IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 12

Originating Summons No 895 of 2020

Between

CIE

… *Plaintiff*

And

CIF

… *Defendant*

GROUNDS OF DECISION

[Arbitration] — [Award] – [Recourse against award] – [Setting aside]

TABLE OF CONTENTS

CIE
v
CIF

[2021] SGHC 12

General Division of the High Court — Originating Summons No 895 of 2020
Andre Maniam JC
15 December 2020

26 January 2021

Andre Maniam JC:

Introduction

1 The plaintiff ("the Claimant") applied to set aside portions of an arbitration award ("the Award") in which its claim for breach of contract had been dismissed with costs by an arbitrator ("the Tribunal").[1] It contended that those portions of the Award had been decided in breach of natural justice, which had prejudiced its rights.

2 In its application, the Claimant also asked that its claim for breach of contract be found in its favour[2] and that the issue of quantum of damages and

---

1 Originating Summons ("OS") at prayer 1.

2 OS at prayer 2.

costs be remitted back to the Tribunal.[3] In its written submissions, however, the Claimant indicated that those prayers were not being proceeded with. Instead, the Claimant asked that the impugned portions of the Award be remitted back to the Tribunal.[4]

3 I dismissed the Claimant's application. The Claimant has appealed, and these are my grounds of decision.

Background

4 The Claimant was in a joint venture ("JV") with the defendant ("the Respondent"), on the terms of a March 2014 joint venture agreement ("the JVA"), which concerned the distribution of certain products in country "Y".

5 Clause 4.2.8(i)(a) of the JVA ("the Distributorship Clause") provided that the Respondent was to:[5]

> [g]rant or procure the grant of the Master Distributorship Licence for the [brands of "X Co"] as well as such other brands that the [Company] may from time to time be granted rights of distributorship or dealership within the territories of [Y], which rights of distributorship shall include the right to appoint sub-distributors, dealers, retailers and resellers within the territories of [Y].

6 In June 2014, the Respondent procured the grant of a distributorship licence from X Co for the distribution of products of X Co's brands in country Y ("the 2015 Distribution Agreement"). The 2015 Distribution Agreement

---

3 OS at prayer 3.

4 Plaintiff's Written Submissions ("PWS") at paras 99–104.

5 Plaintiff's Core Bundle ("PCB") at p 141.

lasted for one year, from 1 July 2014 to 30 June 2015. Renewal was not automatic: X Co would have to agree to it.

7 On 19 May 2015, the parties were informed that X Co would not be renewing the 2015 Distribution Agreement. That agreement thus ended on 30 June 2015.

8 In the arbitration, the Claimant claimed that the Respondent had committed repudiatory breach of the Distributorship Clause by failing to procure the grant of a further distributorship licence from X Co.[6] The Claimant contended that it had accepted the Respondent's repudiatory breach by an email of 30 June 2015 from the Claimant's representative "B", thus ending the JVA.[7]

9 In the Award, the Tribunal identified the question, "whether the Respondent had committed a repudiatory breach of the JVA when the 2015 Distribution Agreement was not renewed".[8] The Tribunal then referred to the 30 June 2015 email[9] and made the following findings:[10]

> 180. The Tribunal's view is that on a plain reading of email, far from suggesting in any way that the Respondent had repudiated the JVA, it was a note from one shareholder to the other to propose that:
>
> (a) The winding down process be initiated as quickly as possible to avoid further losses.

---

6 Statement of Claim (Amendment No. 1) ("SOC") at paras 30 and 34 in PCB at pp 95–97; Reply and Defence to Counterclaim (Amendment No. 1) ("Reply") at paras 4(3), 4(5), 4(8) and 60–62 in Defendant's Core Bundle ("DCB") at pp 332–333 and 352–354.

7 SOC at para 35 in PCB at p 97; Reply at paras 65–66 in DCB at pp 354–355.

8 Award at para 176 in PCB at p 66.

9 Award at paras 177–179 in PCB at pp 66–67.

10 Award at paras 180–185 in PCB at pp 67–69.

(b) The JV business be [wound] down in an efficient way.

