

Dubai court judgment on meaning of 'countersignatory' in shipping contracts

Omar N. Omar - Partner, Head of Transport & Insurance - Insurance / Shipping, Aviation & Logistics
o.omar@tamimi.com - Dubai International Financial Centre

Saif Al Mobideen
s.almobideen@tamimi.com

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The countersignatory ('Y') had argued that the arbitral agreement was not binding on it because the charterparty had been concluded between the Owners and 'X', with Y simply countersigning as a guarantor. The Court of Appeal rejected that argument.

Since the article was written, Y lodged a further appeal before the Dubai Court of Cassation, which in its judgment has given important guidance on the interpretation of contracts and, in particular, the title of the parties in the contracts.

The Court of Cassation

In Y's appeal before the Dubai Court of Cassation it argued that the representative who signed the charterparty on its behalf was not an authorized signatory to agree on arbitration clause and that it signed the charterparty merely as a witness. In support of its arguments, Y submitted its memorandum of association and a photocopy of a fax sent to the tribunal in which Y expressed reservations over the appointment of the arbitrator. Y claimed that the Court of Appeal had ignored this material argument.

The Dubai Court of Cassation decided to repeal the Court of Appeal judgment on the basis that the judgment was insufficiently justified. The Court of Appeal did not address the arguments raised by Y in relation to the incapacity of its signatory to bind Y to arbitration. The matter was therefore sent back to the Court of Appeal, with a different panel of judges, to consider these matters.

Second Judgment by Court of Appeal

The Court of Appeal issued recently a second judgment, rejecting Y's arguments and confirming again that the foreign arbitral award is to be recognized and enforced against Y in the UAE.

The Court held that it had been established through the translation of the vessel's charterparty (as translated by a sworn legal translator) that the charterparty was made by and between the Owners and X and Y as charterers. The charterparty included at the end the signature of Y's representative in addition to Y's stamp, which evidenced that Y is a partner with X for chartering the vessel.

The Court of Appeal rejected Y's argument that its description as a 'countersignatory' in the charterparty meant that Y was merely confirming the signature of X. The Court of Appeal explained that as below:

"[The word 'countersign'] denotes ratification of the signature, because it is stipulated in Al Faruqi Law Dictionary (Fifth Edition, page 174) that one of the meanings of this word is "endorse" and "sign with third parties" (a written deed) and "sign a deed as ratification of a signature affixed thereto". However the court believes that the translation of 'countersign' consistent with the context of Article 12 of the charterparty stipulating [Y]'s name is that "it signs with third parties a written deed"; "third parties" refers to the X

Party; “written deed” refers to the charter party. This is supported by the fact that [Y] and the X Party are described at the end of this clause as “charterers”, i.e. in the plural not the singular form, which is consistent with the above-mentioned translation stipulated in the claim sheet.”

The above shows the Court explicitly referred to Al Faruqi Legal Dictionary as an authority on the interpretation of English words into Arabic. The Court could have referred the issue to a legal translation expert, but was instead satisfied with using Al Faruqi’s Legal Dictionary as an authority in translation, and analysed the context of the word ‘countersign’ within the context of the charterparty to determine the meaning of the word from the various meanings given in the dictionary.

As regards the other arguments raised by Y, the court found that under the New York Convention of 1958 on Recognition and Enforcement of Foreign Arbitral Awards, it was for Y to show its signatory had no capacity to agree on the arbitration clause under the applicable law. Refraining from registering the signatory as a manager of the company does not evidence that the person was not authorized. As regards the reservations made by Y, these reservations were to the appointment of their arbitrator, not on the authority of their signatory to sign the charterparty.

Conclusion

This case is notable because it clarifies that being designated as a ‘countersignatory’ may, in a charterparty at least, result in the countersignatory being deemed a party to the contract in the same position as the main signatory. It also confirms that Al Faruqi’s Legal Dictionary is recognised by the UAE court as an authoritative dictionary for the translation of words from English to Arabic.