

Dracoulis, Turner in New Law Journal: Too Little Too Late

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PRACTICES Shipping Dispute Resolution, International Arbitration, International, Shipping

In brief: English law conflict rules will not readily permit a party to rely upon its local law to circumvent the consequences of an otherwise enforceable contract.

The Commercial Court decision in *Exportadora de Sal S.A. de C.V. v Corretaje Maritimo Sud-Americano Inc.* [2018] EWHC 224 (Comm), [2018] All ER (D) 93 (Feb) is a salutary reminder of the need to act promptly in jurisdictional challenges and a welcome example of the English courts' support of arbitration.

The proceedings arose out of an English law shipbuilding contract for the construction of a self-unloading salt barge (the SBC) concluded between Exportadora De Sal S.A. De C.V. (ESSA) and Corretaje Maritimo Sud-Americano Inc. (CMSA). ESSA is a partially state-owned Mexican salt mining corporation which, for the purposes of Mexican law, is treated as a state entity.

When ESSA failed to pay the second instalment, CMSA terminated the contract and commenced LMAA arbitration proceedings claiming the outstanding instalments. ESSA took no part in the arbitration until late July 2016, shortly before a scheduled final hearing of the merits, when it put forward a claim that the contract resulted from the bribery of one of its employees.

However, at the same time as it took part in the arbitration, the Office of Internal Control for ESSA (the OIC) commenced a regulatory audit inspection and in late August 2016 issued a preliminary report indicating that the tender process for the SBC was null. Thereafter on 16 November 2016 the OIC issued a resolution (the resolution) that decreed the tender null and ordered ESSA to 'early terminate' the SBC, which ESSA purported to do on 28 November 2016.

Despite these events, ESSA played a full role in a rescheduled arbitration hearing in December 2016 and even confirmed to the tribunal that the events in Mexico were a separate matter. However, shortly after the conclusion of the hearing, ESSA raised a jurisdiction challenge before the tribunal founded upon the resolution.

ESSA was unsuccessful in the arbitration. The tribunal rejected ESSA's bribery claims and concluded that CMSA had validly terminated the contract and was entitled to payment of the second instalment. The tribunal also dismissed the jurisdiction challenge on the basis that it had been raised too late. Thereafter, ESSA commenced court proceedings under s 67 of the Arbitration Act 1996 (AA 1996) alleging that the arbitrator lacked substantive jurisdiction. ...

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