181. It was a perfectly reasonable message. It would appear to the Tribunal that [B] had initiated the winding down process after the 2015 Distribution Agreement ended and *there was no hint whatsoever that the Claimant had considered the Respondent to be in breach of the JVA*. In fact, the first time that the Claimant had raised blame, fault or misrepresentation on the part of the Respondent was in the Claimant's lawyer's letter dated 6 January 2017. As for repudiatory breach, it was first alleged in the Notice of Arbitration dated 26 October 2017. The respective dates were long after 30 June 2015 when the 2015 Distribution Agreement terminated.

182. Furthermore, the Tribunal finds that the conduct of the parties after the email of 30 June 2015 was sent is consistent with the fact that both parties had agreed to wind down the business *because the 2015 Distribution Agreement had ended and there was no business to carry on*, rather than because the Respondent had committed a repudiatory breach thereby ending the JVA. Since both parties had agreed that the JVA is at an end without reservations, it follows that the Respondent would be released of all existing obligations under the JVA.

183. It would be incongruous of the Claimant being the party who initiated the winding down because of the termination of the 2015 Distribution Agreement to insist that the Respondent nevertheless continue to be bound by [the Distributorship Clause].

184. The Tribunal finds that after the email was sent, parties agreed and proceeded to commence the winding down process. As the Tribunal found earlier, the JV business was wound down because parties had agreed to the winding down and not because the Respondent had repudiated the contract. The Tribunal therefore rejects the Claimant's claim that the Respondent was in breach of [the Distributorship Clause].

185. In the circumstances, the Tribunal does not consider any need to deal with the alternative grounds of Implied Term and Collateral Contract raised by the Claimant. These grounds were argued on the basis that there was an obligation to procure and/or renew the master distributorship licence by [X Co] beyond the 1-year term granted by the 2015 Distribution Agreement. The

> Tribunal rejects the argument for the reasons hereinbefore stated.
>
> [emphasis added]

The Claimant's setting-aside application

10 The Claimant argued as follows:

(a) the Tribunal made no express finding on whether the Respondent had breached the JVA;[11]

(b) instead, the Tribunal dismissed the Claimant's breach of contract claim because (i) the Claimant had in the 30 June 2015 email proposed that the JV business be wound down, and (ii) the parties then agreed to wind down the JV business, and to end the JVA without reservations;[12]

(c) the Tribunal thus decided that there was some waiver or release that would defeat the Claimant's claim, when this had not been put in issue;[13]

(d) accordingly, there was a breach of natural justice in the making of the Award, which had prejudiced the Claimant's rights.

11 The Claimant complained that the fair hearing rule had been breached, in that:

---

11 PWS at paras 11–15 and 18.

12 PWS at paras 19–20.

13 PWS at paras 17, 25(b) and 29.

(a) the Tribunal had decided the case on a basis not raised or contemplated by the parties (*Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80 at [31]);[14]

(b) the Claimant did not have reasonable and fair notice of the links in the Tribunal's chain of reasoning, and so it had no reasonable opportunity of being heard on them (*CDX v CDZ* [2020] SGHC 257 at [34(d)]–[34(e)]);[15] and

(c) the Tribunal did what the Court of Appeal in *PT Prima International Development v Kempinski Hotels SA and other appeals* [2012] 4 SLR 98 at [37] had cautioned against by deciding the claim on a ground which had not been raised by the Respondent:[16]

> … if A sues B for damages for breach of contract and B joins issue with A, the court cannot dismiss the claim on the ground that there is no contract unless that ground is raised by way of an amended defence (allowed by the court) at any time before the conclusion of the trial.

Issues

12 The key issues are:

(a) did the Tribunal make an express finding as to whether the Respondent was in breach of the JVA; and

---

14 PWS at para 43.

15 PWS at para 45.

16 PWS at paras 48–50.

(b) did the Tribunal dismiss the Claimant's claim for breach of contract, on grounds that had not been put in issue?

