

When arbitration and exclusive jurisdiction clauses conflict—which wins? (Melford Capital Partners (Holdings) LLP v Digby)

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Dispute Resolution analysis: It is the strong policy of English law, based on party autonomy and freedom of contract, to enforce exclusive jurisdiction clauses (EJC) and arbitration clauses in contracts. What then is a court to do when the parties, in their wisdom, include both an arbitration clause and an EJC in their contract? Although, in principle, the answer to that question must be determined by the proper construction of the particular clauses in the particular contract, the court in *Melford Capital Partners (Holdings) LLP and others v Digby* reached the same result as earlier first instance decisions, which was to give primary effect to the arbitration clause and rule that the EJC merely identified the Court with supervisory jurisdiction over that arbitration. The court also held that an action brought by the claimants before the English court for narrowly defined injunctive relief did not amount to a waiver of the London Court of International Arbitration (LCIA) arbitration clause or the EJC in favour of the courts of Guernsey in the contracts concerned. Written by Chirag Karia QC, barrister at Quadrant Chambers.

Melford Capital Partners (Holdings) LLP and others v Digby [\[2021\] EWHC 872 \(Ch\)](#)

What are the practical implications of this case?

The practical implication of this decision should be to lay to rest once and for all the argument, repeatedly raised by parties seeking to avoid arbitration, that the presence of an EJC in a contract providing that all disputes are to be determined by the chosen court renders ineffective an arbitration clause in that contract purporting to require those same disputes to be submitted to arbitration. This authority reinforces the position adopted by earlier first instance decisions that the arbitration clause will generally be construed to be the primary dispute resolution provision, with the EJC simply emphasising the supervisory jurisdiction of the court.

What was the background?

This underlying dispute concerned whether the defendant partner had been validly expelled from the claimant investment partnerships and whether a mechanism set out in the relevant agreement for valuing his partnership interest could fairly be used. The court was not concerned with that ultimate dispute, but only the jurisdictional question as to which court or tribunal should determine those matters.

There were two governing agreements. One provided for the disputes thereunder to be submitted to the courts of Guernsey. The second agreement contained a clause (clause 27.2) providing that:

“The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement” and another clause (clause 28) providing that “any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, or the legal relationships established by this agreement, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration...”

The first question for the court to decide was which of those apparently conflicting dispute resolution clauses in this second agreement was to be given effect. Were the merits of the substantive dispute between the parties under that agreement to be determined by an LCIA tribunal (pursuant to clause 28) or the English High Court (pursuant to clause 27.2)?

The second question for the court was whether the claimants had waived their right to require disputes under the first agreement to be determined by the courts of Guernsey and disputes under the second agreement to be submitted to LCIA arbitration, if the arbitration clause was held to prevail

over the EJC. This waiver argument was based on the fact that the claimants had applied to the English court for an injunction to require the defendant to deliver up confidential information unlawfully downloaded by him from the claimants' server in London and to enjoin him from calling a meeting of investors in London.

What did the court decide?

Effect of the arbitration clause

The court rejected the defendant's argument that the arbitration clause in clause 28 of the second agreement had no effect because it was 'irreconcilable with the exclusive jurisdiction clause in clause 27.2'. Following a line of first instance decisions starting with the decision of Mrs Justice Steyn in *Paul Smith Ltd v H&S International Holdings Inc* [1991] 2 Lloyd's Rep 127 and ending with the decision of Christopher Clarke J in *Ace Capital Ltd v CMS Energy Corporation* [2008] EWHC 1843 (Comm), the court held that clauses 27.2 and 28 were to be construed as requiring all disputes to be submitted to LCIA arbitration pursuant to clause 28, with clause 27.2 having the effect of recognising the supervisory jurisdiction of the English courts over that arbitration.

Waiver of right

The court also rejected the defendant's argument that the claimants had waived their right to submit the substantive disputes to LCIA arbitration (under the second agreement) and the Guernsey courts (under the first agreement). The court held that the injunctive relief sought by the claimants before the English court had been limited and had been brought 'to address the urgent problems they faced', being the urgent need to secure the return of their confidential information unlawfully taken by the defendant in London and preventing the defendant holding a planned meeting in London. The court found further support for its decision in the claimants' particulars of claim, which pleaded a case based almost entirely on the confidential information and meeting issues and contained 'no attempt to litigate all of the matters then or expected to be in dispute between the parties'.

Case details

- Court: Chancery Division
- Judge: Charles Morrison (sitting as a Deputy Judge of the High Court)
- Date of judgment: 19 April 2021

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