

A New Precedent in Contract Conflicts: Decoding the Tyson v. GIC Ruling on Hierarchy Clauses

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Introduction

The recent decision of the UK High Court ("**Court**") in *Tyson International Company Limited* ("**Tyson**") v. *General Insurance Corporation of India* ("**GIC**") sets a critical precedent for cases that lie at the intersection of arbitration, contractual hierarchy, and judicial intervention through anti-suit injunctions. The principal issue in the case revolved around the harmonious application of two conflicting dispute resolution clauses contained in two separate agreements pertaining to the same transaction. While one provided for dispute settlement through arbitration seated in New York, the other was an exclusive jurisdiction clause that provided for dispute settlement by England and Wales courts. To resolve this apparent conflict between the two clauses, the Court relied on a confusion clause (also known as a hierarchy clause) in the parties' agreement to rule that the exclusive jurisdiction clause, in favour of England and Wales courts, prevails over the arbitration clause. Based on this conclusion, the Court issued an anti-suit injunction against GIC from arbitrating the dispute in New York.

Factual Background

Tyson entered into a reinsurance agreement with General Insurance Corporation of India ("**GIC**"), a state-owned-entity. The transaction involved two agreements; a Market Reforms Contract ("**MRC**") and second Facultative Certificates ("**Certificates**"). The MRC contained an explicit choice of law and an exclusive jurisdiction clause, submitting disputes to English courts to be governed by the laws of England and Wales ("**English DRC**"). However, the subsequently issued Certificates introduced an arbitration clause referring disputes to arbitration in New York to be governed by the laws of New York ("**Arbitration Clause**"). A pivotal provision, termed the "Confusion Clause," was embedded within the Certificates, stipulating that in the event of a confusion, the MRC would take

precedence over the Certificates.

The dispute arose when GIC claimed that Tyson had undervalued certain commercial numbers on which the insurance premium was based. Therefore, GIC sought to initiate arbitration in New York pursuant to the arbitration clause in the Certificates. In response, Tyson approached the High Court for an anti-suit injunction against the arbitration, arguing that pursuant to the English DRC, English courts would have exclusive jurisdiction over any dispute emanating from the transaction.

The Court stressed on the importance of circumspect judicial intervention when interfering in arbitration. However, considering the existence of the “confusion clause”, Tyson argued that the arbitration agreement did not come into existence. Therefore, the principal question before the Court was: what is the effect of the confusion clause when interpreting the two agreements? If the confusion clause had the effect of a hierarchy clause (as argued by Tyson) and hence gave precedence to the MRC, the arbitration agreement wouldn’t come into existence and the anti-suit injunction would be granted. On the other hand, if the confusion clause was merely to give meaning to confusing terms in the Certificates (as argued by GIC), the two agreements would be read harmoniously without giving preference to either. GIC argued this can be done in two ways. First, the conflicting clauses could be read as an agreement between parties to treat the arbitration as a condition precedent to raising any claims before the English Courts. Or in the alternative, the two agreements would be read together to mean that English Courts will have jurisdiction to supervise the New York arbitration. Either ways, the arbitration agreement would be valid and hence the anti-suit injunction should fail.

Submissions of Parties

The Court summarised the principles governing anti-suit injunctions in *Times Trading Corp v National Bank of Fujairah*[1] to hold that an anti-suit injunction can be granted in all cases where it is just and convenient to do so.[2] However, such power must be exercised with circumspection where the claimant can demonstrate a negative right to not be sued. Tyson can establish such a right if it can demonstrate that an arbitration agreement was not concluded between the parties. Crucial to this conclusion would be determining the effect of the confusion clause in the Certificates.

The judge cited various authorities; specifically *Surrey County Council v Suez Recycling and Recovery Surrey Limited*[3], to discuss principles of contractual construction and summarised the position in that the role of the court is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. GIC made the following submissions in this regard: First, the phrase “confusion” in the clause refers to obscurity or uncertainty in the meaning of provisions and does not refer to a conflict or a contradiction. They relied on the meaning of the word “confusion” in the Oxford dictionary to support this premise and submitted that the clause operates to address any uncertainty that may arise when reading the provisions of the Certificates. Such uncertainties must then be addressed by interpreting the provisions in light of the MRC. However, the clause does not operate to address a conflict between the MRC and the Certificates, for such an instance is a “conflict” and not a “confusion”. Lastly, they submitted that there is no confusion because the arbitration clause in the Certificates should be read as a *Scott v. Avery*[4] clause[5] or, a clause conferring English Courts with supervisory jurisdiction over the New York arbitration.

Tyson submitted that by using the phrase “takes precedence” in the confusion clause, the clear objective intent of the parties is to create a hierarchy between the MRC and Certificates whereby in case of a confusion, the terms contained in the MRC will prevail over those in the Certificates. They further submitted that GIC is taking a very narrow interpretation of the word “confusion” and is reading it in isolation of the remainder of the clause to arrive at its conclusion. The word “confusion”, when read in the context of the provision, has a broader purport to cover circumstances of contradicting terms between the MRC and the Certificates that create confusion regarding which clause will prevail. Thus the clause operates as a hierarchy clause whereby it clears the confusion by giving precedence to clauses in the MRC.