Findings

The Tribunal expressly found that the Respondent was not in breach of the JVA

13 The Claimant argued that the Tribunal made no express finding as to whether the Respondent was in breach of the JVA. However, in the Award, the Tribunal had asked the question "whether the Respondent had committed a repudiatory breach of the JVA when the 2015 Distribution Agreement was not renewed",[17] and later concluded that he "*rejects* the Claimant's claim that the Respondent was in breach of [the Distributorship Clause]" [emphasis added].[18] The Tribunal thus found against the Claimant on the issue of whether the Respondent was in breach of the Distributorship Clause, and consequently the JVA.

14 It follows that the Claimant's claim for breach of contract was not dismissed merely on some *other* ground such as waiver or release. First and foremost, it was dismissed because the Tribunal found that there was *no breach* of the Distributorship Clause.

The grounds on which the Tribunal dismissed the Claimant's claim for breach of contract, had been put in issue

15 The Tribunal found that:

---

17 Award at para 176 in PCB at p 66.

18 Award at para 184 in PCB at p 68.

(a) the 30 June 2015 email did not suggest that the Respondent had repudiated, or was in breach of, the JVA;[19]

(b) the Claimant had not alleged breach or repudiatory breach until much later, in 2017;[20]

(c) the parties had agreed to wind down the JV business, and to end the JVA without reservations;[21] and

(d) the JV business was wound down because the parties had agreed to this, and not because the Respondent had repudiated the JVA.[22]

The parties acted as if there were no breach

16 Whether the 30 June 2015 email was an acceptance of a repudiatory breach of the JVA, was an issue before the Tribunal. It was open to the Tribunal to find (as it did) that the email was not an acceptance of a repudiatory breach, because it was only a note from B to the other shareholders which did not suggest "in any way" that there was a breach of the JVA by the Respondent.[23] Moreover, the Claimant only alleged repudiatory breach of the JVA by the Respondent for the first time in October 2017, long after the 2015 Distribution Agreement ended in June 2015.[24] As such, the Claimant's actions were consistent with parties' mutual agreement to wind down the JV business

---

19 Award at paras 180–181 in PCB at pp 67–68.

20 Award at para 181 in PCB at p 68.

21 Award at paras 182 and 184 in PCB at p 68.

22 Award at para 184 in PCB at p 68.

23 Award at para 180 in PCB at p 67.

24 Award at para 181 in PCB at p 68.

following the 30 June 2015 email, rather than a response to any repudiatory breach of the JVA by the Respondent. That, in turn, supported the Tribunal's conclusion that there was no breach of the JVA.

If there were no obligation to procure a licence renewal, there could be no breach in that regard

17 Furthermore, the Tribunal rejected the Claimant's argument that there was an obligation by the Respondent to procure a distributorship licence from X Co going beyond the one-year term granted by the 2015 Distribution Agreement.[25] Since there was no such obligation, the Respondent could not have breached it. The Tribunal thus accepted the Respondent's defence that by procuring the entry into the 2015 Distribution Agreement, the Respondent had already fulfilled its obligation under the Distributorship Clause (as least in relation to products of X Co's brands).[26]

18 The Tribunal found that the provisions of the JVA were not meant to confine the parties to the distribution of products of X Co's brands only, but those of other brands as well (should parties decide to do so)[27] and the Distributorship Clause was intended to continue to operate even if products of X Co's brands were no longer available for distribution (such as if the 2015 Distribution Agreement with X Co was not renewed).[28] The parties could have

---

25 Award at para 185 in PCB at p 69.

26 Defence and Counterclaim ("Defence") at para 158 in DCB at p 303.

27 Award at paras 169–170 in PCB at pp 64–65.

28 Award at paras 171–172 in PCB at p 65.

agreed on other brands to distribute, but they did not; and the Claimant did not raise any argument or point about this.[29]

The parties amicably agreed to wind down the JV business, and end the JVA

19 In so far as the Tribunal referred to the Respondent being released of all existing obligations under the JVA,[30] that did not stray beyond the issues in the arbitration.

