

# TECBAR Arbitration Update 2008

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## [FIONA TRUST & HOLDING CORPORATION & 20 ORS v YURI PRIVALOV & 17 ORS sub nom PREMIUM NAFTA PRODUCTS LTD \(20th DEFENDANT\) & ORS v FILI SHIPPING CO LTD \(14th CLAIMANT\) & ORS \(2007\)](#)

Unless the language of an arbitration clause made it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction, it was to be assumed that the parties, as rational businessmen, were likely to have intended any dispute arising out of the relationship into which they had entered, including disputes over the validity of their agreement itself, to be decided by the arbitrator rather than by a court.

CONTRACTS - ARBITRATION - SHIPPING

HL (Lord Hoffmann, Lord Hope of Craighead, Lord Scott of Foscote, Lord Walker of Gestingthorpe, Lord Brown of Eaton-under-Heywood) 17/10/2007

References: LTL 17/10/2007 : (2007) Bus LR 1719 : (2007) 4 All ER 951 : (2007) 2 CLC 553 : 114 Con LR 69 : (2007) CILL 2528 : (2008) 1 Lloyd's Rep 254 : Times, October 25, 2007

Document No.: Case Law - AC0115094

## [C v D \(2007\)](#)

By choosing London as the seat of an arbitration, the parties were to be taken to have agreed that proceedings on the award should be only those permitted by English law. A choice of seat for the arbitration was a choice of forum for remedies seeking to attack the award.

CIVIL PROCEDURE - ARBITRATION - CONFLICT OF LAWS - COSTS - INSURANCE

CA (Civ Div) (Sir Anthony Clarke MR, Longmore LJ, Jacob LJ) 5/12/2007

References: LTL 5/12/2007 : (2008) 1 Lloyd's Rep 239 : (2007) 2 CLC 930 : Times, January 16, 2008

Document No.: Case Law - AC0115678

## [SUMUKAN LTD v COMMONWEALTH SECRETARIAT \(2007\)](#)

Where the president of an arbitral tribunal had not been appointed in accordance with the agreed procedure his participation in an arbitration was unlawful and the award a nullity. There was no room in the field of private arbitration for the common law de facto doctrine which, in some circumstances, validated the acts of an apparent and reputed judge.

ARBITRATION

CA (Civ Div) (Sir Anthony Clarke MR, Waller LJ (V-P), Sedley LJ) 15/11/2007

References: LTL 15/11/2007 : (2008) 1 Lloyd's Rep 40 : Times, December 18, 2007

Document No.: Case Law - AC0115447

## [ALBON \(T/A N A CARRIAGE CO\) v NAZA MOTOR TRADING SDN BHD \(2007\)](#)

Where it was agreed that the issue of the genuineness of an agreement, together with its arbitration clause, would be decided by the English court rather than the arbitrators, continuation of the arbitration proceedings was oppressive and it was right to grant an injunction restraining pursuit of the arbitration proceedings pending resolution of the question of the genuineness of the agreement.

CIVIL PROCEDURE - ARBITRATION - CONFLICT OF LAWS

CA (Civ Div) (Waller LJ (V-P), Longmore LJ, Sir Peter Gibson) 6/11/2007

References: LTL 6/11/2007 : (2008) 1 Lloyd's Rep 1 : (2007) 2 CLC 782

Document No.: Case Law - AC0115313

**KOREA NATIONAL INSURANCE CORPORATION v ALLIANZ GLOBAL CORPORATE & SPECIALTY AG (ON ITS OWN BEHALF & ON BEHALF OF THE REINSURERS SUBSCRIBING TO POLICY NO.AJFM157 FOR THE 2004 YEAR OF ACCOUNT) (2007)**

In the circumstances reinsurers had no real prospect of showing at trial that a Korean judgment had been obtained by the reinsured by fraud because the reinsured's rights against the reinsurers had been discharged under a compromise agreement.

