

Legal Briefing

Ted Lowery on a termination that was not subject to good faith

TAQA Bratani Limited and Others v Rockrose UKCS8 LLC

[2020] EWHC 58 (Comm)

Before His Honour Judge Pelling QC

In the Commercial Court

Judgement delivered 17 January 2017

The facts

This dispute concerned joint operating agreements (JOAs) entered into during 1979, 1980 and 1990 for five oil production blocks within the Brae Field in the North Sea. At the start of 2019 the parties to the JOAs were TAQA Bratani Ltd, TAQA Bratani LNS Ltd, JX Nippon Exploration and Production (UK) Ltd, Spirit Energy Resources Ltd and Marathon Oil UK LLC. The parties administered each block as an unincorporated joint venture in accordance with the provisions of the JOAs. For each block, Marathon was the operator with responsibility for managing all operational and commercial activity on a no gain/no loss basis. The remaining four non-operator parties (the claimants in these proceedings) funded the operations and received profits in proportion to their equity stake. The JOAs expressly provided that each party was responsible only for its own obligations and that no partnership was intended. Clause 19 in the JOAs provided for a change of operator either by resignation, termination in the event of certain specified events (including insolvency) and termination by the unanimous vote of all non-operator parties.

TAQA had been considering taking over the role of operator from Marathon for some time but in early 2019 it was announced that Rockrose was to acquire the business of Marathon. TAQA expressed concerns to JX and Spirit over the operational and financial competence of Rockrose. During June 2019 TAQA offered to cover any transition costs over £5m that JX and Spirit might incur in connection with a change of operator. On 6 June 2019 the four claimants voted to terminate and on 20 June 2019 notices were served under each JOA terminating Marathon's role as operator. Rockrose completed its acquisition of Marathon on 1 July 2019.

Rockrose challenged the validity of the termination on the grounds that on a proper construction, the power of the claimants to terminate pursuant to clause 19 was not unqualified and/or was subject to various implied terms, including as to good faith, that had been breached given TAQA's primary desire to assume the role of operator for its own commercial and financial benefit and by TAQA's improper inducement of JX and Spirit when agreeing to cap their transition costs liabilities. In response, the claimants maintained that their power to terminate was unqualified and could not be subject to any implied terms and they commenced proceedings seeking declarations to this effect.

The issue

Were the claimants entitled to the declarations?

The decision

The judge found that where the JOAs were sophisticated and complex contracts they were to be interpreted principally by textual analysis, giving the words their natural and ordinary meaning in the context of other relevant provisions and by reference to the overall purpose of the provision being construed. Applying these principles, it was obvious that clause 19 was intended to confer an unqualified right to terminate the role of the operator where the language was clear and unambiguous, was not in conflict with the rest of the agreement and was consistent with the overall nature of the JOAs in the sense that they were not intended to create a partnership and the parties were expressly entitled to act in their own interests.

Given that clause 19 gave the claimants an unqualified right to discharge the operator, the judge dismissed the possibility that this right could be constrained by an implied term. It followed that the implied terms contended for by Rockrose were not necessary to give business efficacy to the JOAs and the authorities cited by Rockrose had no application to unqualified termination provisions within expertly drawn complex commercial agreements.

The rights established by clause 19 did not necessitate the exercise of a discretion in consequence of forming an opinion on relevant facts so there was no implicit obligation upon the claimants to exercise those rights in good faith and not in an arbitrary, capricious or an irrational manner. The

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judge observed that as long term agreements, the JOAs might arguably constitute relational contracts but that in itself was not sufficient to imply any good faith obligation into clause 19.

Commentary

In granting the declarations, the judge delivered a strong message that where parties include within their agreement a provision that entitles one or more of them to terminate the agreement, that clause takes effect in accordance with its terms.

Similar provisions to clause 19 in the JOAs appear in standard form building contracts and PFI agreements so the key principles concerning contract interpretation and implied terms, neatly summarised within this judgment, will be relevant to many construction contract disputes.

Ted Lowery
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