



LEGAL BRIEFING

Golden Ocean Group Ltd v (1) Salgaocar Mining Industries PVT Ltd (2) Mr Anil V. Salgaocar

[2011] EWHC 56 (Comm), Mr Justice Christopher Clarke

Parties conducting commercial negotiations by email should be wary of entering into guarantees without meaning to. In this case the Judge considered that an electronic signature block at the end of an email may be sufficient to constitute a signature for the purposes of section 4 of the Statute of Frauds 1677. This opens up the possibility of a guarantee being formed by an email (or email chain) even where there is no “manual signature”.

The Facts

The claimant in this case, Golden Ocean Group Ltd, was a shipping company (“Golden Ocean”). The second defendant, Mr Salgaocar, was a majority shareholder in the first defendant, Salgaocar Mining Industries PVT Ltd (“SMI”).

In early 2008 Golden Ocean offered to charter to SMI (or an account guaranteed by SMI) a vessel with an option to purchase the vessel at the end of the charter period. The entity nominated by SMI to enter into the charter was Trustworth Shipping Pte Ltd (“Trustworth”). Trustworth was a related company. The negotiations following this offer were conducted by email and proceeded on the basis “*Trustworth fully guaranteed by SMI.*”

Golden Ocean later alleged that the charter had been repudiated by Trustworth and, further, that the charter had been guaranteed by SMI.

The defendants applied for permission to set aside an order giving Golden Ocean permission to serve their claim form on them in Goa. They argued there was no “*serious issue to be tried*” as Golden Ocean could not demonstrate that its claim against SMI had a reasonable prospect of success. In particular, the guarantee was unenforceable under section 4 of the Statute of Frauds 1667 (the “Statute of Frauds”). This provides:

*“No action shall be brought whereby to charge the Defendant upon any special promise to answer for the debt default or miscarriage of another person unless **the Agreement upon which such Action shall be brought or some Memorandum or Note thereof shall be in Writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised.**”* [Emphasis added]

They further argued that the email chain was too disjointed and insufficient to constitute a guarantee within the meaning of the Statute of Frauds.

The Issue

There were a number of issues but the key one for construction practitioners was whether the email chain was capable of constituting a guarantee.

The Decision

The Judge dismissed the defendants’ arguments and held that Golden Ocean had a “*well arguable case*” that the guarantee was in writing and did not fall foul of the Statute of Frauds. This was for a number of reasons.

First, the Judge did not accept that, if the parties agree by email the basic terms of a charterparty including a guarantee, and then the detailed terms of the charterparty, so that the concluding emails in the sequence of negotiations no longer made reference to the guarantee, their final agreement was not, including the guarantee, an agreement in writing for the purpose of the Statute of Frauds. The use of the phrase "*fully guaranteed by [SMI]*" signified that the charterparty, once its terms were agreed, was one that was guaranteed by SMI. The words did not have any element of futurity about them. For example, they did not say "*to be guaranteed.*"

It did not matter that there was no form of recap of the terms at the end of the negotiations. Neither did the Judge accept that, if an agreement has been made in writing, there was some limit to the number of documents to which reference is permissible. As a matter of commercial good sense it was "*highly desirable*" that the law should give effect to agreements made by a series of email communications which follow, "*more than clearly than many negotiations between men of business, the sequence of offer, counter offer, and final acceptance by which, classically, the law determines whether a contract has been made.*"

In relation to the question of whether the guarantee was signed, the Judge noted the emails which constituted the contract were signed by the electronically printed signature of the persons who sent them and that this was sufficient to constitute a signature for the purpose of the Statute of Frauds.

Comment

The Judge did not have to decide whether the email chain in question was in fact a guarantee only whether there was a "*serious issue to be tried*". Nevertheless, those conducting commercial negotiations over email should be more careful than ever that they do not enter into binding agreements, or indeed guarantees, inadvertently. A failure to manually sign a guarantee is not necessarily sufficient to prevent one being entered into. The signature block at the end of your email may do this for you.

Claire King
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