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Dispute Resolution Clause in Settlement Agreement Supersedes the Underlying Agreement

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Monde Petroleum SA v Westernzagros Ltd [2015] EWHC 67 (Comm)

In 2006, WesternZagros Ltd (WZL), an oil and gas company incorporated in Cyprus, entered into a consultancy agreement with Monde Petroleum SA (Monde), a company incorporated in the British Virgin Islands. Under that consultancy agreement, Monde was obliged to assist WZL with negotiations relating to oil exploration in Iraq, in return for a monthly fee. A dispute arose in 2007 when WZL (a) stopped payments to Monde on the grounds that Monde had failed to achieve the required milestones and (b) purported to terminate the consultancy agreement. The consultancy agreement contained a dispute resolution clause providing for arbitration in London under the ICC Rules of Arbitration.

The parties later entered into a settlement agreement terminating the consultancy agreement and providing that WZL would pay Monde the disputed fees. The settlement agreement contained a mutual waiver of all claims in respect of the consultancy agreement and a dispute resolution clause providing that the courts of England and Wales had exclusive jurisdiction.

Monde subsequently brought proceedings against WZL in the Commercial Court under the exclusive jurisdiction provision of the settlement agreement claiming that Monde was induced to enter into the settlement agreement by misrepresentation and/or duress. Monde claimed damages relating to the amount it would have earned under the consultancy agreement. Although Monde's primary case was that the Commercial Court had jurisdiction pursuant to the settlement agreement, Monde also commenced arbitration proceedings against WZL claiming damages for the wrongful termination of the consultancy agreement. Monde said the wrongful termination claim was a protective measure to prevent Monde's arbitration claim being time-barred in the event that its claim could not be pursued in the Commercial Court. WZL counterclaimed in the arbitration for declaratory relief, including that Monde had no further entitlement under the consultancy agreement and therefore had not lost any benefit by entering into the settlement agreement.

The arbitration tribunal decided that it had no jurisdiction to determine WZL's claims for declaratory relief, on the grounds that the settlement agreement was binding on the parties. The tribunal reasoned that the Commercial Court had not yet determined Monde's claims for misrepresentation/duress and the arbitration clause in the consultancy agreement was "inoperative" because there was no possibility of any dispute falling within the scope of that clause. The tribunal also ordered WZL to pay Monde's arbitration costs.

WZL applied to the Commercial Court under section 67 of the Arbitration Act 1996 to challenge the tribunal's decision that the tribunal did not have jurisdiction. WZL claimed that the dispute resolution clause in the settlement agreement had not overridden the arbitration agreement in the consultancy agreement. Monde argued that the dispute resolution clause in the settlement agreement was intended to supersede the arbitration agreement.

In a judgment dated 22 January 2015, Popplewell J recognised the presumption that rational businessmen who are parties to a contract intend all questions arising out of their legal relationship to be determined in the same forum (following, for example, *Fiona Trust & Holdings v Privalov & others* [2007] Bus LR 1917 [2008] 1 Lloyd's Rep 254) and found that "*this presumption in favour of one-stop adjudication may have particular potency where there is an agreement which is entered into for the purpose of terminating an earlier agreement between the same parties or settling disputes which have arisen under such an agreement*" (paragraph 38).

If an original agreement and a settlement agreement contain different dispute resolution provisions, Popplewell J stated that, "*the parties are likely to have intended that it is the settlement/termination agreement clause which is to govern all aspects of outstanding disputes, and to supersede the clause in the earlier agreement*" (paragraph 38). Having noted that the court should consider the surrounding circumstances, including the precise wording of the relevant clause, Popplewell found in this case that the tribunal had correctly decided that it had no jurisdiction in relation to WZL's claims and therefore refused WZL's appeal.

Popplewell J also addressed the question of what the position would be if the settlement agreement were rescinded by the Commercial Court on the basis of misrepresentation and/or duress. Popplewell J found that the jurisdiction clause in the settlement agreement was separable, such that setting aside the settlement agreement would not entail an impeachment of the separate jurisdiction clause (following *Deutsche Bank AG v Asia Pacific Broadband Wireless Communications Inc* [2009] 2 All ER (Comm) 129 per Longmore LJ at paragraphs [24]-[26]) (paragraph 49).

Conclusion

Settlement agreements are often drafted quickly at the last minute, but this case clearly demonstrates that the dispute resolution clause contained in a settlement agreement can have far-reaching and possibly unintended consequences and therefore must be very carefully considered by the parties to ensure that it has the desired effect.