member State to prevent proceedings commenced before the court of another Member State, on the grounds that the parties are subject to an existing arbitration agreement, is contrary to existing EC Law.

settled by arbitration pursuant to the arbitration agreement. West Tankers also applied for an anti-suit injunction to restrain Insurers from taking further steps in relation to the dispute other than by way of arbitration, in particular requiring them to discontinue the proceedings in Italy.

In March 2005 the Commercial Court granted the injunction and Allianz appealed directly to the House of Lords arguing that it was granted contrary to Regulation No. 44/2001.

The Facts

In August 2000 a vessel owned by West Tankers and chartered by Erg, collided with a jetty owned by Erg in Italy. The charterparty contained a UK arbitration clause and was governed by English law.

Erg claimed compensation from its insurers, Allianz and Generali, up to policy limits and then commenced arbitration proceedings against West Tankers in the UK for the excess.

In July 2003 Allianz brought proceedings against West Tankers before the Tribunale di Siracusa in Italy to recover the sums they had paid to Erg based on their statutory right of subrogation.

In September 2004 West Tankers brought proceedings before the English High Court to seek a declaration that the dispute between itself and Insurers was to be

Regulation No.44/2001

The key provision of EC law that this dispute centred around was Regulation No.44/2001 (the Regulation). This sets out where a Member State will have jurisdiction over a particular dispute. For example, an action for tort can be brought in the courts of the country where the harmful event occurred. Crucially, there is an exception in the Regulation such that it does not apply to arbitration.

The Regulation is based on the idea that Member States have mutual trust in each other's legal systems, so that the court of a Member State can decide for itself whether it has jurisdiction to hear a certain dispute. An anti-suit injunction has the effect of allowing the courts of another Member State (in this case the English court) to make the decision on the jurisdiction of the court of another member state.

The House of Lords

The House of Lords held that all matters relating to arbitration were excluded from the scope of the Regulation and the grant of the injunction restraining Allianz from pursuing proceedings in Italy was not an infringement of it.

This went against the earlier decision of the ECJ in the case of *Turner* which held that an anti-suit injunction in connection with proceedings before the court of another Member State was inconsistent with the Regulation.

In February 2007 the House of Lords stayed proceedings to make a reference for a preliminary ruling to the ECJ. The ECJ was asked whether it was consistent with the Regulation for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings in another Member State on the grounds that such proceedings were in breach of an arbitration agreement.

The ECJ's decision

The Court began by considering whether the initial proceedings brought by Insurers against West Tankers in Italy came within the scope of the Regulation.

The Court held if the subject matter of the dispute, (e.g. a claim for damages), resulted in the proceedings coming within the scope of the Regulation, then a preliminary issue concerning the applicability of an arbitration agreement would also come within its scope of application. The exception in relation to arbitration did not apply.

As the objection raised by West Tankers of lack of jurisdiction of the Italian court comes within the scope of the Regulation, it would therefore be exclusively for the Italian court to rule on that objection and decide the question of its own jurisdiction.

An anti-suit injunction restraining proceedings on the basis of the existence of an arbitration agreement was therefore inconsistent with the Regulation.

Comment

The decision of the ECJ was widely predicted after the Advocate General's comments delivered on 4 September 2008.

While in the future the Member States' courts will not be subject to anti-suit injunctions issued by the English High Court supporting English arbitration clauses, they

will still have to rule on their own jurisdiction to hear disputes where an objection is raised in favour of English arbitration. Clearly drafted arbitration clauses in contracts being disputed at least provide any court considering its jurisdiction with limited options to ignore a contractual choice arbitration.

If you require any further information in relation to the way in which these developments impact upon your business please contact Nicholas Bradley, David Breslin, William Sturge or Viran Ram on 020 7379 0000 at Lawrence Graham LLP.

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