INSURANCE - CIVIL PROCEDURE - CONTRACTS

CA (Civ Div) (Buxton LJ, Jacob LJ, Moore-Bick LJ) 30/10/2007

References: LTL 30/10/2007 : (2007) 2 CLC 748

Document No.: Case Law - AC0115232

**KOHN v WAGSCHAL & ORS (2007)**

A finding of the Beth Din court, that the object of a deceased was to evade tax by the production of documents to be used to deceive the Revenue, was not a finding of such illegality that the English Court of Appeal could not enforce the award.

ARBITRATION - SUCCESSION

CA (Civ Div) (Waller LJ (V-P), Laws LJ, Gage LJ) 24/10/2007

References: LTL 24/10/2007 : (2007) 2 CLC 720

Document No.: Case Law - AC0115189

**BANDWIDTH SHIPPING CORPORATION v INTAARI (A FIRM) sub nom THE MAGDALENA OLDENDORFF (2007)**

Where a point had been taken in oral submissions before arbitrators and there was no reason for the arbitrators to think that leading counsel had missed the point, there was no unfairness under the Arbitration Act 1996 s.33(1)(a) and no material irregularity under s.68.

ARBITRATION - SHIPPING

CA (Civ Div) (Waller LJ (V-P), Gage LJ, Lawrence Collins LJ) 17/10/2007

References: LTL 17/10/2007 : (2007) 2 CLC 537 : (2008) 1 Lloyd's Rep 7 : Times, October 31, 2007

Document No.: Case Law - AC0115095

**GATER ASSETS LTD v NAK NAFTOGAZ UKRAINIY (2007)**

A court was wrong to make an order for security for costs against an award creditor under a New York Convention award.

CIVIL PROCEDURE - ARBITRATION - COSTS

CA (Civ Div) (Buxton LJ, Rix LJ, Moses LJ) 17/10/2007

References: LTL 17/10/2007 : (2007) 2 Lloyd's Rep 588 : (2007) 2 CLC 567

Document No.: Case Law - AC0115100

**ECUADOR v OCCIDENTAL EXPLORATION & PRODUCTION CO (2007)**

In the circumstances, arbitrators had had jurisdiction to make an award in respect of a dispute involving matters of taxation that arose in connection with a bilateral investment treaty between the United States and Ecuador.

ARBITRATION - INTERNATIONAL LAW

CA (Civ Div) (Sir Anthony Clarke MR, Buxton LJ, Toulson LJ) 4/7/2007

References: LTL 4/7/2007 : (2007) 2 Lloyd's Rep 352 : (2007) 2 CLC 16

Document No.: Case Law - AC0114170

**KAZAKHSTAN v ISTIL GROUP INC (2007)**

The restriction on rights of appeal under the Arbitration Act 1996 s.67(4) was compatible with the European Convention on Human Rights 1950 Art.6.

ARBITRATION - CIVIL PROCEDURE - HUMAN RIGHTS

CA (Civ Div) (Arden LJ, Longmore LJ, Toulson LJ) 25/4/2007

References: LTL 22/5/2007 : (2007) 2 Lloyd's Rep 548

Document No.: Case Law - AC0113729

**SUMUKAN LTD v COMMONWEALTH SECRETARIAT (2007)**

The Arbitration Act 1996 s.69(1) permitted the incorporation by reference of an agreement excluding the right of appeal and such incorporation by reference was not contrary to the European Convention on Human Rights 1950 Art.6. The question whether there was an exclusion agreement was a preliminary question to which s.69(6) of the Act did not apply.

ARBITRATION - CONTRACTS - HUMAN RIGHTS

CA (Civ Div) (Waller LJ (V-P), Sedley LJ, Sir Anthony Clarke MR) 21/3/2007

References: LTL 21/3/2007 : (2007) Bus LR 1075 : (2007) 3 All ER 342 : (2007) 2 Lloyd's Rep 87 : (2007)

1 CLC 282 : Times, April 13, 2007

Document No.: Case Law - AC0113020

**PAUL STRETFORD v FOOTBALL ASSOCIATION LTD & ANOR (2007)**

The arbitration clause contained within the Football Association Rules r.K was not in conflict with the European Convention on Human Rights 1950 Art.6, the provisions of the Arbitration Act 1996 amply satisfying the Art.6 requirements and the parties having waived their rights to a public hearing before the courts.