20 The Claimant said that the Respondent never pleaded waiver or release in its Defence.[31] However, the Claimant had responded to the Respondent's Defence by pleading that there was *no waiver* of its rights in respect of the Respondent's repudiatory breach of the Distributorship Clause.[32] Why did the Claimant do so, if waiver were never in issue?

21 In its Reply, the Claimant pleaded:

(a) "[a]t all material times, there was *no waiver* of the Claimants' rights in respect of the repudiatory breach of the JVA by the Respondents" [emphasis added];[33] and

(b) "[88] of [the Defence] is admitted. The Claimants further aver that the email dated 30 June 2015 is an acceptance of repudiation and that steps taken to wind down the JVA in order to mitigate damage *does*

---

29 Award at para 173 in PCB at p 65.

30 Award at paras 182–183 in PCB at p 68.

31 PWS at paras 39–42.

32 Reply at para 4(8) in DCB at p 333.

33 Reply at para 4(8) in DCB at p 333.

> *not constitute a waiver* of rights that [the Claimant] has against [the Respondent] under the JVA" [emphasis added].[34]

22 The Claimant was evidently concerned that the Respondent's Defence *had* raised the issue of waiver, and that is why the Claimant pleaded in its Reply that that there was no waiver of its rights. In particular, the Claimant pleaded that steps taken to wind down the JV business (following the 30 June 2015 email) did not constitute a waiver of its rights.

23 The Respondent had pleaded that the chronology of events showed that there is no factual basis for the Claimant's claims.[35] In particular, the Respondent pleaded that:[36]

> (a) B, and consequently the Claimant, was aware that the 2015 Distribution Agreement was only for one year and that any extension was subject to mutual agreement;
>
> (b) when X Co decided not to renew the 2015 Distribution Agreement, B (and consequently, the Claimant) accepted that steps should be taken to wind up the JV companies; and
>
> (c) the process of winding down the JV's operations first began amicably before deteriorating.

---

34 Reply at para 30 in DCB at p 344.

35 Defence at para 8 in DCB at p 251.

36 Defence at paras 8(5)–8(7) in DCB at pp 251–252.

24 In its Reply, the Claimant denied the above,[37] and pleaded that there was no waiver of its rights.[38]

25 The Respondent had also pleaded that by the 30 June 2015 email, the Claimant had initiated discussions for the winding down of the JV business,[39] and that at or around the same time the Respondent was also agreeable to the amicable winding down of the JV business.[40] In its Reply, the Claimant had admitted to initiating discussions for the winding down of the JV business by the 30 June 2015 email. The Claimant, however, pleaded that the email was an acceptance of the Respondent's repudiation of the JVA and that steps taken to wind down the JV business in order to mitigate damage did not constitute a waiver of its rights against the Respondent under the JVA.[41]

26 The Claimant was justifiably concerned that the Respondent's point about parties having mutually agreed to an amicable winding down of the JV business following the 30 June 2015 email, could support a finding that the Claimant had waived its rights, and so it responded by expressly denying waiver in its Reply. But now, despite its earlier pleading of "no waiver", the Claimant says that waiver was *never in issue*, and that any finding of waiver would be in breach of natural justice.

---

37 Reply at para 4 in DCB at p 331.

38 Reply at para 4(8) in DCB at p 333.

39 Defence at para 88 in DCB at pp 279–281.

40 Defence at para 89 in DCB at p 281.

41 Reply at para 30 in DCB at p 344.

27 This is reminiscent of the Chinese proverb about a man who buried 300 taels of silver and put up a sign saying, "no 300 taels of silver buried here", following which the silver was dug up and stolen.