The Judgement

The Judge agreed with the submissions of Tyson and found that GIC’s interpretation of “confusion” was too narrow to reflect an objective meaning of the language used by parties. He ruled that confusion can also arise where there are two clauses within a contract which are inconsistent such that there is confusion as to the intent of the parties as to their respective rights and

obligations under the contract because of such inconsistency. Second, when the MRC grants exclusive jurisdiction to English Courts and the Certificates provide for disputes to be resolved through arbitration in New York, there is an obvious confusion as to which dispute resolution clause should apply. The judge noted that English courts must generally give effect to an arbitration clause but this is a case of routine construction of contracts wherein courts cannot rewrite the parties' agreement. Accordingly, when parties have explicitly agreed that the MRC must take precedence in case of a confusion, such intention must be given effect. The Court opined that any attempt to resolve the confusion through any other means such as viewing arbitration as a condition precedent to any right of action or allowing the arbitration to continue under the supervision of English Courts would amount to rewriting the contract. As a sequitur, the court ruled in favour of Tyson and granted an anti-suit injunction against GIC.

GIC's Attempt to Appeal

In response to the judgment, GIC sought permission to appeal on two grounds (i) the court misconstrued the Confusion Clause in the Certificates and (ii) the court misconstrued the MRC and the Certificates in concluding that the English Court did not have jurisdiction over New York arbitration. When considering whether to grant an appeal, the test is whether GIC has a real prospect of success in relation to any of its grounds.

In order to discharge this burden, GIC made the following arguments: (1) the 'confusion' language is novel and has not been interpreted by courts in the past which gives it considerable scope to argue about its meaning; (2) the Certificates were contractual documents intended to supersede the MRC and not merely administrative documents; and (3) the Court has failed to consider the strong policy adopted by English courts in favour of giving effect to arbitration agreements whereby the conflict should be interpreted in a manner that upholds the agreement to arbitrate. Tyson in response argued that (1) the Court's construction of the word "confusion" gives effect to the meaning of the word in light of the clause as a whole whereas GIC's construction focuses only on the word 'confusion' in isolation of the entire clause. (2) GIC's interpretation of the Confusion Clause runs against commercial common sense; for an overriding effect would essentially nullify many of the provisions contractually agreed to in the

MRC. (3) judicial precedents[6] that have ruled in favour of arbitration by resolving potential conflicts between contractual provisions lacked a hierarchy clause necessitating the courts to engage in the endeavour of contractual interpretation. In this case, where a hierarchy clause exists, it is not a matter of resolving conflicts by applying judicial standards of interpreting contracts but one giving effect to the parties' method of resolving confusion between conflicting provisions.

Based on the submissions, the Judge concluded that GIC did not have a realistic prospect of success on either of its grounds. At the outset, although one could accept GIC's construction of the Confusion Clause, it still lacks the realistic prospect of persuading the Court of Appeal to eschew the construction adopted by the Court and instead acceding to GIC's construction. Finally, the Confusion Clause in this case is a relevant factor that distinguishes this case from previous cases favouring arbitration because it operates as a hierarchy clause to mitigate any confusion when reading the Certificates and the MRC together. Since the parties have contractually agreed to the hierarchy clause when resolving any confusion, the court must give effect to the clause when resolving conflicts and cannot apply its own principles of interpreting conflicting terms of a contract; for any such attempt would amount to rewriting the parties' agreement. Therefore, even the second ground lacks a realistic prospective of succeeding before the court of appeals. Since both the grounds for appeal lacked a realistic prospective of succeeding, the application for leave to appeal was refused.

Key Takeaways and Implications

The said ruling in underscores the Court's role in upholding contractual intention of parties when resolving conflicts between competing dispute resolution clauses. By affirming the primacy of the Market Reform Contract through the Confusion Clause, the court reinforced the principle that hierarchy clauses serve as decisive mechanisms in contractual interpretation. Furthermore, the court's refusal to grant leave to appeal solidifies the precedent that courts will not rewrite contracts but will instead give effect to unambiguous terms agreed upon by parties. This case sets as an important judicial precedent for interpreting confusion clauses and strengthens the predictability of contractual enforcement in commercial agreements. As a takeaway, when drafting multiple contracts for

the same transaction, it is worth considering the harmonious impact of differing clauses in the various agreements. Parties, must discuss their commercial objectives and have a clearer communication of their intended outcomes before agreeing to multiple dispute resolution clauses that cover the same transaction.

[1] Times Trading Corp v National Bank of Fujairah (Dubai Branch) [2020] EWHC 1078 (Comm)

[2] Girish Deepak, 'ANALYSIS: UK HIGH COURT ISSUES ANTI-SUIT INJUNCTION AGAINST NEW YORK-BASED COURT AND ARBITRATION PROCEEDINGS IN DISPUTE INVOLVING INDIAN STATE-OWNED INSURANCE COMPANY' (IA Reporter, 27 February 2025) <<https://www.iareporter.com/articles/analysis-uk-high-court-issues-anti-suit-injunction-against-new-york-based-court-and-arbitration-proceedings-in-dispute-involving-indian-state-owned-insurance-company/>> accessed 11 March 2025

[3] Surrey County Council v Suez Recycling and Recovery Surrey Limited [2021] EWHC 2015 (TCC)

[4] Scott v Avery (1856) 5 HL Cas 811

[5] Keren Tweeddale, Andrew Tweeddale, 'Scott v Avery Clauses: O'er Judges' Fingers, Who Straight Dream on Fees' [2011] 77(4) Arbitration: The International Journal of Arbitration, Mediation and Dispute Management, pp. 423 - 427

[6] Sulamerica CIA Nacional de Seguros SA & Ors v Enesa Engenharia SA & Ors [2012] EWHC 42 (Comm), Surrey County Council v Suez Recycling and Recovery Surrey Limited. [2021] EWHC 2015 (TCC)