Sanctions and contracts: "*reasonable endeavours*" to overcome impact of sanctions – is accepting payments in an alternative currency required?

In *MUR Shipping v RTI Ltd* [2022] EWCA Civ 1406 the Court of Appeal considered the topical issue of sanctions and contracts.

The contract obliged the party claiming force majeure to exercise "*reasonable endeavours*" to overcome the force majeure. The Court of Appeal held that this obligation required accepting payments in Euros rather than US Dollars, notwithstanding the fact that contract required payment in US Dollars.

Factual summary

In June 2016, MUR Shipping BV ("**MUR**") entered into a contract of affreightment (the "**Contract**") with RTI Ltd ("**RTI**"). Under the Contract, MUR agreed to carry bauxite from Guinea to Ukraine shipped by RTI.

In April 2018, RTI's parent company (Rusal) was sanctioned by the US. As a result, US Dollar payments from RTI were highly likely to be blocked by the intermediary bank in the US. Given the inability to receive US Dollar payments from RTI, MUR served notice under the force majeure clause ("**FM clause**").

The arbitral tribunal held that MUR was not entitled to rely on the FM clause because that clause expressly required MUR to exercise "*reasonable endeavours*" to overcome the force majeure event. In the circumstances, the tribunal held that this required MUR to accept payment in Euros (as offered by RTI), rather than US Dollars.

MUR appealed the award to the High Court under Section 69 of the Arbitration Act 1996 (which allows appeals of arbitral awards on points of law, but as this is a non-mandatory provision of the Arbitration Act 1996, it is often excluded by the chosen arbitration rules).

The High Court disagreed with the Tribunal (see our previous post here). In short, the High Court held that because the Contract required RTI to make payments in US Dollars, accepting payments in Euros did not constitute "*reasonable endeavours*", as this obligation did not require MUR to "*sacrifice … their contractual right to payment in US$…" [131].*

The Appeal

RTI appealed to the Court of Appeal on the key issue of whether the FM event "*could have been overcome by reasonable endeavours…*" [40].

The Court of Appeal held that notwithstanding the fact that the contract required payment in US Dollars, the "*the purpose of that payment obligation was to provide MUR as the shipowner with the right quantity of dollars in its account at the right time*" and that on the facts the proposal to pay in Euros "*achieved that objective with no detriment to MUR and therefore overcame the state of affairs caused by the imposition of sanctions on Rusal"* [Males J, paragraph 60].

Interestingly, the Court of Appeal noted the Tribunal's finding that the reason why MUR refused to accept payment in Euros is that the "*contract had become disadvantageous to MUR*" [60]. This is therefore a cautionary tale for those whose reliance on sanctions for terminating or not performing contractual obligations is pretextual.

Commentary

This case illustrates the complexity of the legal issues that may arise when sanctions impact on contracts: the High Court disagreed with the Tribunal; the Court of Appeal disagreed with the High Court; and the Court of Appeal's judgment was not unanimous. Accordingly, this case emphasises the importance of seeking legal advice if sanctions impact on contracts.