28 By expressly denying waiver in its Reply, the Claimant signaled to the Tribunal that waiver *was* in issue (as indeed it was). It should therefore have come as no surprise to the Claimant, for the Tribunal to address the Claimant's "no waiver" contention and find that the Claimant had indeed waived its rights against the Respondent.[42] The Tribunal's findings can hardly be said to be surprising or unexpected, and that indicates that, contrary to the Claimant's complaint (see [11] above), there was no breach of the fair hearing rule (see *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd* [2018] 2 SLR 1311 at [54] ("*Glaziers*")).

29 Nor was the Claimant deprived of a reasonable opportunity to be heard on the issue of waiver: having pleaded "no waiver", the Claimant was free to address that in its evidence and submissions to the Tribunal. The Claimant cannot complain that it was deprived of a fair hearing if it did not develop its case on waiver *despite* it being reasonably foreseeable that waiver was an issue the Tribunal might decide on (see *Glaziers* at [60]).

30 There was thus no process failure in the Tribunal finding that the parties had amicably agreed on a clean break, which entailed the Respondent being released of all existing obligations under the JVA, including those under the Distributorship Clause.[43] The Tribunal found that there was no obligation to

---

42 Award at paras 182–183 in PCB at p 68.

43 Award at paras 182–183 in PCB at p 68.

procure a renewal of the 2015 Distribution Agreement; but if there were such an obligation, the Claimant would have waived it.

31 In any event, this was not the only point on which the Tribunal based its decision to dismiss the Claimant's claim for breach of contract.

32 The Tribunal:

(a) disagreed with the Claimant's pleaded position that the Respondent was in breach of contract (see [13] above).[44]

(b) agreed with the Respondent's pleaded position that there was no obligation to procure the renewal of the 2015 Distribution Agreement (see [17] above).[45]

(c) agreed with the Claimant's pleaded position that by the 30 June 2015 email, the Claimant had asked to bring the JVA to an end (see [25] above);[46]

(d) disagreed with the Claimant's pleaded position that it was because of a repudiatory breach by the Respondent, that the Claimant had asked to bring the JVA to an end (see [15(a)]–[15(b)] above);[47]

---

44 SOC at paras 30 and 34 in PCB at pp 95–97; Reply at paras 4(3), 4(5), 4(8) and 60–62 in DCB at pp 332–333 and 352–354; Award at paras 169–174, 176, 184 and 185 in PCB at pp 64–66 and 68–69; see also Defence at paras 154 and 158 in PCB at pp 103–104.

45 Defence at para 158 in PCB at p 104.

46 SOC at paras 34–35 in PCB at pp 96–97; Reply at paras 30 and 66 in PCB at pp 109 and 113; Award at paras 182 and 184 in PCB at p 68.

47 SOC at paras 34–35 in PCB at pp 96–97; Reply at paras 30 and 66 in PCB at pp 109 and 113; Award at paras 182 and 184 in PCB at p 68.

(e) agreed with the Respondent's pleaded position that the parties had agreed on an amicable winding up of the JV business (see [15(c)]–[15(d)] above);[48] and

(f) disagreed with the Claimant's pleaded position that there was no waiver of its rights (see [28] above).[49]

Conclusion

33 There was no breach of natural justice in connection with the making of the Award by which the rights of the Claimant have been prejudiced. In the circumstances, I dismissed the Claimant's application with costs.

Andre Maniam
Judicial Commissioner

Roderick Martin SC, Gideon Yap and Eugene Tan
(RHTLaw Asia LLP) for the plaintiff;
Sanjiv Rajan, Leong Yi-Ming and Wong Pei Ting
(Allen & Gledhill LLP) for the defendant.

---

48 Defence at paras 8(6)–8(7) and 88–89 in DCB at pp 251–252 and 279–281; Award at paras 182 and 184 in PCB at p 68.

49 Reply at paras 4(8) and 30 in DCB at pp 333 and 344; Award at paras 182–183 in PCB at p 68.