ARBITRATION - HUMAN RIGHTS

CA (Civ Div) (Waller LJ, Sedley LJ, Sir Anthony Clarke MR) 21/3/2007

References: LTL 21/3/2007 : (2007) Bus LR 1052 : (2007) 2 Lloyd's Rep 31 : (2007) 1 CLC 256 : Times, April 13, 2007

Document No.: Case Law - AC0113021

**AMR AMIN HAMZA EL NASHARTY v J SAINSBURY PLC (2007)**

In the circumstances the allegation that a share sale agreement had been entered into under duress did not impeach the arbitration clause in the agreement.

ARBITRATION - CIVIL PROCEDURE - HUMAN RIGHTS

QBD (Comm) (Tomlinson J) 13/11/2007

References: LTL 20/11/2007 (Unreported elsewhere)

Document No.: Case Law - AC0115406

**BRAES OF DOUNE WIND FARM (SCOTLAND) LTD v ALFRED MCALPINE BUSINESS SERVICES LTD (2008)**

Where in substance the parties agreed that the laws of one country would govern and control a given arbitration, the place where the arbitration was to be heard would not dictate what the governing or controlling law would be.

ARBITRATION - CONSTRUCTION LAW - CONTRACTS

QBD (TCC) (Akenhead J) 13/3/2008

References: LTL 27/3/2008 (Unreported elsewhere)

Document No.: Case Law - AC0116686

**HEIFER INTERNATIONAL INC v (1) HELGE CHRISTIANSEN (2) CHRISTIANSEN ARKITEKTER KS MAA PAR (3) HASLEV-HANSON VVS (4) STEVNS EL-SERVICE A/S (5) LISTED EL-TEKNIK APS (2007)**

In the circumstances an arbitration clause providing for arbitration in Denmark was incorporated into the contracts between the parties and the clause was not unfair under the Unfair Terms in Consumer Contracts Regulations 1999.

ARBITRATION - CONFLICT OF LAWS - CONSTRUCTION LAW - CONSUMER LAW - CONTRACTS

QBD (TCC) (Judge Toulmin QC) 18/12/2007

References: LTL 10/1/2008 (Unreported elsewhere)

Document No.: Case Law - AC0115969

**PENWITH DISTRICT COUNCIL v VP DEVELOPMENTS LTD (IN COMPANY VOLUNTARY ARRANGEMENT) (2007)**

In arbitration proceedings, the content of applications for leave to appeal on questions of law should not be dressed up as questions of law when they were, on proper analysis, criticisms of an arbitrator's findings of primary or secondary fact. For there to be a question of law, there had to be a properly arguable error of law.

ARBITRATION - LOCAL GOVERNMENT

QBD (TCC) (Akenhead J) 2/11/2007

References: LTL 12/11/2007 (Unreported elsewhere)

Document No.: Case Law - AC0115298

**(1) NEIL HOLLOWAY (2) SAMANTHA HOLLOWAY v CHANCERY MEAD LTD (2007)**

In the circumstances house purchasers were entitled to refer their dispute with a developer to arbitration under the sale contract, and on the true interpretation of the contract were not first obliged to make use of the dispute resolution service of the National House-Building Council.

ARBITRATION - CONSTRUCTION LAW - CONTRACTS - REAL PROPERTY

QBD (TCC) (Ramsey J) 30/7/2007

References: LTL 7/11/2007 (Unreported elsewhere)

Document No.: Case Law - AC0115292

**MICHAEL JOHN CONSTRUCTION LTD v ST PETER'S RUGBY FOOTBALL CLUB (REPRESENTED BY ROBERT MATTHEWS ON BEHALF OF HIMSELF & ALL OTHER MEMBERS OF THE CLUB AS AT 15 OCTOBER 2003) (2007)**

An arbitrator had erred in law by ruling that he had jurisdiction to conduct an arbitration hearing and make findings as to who the parties to a contract were when that point had already been decided in earlier enforcement proceedings.

