11th February, 1982

Cleveland Bridge and Engineering Co. Ltd.

v.

Sogex (International) Ltd.

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JUDGMENT

DEPUTY BAILIFF: The plaintiff in this action is a manufacturing firm from Durham, and the defendant is a company incorporated according to the laws of this Island. It is the employer under three contracts between it and the plaintiff company. It is also part of an international organisation which we are told consists, inter alia, of Sogex United Kingdom Limited, which is a United Kingdom service contract company, and Sogex Arabia Incorporated, which we understand was incorporated after the contract was entered into. We were told that had Sogex Arabia Incorporated been in existence before the contracts were entered into that it would have been with that company rather than the Jersey incorporated company, the defendant, and the plaintiff that the contracts would have been concluded. Be that as it may, at the time the contract were concluded, the Jersey company was chosen because of some export payment by Her Majesty's Government under the E.C.C.G. arrangements, but that is not relevant to this case. There are three contracts. The first one, and the main one, is what we have been told we should call the Main Fabrication Contract; the second one is called the Pipe Bridge Construction Contract, and it contains references in it which links it with the general provisions of the first contract; and the third contract is the Erection contract. All three relate to the building of a large desalination plant in Saudi Arabia. All three contracts contain either directly or by cross reference between contract 1 and contract 2, two main important clauses. The first clause relates to arbitration and that is to be found in clause 55 in contract 1 which is as follows:-

> "If any dispute or difference shall arise between the employer and the contractor which cannot be resolved by discussion and negotiation between the employer and the contractor, then the

matter shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed under such rules. The decision of the arbitrator or arbitrators appointed by the International Chamber of Commerce shall be final and binding on both the employer and the contractor."

The second important clause in the contracts is that relating to the law of the contracts, and I'm now looking at clause 5/2 of the first contract which is reproduced by inference in the second contract and expressly in the third contract. It reads:-

"The laws of England shall apply to the contract and the contract documents so that all contract documents shall be construed according to the laws of England."

Arrangements were also made in the three contracts for interim payments. As regards contracts 1 and 2, the clause which deals with interim payments is no. 49 which reads as follows:-

"All interim payments other than the advance payment shall be paid when due on presentation by the contractor to the employer of a statement certifying the actual work completed in respect of the employer. Such statement has to be certified by the employer's representative."

The clause in contract 3 was as follows, it is under clause 23/2:-

"Interim payments shall be made on the presentation by the contractor of an interim payment certificate indicating the amount of work done during the preceding months. The rates to be applied for certifying these interim payments shall be as specified in the special conditions to the contract. The employer shall clear the interim payments within thirty days from the date of their issuence by the contractor."

Substantial sums are outstanding on the three contracts and the

plaintiff company has instituted proceedings in this Court for their recovery. The issues we have to decide today are twofold. First, should the Court stay the proceedings and order that they shall remain stayed pending arbitration in accordance with the terms of the contracts entered into between the parties or, secondly, should the Court ascertain, if it can, certain admitted figures of items due to the plaintiff company, give judgment for those figures and stay the proceedings only in respect of the balance of the amounts claimed pending arbitration.

We have been urged as regards the question of arbitration by Mr. Hamon for the defendant company, to fetter ourselves by taking the whole of English law into consideration and not just the substantive part. We decline to do so. Our procedural law is different from that of the United Kingdom and we would have to have a good deal more argument advanced to us before we were to hold that this Court's procedure is, so to speak, put under the curatelle of the procedure appertaining to another jurisdiction. We now look, however, at the question whether it would be possible for this Court to find that there were admitted figures which would entitle us to give judgment for those admitted figures in favour of the plaintiff this afternoon. We have heard in support of that contention an affidavit of Mr. Trett and certain correspondence and an exchange of telexes. On the other hand we have had an affidavit of Mr. Young, an employee in some way of the defendant company and I think it is fair to say that these two affidavits are diametrically opposed. There were two questions which we had to ask ourselves before we could feel able to make the order the plaintiff company is asking for. We had to ask ourselves these two questions and answer them in the affirmative. First, was Mr. Young the agent of the defendant company and second, did he in that capacity fulfill the terms of clause 23/2 of contract 3 and clause 49 in

contracts 1 and 2. Without hearing a good deal more evidence which it has not been possible to hear today, we cannot express a firm opinion on what we would have found as an answer to these two questions. It follows that we cannot therefore be satisfied either that there has been an unequivocal admission of certain sums due or that the plaintiff has established that such sums are indisputably due. It was suggested by the plaintiff that the defendant had taken steps, which had it done so in the English jurisdiction would have prevented it from, if I may put it like this, praying in aid the arbitration clauses contracts. We do not accept that because our procedure is different in as much as the defendant company is obliged to take the steps to protect its position otherwise judgment might have been decided against it under Rule 6/8(2). It follows therefore that we are not satisfied that it would be proper for us to make an order for specified sums as sought by the plaintiff company and so order that the proceedings in all three actions shall be stayed pending an arbitration, if it is proceeded with. The costs will be in the cause.