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HK COURT RELIES ON DEEMED SERVICE CLAUSE TO DISMISS A SETTING-ASIDE APPLICATION TO ENFORCE AN ARBITRAL AWARD

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In *CC v AC [2025] HKCFI 855* (Date of Decision: 27 February 2025), the Hong Kong Court of First Instance ("**Court**") dismissed an application to set aside an order to enforce an arbitral award.

The main basis of challenge to the award had been that the Defendant alleged that it had not been given notice of the appointment of the arbitrator or of the arbitral proceedings.

BRIEF FACTS

The Plaintiff (a Singapore individual) commenced arbitration and served the notice of arbitration upon the Defendant (a Hong Kong company): (a) by post to the address provided under the parties' agreements as the Defendant's "principal address", (b) by post to the address listed on the Defendant's official website, (c) by email to the email address as provided on the Defendant's official website and (d) by email to the email address found on the website of the Securities & Futures Commission.

As regards (a), under the parties' agreements, the parties has agreed that notice by registered post to this "principal address" "*shall be deemed to be sufficiently served*" and deemed to be received two days after the letter was posted.

The Defendant argued that it never received the notice of arbitration, because: (a) the postal addresses to which the notice was sent were its old and outdated registered addresses (the Defendant had changed to a new registered address but failed to inform the Plaintiff), and (b) there had been changes of personnel within the Defendant and none of its existing personnel had access to the email addresses.

DECISION

The main issue before the Court was whether it should refuse enforcement of the award on the basis that the Defendant "*was not given proper notice of the appointment of the arbitrator or of the*

arbitral proceedings… or was otherwise unable to present [the Defendant's] case", pursuant to section 86(1)(c) of the Arbitration Ordinance (Cap 609).

In dismissing the Defendant's application of setting aside, the Court made the following points:

1. "Proper notice" does not necessarily mean "actual notice". Courts in Hong Kong and in other Model Law jurisdictions have said that proper notice can be satisfied or inferred by notice to a contractually-specified address.

2. When a party states an address in a contract for the specific purpose of service of notice and documents upon it as required under the contract, that party's intention and agreement must be that notices and documents sent to the specified address can and will be brought to its notice and attention. If that party turns a blind eye to the duty to notify its counterparty of changes in the specified address, it has no ground to complain. In this present case, the Defendant never informed the Plaintiff of the Defendant's change of registered address (this failure in itself was a breach of the terms of the agreements by the Defendant), or that the "principal address" should not be used. The Court therefore ruled that the notice of arbitration was deemed to have been received by the Defendant two days after it was posted – as agreed in the relevant express contract provision.

3. The Court also commended the Plaintiff for taking "*all the steps reasonably calculated to apprise the Defendant of the arbitration proceedings*" and "*all reasonable endeavours to bring the Notice to the attention of the Defendant*" by attempting to serve the notice of arbitration on the Defendant's other postal address and its email addresses. This also was relevant to the Court's consideration as to whether "proper notice" had been given.

4. In principle, any deemed notice may be rebutted by credible evidence that no proper notice had in fact been received by the party. However, in this present case, the Court was critical of the Defendant's various failures, in particular its failure to notify the Plaintiff of its changed registered office address, and its failure to maintain its own email addresses, and its failure to access the emails sent to its email addresses notified to the public on its own website. Because of these failures, the court was of the view that Defendant could not rebut the deeming provision for service by alleging that it had not in fact received the notice of arbitration.

The Court therefore ruled that there was proper service of the notice on the Defendant, and that it was entirely the Defendant's own fault if it had not actually received the notice. In the Court's opinion, it would be grossly unfair to the Plaintiff if the Court should permit the Defendant to avoid the effect of the arbitral award by taking advantage of its own wrongdoings.

CONCLUSION

The present case highlights the importance of "deemed service" clauses, especially against evasive defendants. The inclusion of a "deemed service" clause in contracts can significantly enhance the

chance of effecting proper giving of notice in the event that the parties dispute whether actual notice in fact was effected.

Parties should be cautious in putting contact details into their contracts, especially if the contact details are linked to a "deemed service" clause. Whether or not there is an obligation to keep the contact details in contracts up-to-date, parties should inform the counterparty of any change in contact details, including any change in registered office address or email address.

From the perspective of potential claimants, if there is any doubt that the respondent might argue that it has not been given proper notice, the claimant is well advised to take additional steps to give notice to the respondent through multiple communication channels, in addition to the channels specified in the contract. As the Plaintiff in the present case has demonstrated, it is important to demonstrate to the court that "*all reasonable endeavours*" have been made to give notice.

RELATED PRACTICE AREAS

- Litigation & Dispute Resolution
- Business & Commercial Disputes
- International Arbitration

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