ARBITRATION - CONTRACTS

QBD (TCC) (Judge David Wilcox) 30/7/2007

References: LTL 21/1/2008 : 115 Con LR 134

Document No.: Case Law - AC0115684

**LONDON UNDERGROUND LTD v CITYLINK TELECOMMUNICATIONS LTD (2007)**

There had been no serious irregularity under the Arbitration Act 1996 s.68(2) leading to a substantial injustice in an arbitrator's award and he had properly treated the complaints as a global claim.

ARBITRATION

QBD (TCC) (Ramsey J) 20/7/2007

References: LTL 27/07/2007 : (2007) BLR 391 : 114 Con LR 1

Document No.: Case Law - AC0114361

**TRUSTEES OF EDMOND STERN SETTLEMENT v SIMON LEVY (2007)**

In the circumstances, an arbitrator had not been obviously wrong in his construction of words in a contract describing the fee payable for certain work by a building surveyor, and even if he had been, it had not been shown that his alleged error would or could have affected the rights of the parties.

CONSTRUCTION LAW

QBD (TCC) (Judge Peter Coulson QC) 11/5/2007

References: LTL 11/6/2007 : 113 Con LR 92

Document No.: Case Law - AC0113938

**JD WETHERSPOON PLC v JAY MAR ESTATES (2007)**

A commercial tenant unsuccessfully invoked the Arbitration Act 1996 s.68(2) to remit a rent review arbitration award for reconsideration. The tenant had not established an irregularity and, even assuming an irregularity, there was no further evidence that would have made a substantial difference to the result. Accordingly, the "substantial injustice" test in s.68 had not been met.

ARBITRATION - LANDLORD AND TENANT

QBD (TCC) (Judge Peter Coulson QC) 4/4/2007

References: LTL 28/6/2007 : (2007) BLR 285 : 113 Con LR 101 : (2007) NPC 53

Document No.: Case Law - AC0113936

**G Middleton Ltd v Berry Creek Overseas Development Ltd (2007) (2007)**

There were no special circumstances which rendered it inexpedient to enforce two arbitration awards granted in favour of the claimant, so the defendant's application for a stay of enforcement was refused.

CIVIL PROCEDURE - ARBITRATION - CONSTRUCTION LAW

QBD (TCC) (Judge Peter Coulson QC) 9/2/2007

References: LTL 27/3/2007 : 113 Con LR 23

Document No.: Case Law - AC0113233

**MULTIPLEX CONSTRUCTIONS (UK) LTD v MOTT MACDONALD LTD (2007)**

Where parties to a construction agreement differed as to what constituted "pertinent records" liable to inspection, an adjudicator had been entitled to formulate his own interpretation of the term, and whether he was right or wrong he was determining a pre-existing dispute between the parties and was, thus, within his jurisdiction.

CONSTRUCTION LAW - CONTRACTS

QBD (TCC) (Jackson J) 10/1/2007

References: LTL 29/1/2007 : 110 Con LR 63 : (2007) CILL 2446

Document No.: Case Law - AC0112595

**HALIFAX LIFE LTD v EQUITABLE LIFE ASSURANCE SOCIETY (2007)**

It was open to the High Court to direct an expert who had made an expert's determination in his capacity as an umpire in a dispute between parties to state further reasons for his determination.

ARBITRATION - CIVIL PROCEDURE

QBD (Comm) (Cresswell J) 13/3/2007

References: LTL 19/3/2007 : (2007) 1 Lloyd's Rep 528 : (2007) 17 EG 172 (CS)

Document No.: Case Law - AC0112975

**ASM SHIPPING LTD v BRUCE HARRIS & ORS (2007)**

There was no invariable rule, nor was it necessarily the case, that where one member of a tribunal was tainted by apparent bias the whole tribunal was affected second-hand by apparent bias, and therefore should recuse themselves, or should be excluded, from the proceedings.

ARBITRATION - CIVIL PROCEDURE - SHIPPING

QBD (Comm) (Andrew Smith J) 28/6/2007

References: LTL 5/7/2007 : (2007) 1 CLC 1017 : (2008) 1 Lloyd's Rep 61 : Times, August 6, 2007

Document No.: Case Law - AC0114130