

Oil Spot Trading: Whose Terms Apply – The Incorporation of English Jurisdiction Clauses in Oral Agreements

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Spot trading of oil is often done at speed and over the phone, with confirmatory written terms arriving after the sale. The practice has inherent legal risk – the terms of the deal may be uncertain and incomplete. In *Addax Energy SA v Petro Trade Inc* [2022] EWHC 237 (Comm) the Commercial Court considered whether an alleged oral contract for supply of petroleum products contained an English jurisdiction clause in the absence of clear written terms. The Commercial Court considered whether there was a ‘course of dealing’ evidencing sufficient consistency that an English jurisdiction clause was incorporated into the agreement. The case is a good reminder that the boilerplate matters and that properly drafted agreements can help avoid disputes.

Background

Addax Energy SA (“**Addax**”) and Petro Trade Inc (“**Petro Trade**”) were party to a Secured Distribution Agreement, under which Addax could deliver petroleum into a third party’s tanks in Liberia, and from where Petro Trade could take the petroleum (“**SDA**”).

The SDA anticipated that Addax and Petro Trade would enter into subsequent supply and spot contracts. The terms were agreed informally by telephone, and then summarised in a recap email sent by Addax. However, the emails did not make any provision as to jurisdiction. On some occasions, after sending the recap email, Addax also sent a ‘spot contract’ which contained more extensive written terms, including an English governing law clause and an English courts’ jurisdiction clause.

Related People

John Gilbert
Partner
LONDON
+44.(0).207.448.4296
john.gilbert@bracewell.com

Adam Blythe
Partner
LONDON
+44.(0).207.448.4247
adam.blythe@bracewell.com

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What was the dispute about?

The dispute concerned an agreement covering multiple shipments for the supply of gas oil and gasoline between January 2018 and December 2019 (the “**Term Agreement**”), and what terms were agreed in a telephone conversation between the parties.

Addax claimed that the Term Agreement was concluded orally during the telephone conversation on 3 January 2018. However, Petro Trade did not agree, it argued that Addax was only asked to provide draft terms to form the basis of negotiation during the call.

A dispute subsequently arose regarding deliveries made by Addax and Addax commenced proceedings against Petro Trade in the English courts. Relying on CPR rule 6.33(2B)(b), Addax served Petro Trade in Liberia without permission from the Court, on the basis that its claims arose in respect of contracts with an English jurisdiction clause.

Petro Trade challenged the jurisdiction of the English courts. It claimed that the Term Agreement did not contain an English jurisdiction clause, as there was no discussion between the parties about what court would have jurisdiction during the telephone call (and no evidence was adduced to support an oral agreement on the jurisdiction clause).

What were the key issues for the Commercial Court to decide?

Given that there was no evidence of an express agreement on jurisdiction during the 3 January 2018 telephone call, the High Court had to decide whether, as a result of previous dealings, an English jurisdiction clause had been incorporated into the alleged oral Term Agreement.

Addax supported its case that the English courts had jurisdiction by arguing that the terms in its written spot contract document which provided for disputes to be solved by English courts, had during a three year period become the standard terms on which Addax and Petro Trade traded.

Decision

Petro Trade’s jurisdictional challenge failed. Treating the dispute as “*a case on course of dealing*”, Mrs Justice Cockerill found that “*whether there is a course of dealing depends on the facts. It depends upon looking at all of the facts against the relevant background.*”

In this case, there was sufficient consistency that each party had led the other reasonably to believe that the dispute resolution provisions, used consistently in previous transactions, also applied to the Term Agreement. Importance was placed on the fact that the Term Agreement was alleged to have arisen in the context of a series of contracts within an industry where parties often agree supply contracts informally. There were numerous previous contracts between the parties containing an English jurisdiction clause and the spot contracts produced were on substantially identical terms.

What to learn from this?

Oral agreements are often used for petroleum trading. Where particular provisions are not discussed on each occasion a contract is concluded, there is a risk of disagreements regarding the incorporation of those provisions. To avoid this, parties should seek to record the key terms of what was agreed in writing, and should consider the use of well-developed standard terms to ensure that the full spectrum of potential issues are addressed and documented. In addition, parties should be aware that consistency in previous, related transactions, may give rise to a course of dealings. This case highlights that, to avoid protracted and costly legal proceedings, the governing law and dispute resolution provision, agreed between the parties should be recorded.

In relation to international transactions, it is worth noting that Addax relied on CPR rule 6.33(2B)(b) to serve proceedings out of jurisdiction without the permission of the English courts. Rule 6.33(2B)(b) is a recent change to the Civil Procedure Rules which provides that, where the contract contains a term granting the English courts jurisdiction, a claimant may serve the claim form on a defendant outside the United Kingdom. Accordingly, permission from the Court to serve outside the jurisdiction is no longer needed in these circumstances.