

Haynes and Boone Successfully Defends Challenge to Arbitration Award

February 21, 2018 Andreas Dracoulis, Jonathan Morton

PRACTICES Shipping Dispute Resolution, International Arbitration, Shipping

In a decision that underscores the sanctity of arbitral awards against untimely collateral attacks, a team of Haynes Boone CDG, LLP litigators in London have secured a victory in the English High Court for client Corretaje Maritimo Sud-Americano Inc (CMSA).

Partner [Andreas Dracoulis](#) and Associates [Jonathan Morton](#) and Matthew Turner successfully defended an application by the Mexican salt mining corporation Exportadora de Sal S.A. de C.V. (ESSA) challenging the validity of an arbitration award. The award arose out of a shipbuilding contract subject to English law and London LMAA arbitration and pursuant to which CMSA had agreed to construct a self-unloading salt barge. ESSA having failed to pay the second instalment, CMSA terminated the contract and commenced arbitration proceedings claiming the unpaid instalments.

ESSA took no part in the arbitration until shortly before a scheduled final hearing of the merits, when ESSA put forward a claim that the contract resulted from the bribery of one of its employees. This claim was ultimately rejected by the arbitration tribunal, which found that CMSA had validly terminated the contract and was entitled to payment of the second instalment. It was this award that ESSA sought to challenge, relying upon section 67 of the Arbitration Act in its argument that, as a matter of Mexican law, ESSA lacked the capacity to enter into the contract (and therefore the arbitration agreement) such that the arbitrator lacked substantive jurisdiction.

ESSA's challenge involved complex issues of English conflict of laws principles and Mexican administrative, procurement and civil law, but ultimately failed on both substantive and procedural grounds. Handing down his judgment a day after closing submissions, [Mr. Justice Andrew Baker agreed with CMSA](#) that, as a matter of English law, ESSA's argument that it lacked capacity to enter into the underlying arbitration agreement was, essentially, mischaracterised. However, even if this had not been the case, the judge also concluded that ESSA's challenge had been brought too late and was barred under the Act.

“Reported decisions on jurisdictional challenges of this nature are relatively unusual,” Dracoulis said. “This is particularly so in circumstances where such a challenge has been raised too late, in which context the judgment provides a useful analysis of sections 31 and 73 of the Arbitration Act.”

The Haynes Boone CDG team worked with barristers Huw Davies QC of Essex Court Chambers and James Leabeater of 4 Pump Court.