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HK COURT REFUSES BORROWER'S CHALLENGE TO ENFORCEMENT OF ARBITRAL AWARD IN FAVOUR OF MONEYLENDER

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SUMMARY

In *CCC v AAC* [2025] HKCFI 2987[1], Sir William Blair[2], sitting as Deputy High Court Judge in the Hong Kong Court of First Instance ("**Court**"), rejected a borrower's challenge to the enforcement of an arbitral award in favour of a moneylender.

In doing so, the Court made some interesting observations in respect of certain procedural aspect of the case, in particular relating to the importance of giving proper notice of the arbitration.

BACKGROUND

The Applicant in the challenge proceedings was a moneylender, and the Respondent was a borrower who had borrowed money from the Applicant under two loan agreements and two supplemental loan agreements.

The supplemental loan agreements contained a dispute resolution clause, which gave the Applicant an option to refer any dispute to arbitration administered by the Hong Kong Arbitration Society ("HKAS") under the HKAS Online Arbitration Rules. The supplemental loan agreements had two pages – the first setting out the dispute resolution clause and the second being the signature page.

Following default by the Respondent borrower, the Applicant lender commenced arbitration under the HKAS Online Arbitration Rules against the Respondent. An arbitral award was issued in favour of the Applicant.

The Applicant obtained an *ex parte* order from the Hong Kong court granting leave to enforce the award as a judgment of the Hong Kong courts. The present application was made by the Respondent to set aside that *ex parte* enforcement order.

COURT'S DECISION

The Court rejected the Respondent's application, which challenge had been based on the following grounds:

FRAUD

The Respondent contended that the Applicant had acted fraudulently, and therefore it would be contrary to public policy to enforce the award, pursuant to section 86(2)(b) of the Arbitration Ordinance.

The gist of the Respondent's fraud allegation was that one of the pages of both of the two-page supplemental loan agreements (being the page that had introduced the arbitration clause) was not genuine and had been 'manufactured' subsequently, because the signatures were different on the two pages and the signature on the page with the arbitration clause was not the Respondent's signature. Further, the Respondent complained that, when he requested for a copy of the agreements, the Applicant only sent him the loan agreements but not the supplemental loan agreements.

The Court said it was a 'serious omission' for the Applicant not to send the supplemental loan agreements at the same time as it sent the base agreements, and noted that the Applicant had offered no proper explanation for this omission.

However, based on the available evidence before it, the Court concluded that the fraud allegation lacked a clear basis and did not have a real prospect of success. The Court noted that the Respondent had failed to 'fully engage with' the Applicant's affidavit evidence, and that the matters which the Respondent had raised did not reach the high threshold that allegations of fraud must be 'clearly proved'.

PROPER NOTICE OF THE ARBITRAL PROCEEDINGS

On 16 October 2024, the Applicant commenced arbitration by submitting a Notice of Arbitration to the HKAS. According to the Applicant, on this day, the HKAS sent the Respondent an SMS message containing instructions on how to access the Notice of Arbitration. Under the HKAS Online Arbitration Rules, electronic service by SMS messages was a permissible method of service.

However, the Respondent said that he did not receive the SMS, and suggested that the SMS could have been blocked or might have been unable to be received because of its size.

The Respondent therefore contended that the Court should refuse to enforce the award because he was not given proper notice of the arbitral proceedings, pursuant to section 86(1) of the Arbitration Ordinance.

Referring to case law, the Court reiterated that "proper" notice does not necessarily mean "actual" notice, but rather notice that is likely to bring the relevant information to the recipient's notice.

The Court then referred to the evidence from the software developer for HKAS, who confirmed that (a) in general, if a SMS message sent by the HKAS was not delivered, the HKAS' Online Arbitration Platform ("**Platform**") will return the undelivered status to HKAS, (b) the SMS message of 16 October 2024 was displayed as "delivered" on the Platform, and (c) since the commencement of the Platform in 2019, there had never been any complaint that a user was not able to receive an SMS message when it was displayed as "delivered" on the system.

Relying on this evidence of the software developer, the Court concluded that the SMS message of 16 October 2024 in fact had been received by the Respondent.

NO SUFFICIENT TIME TO REACT OR DEFEND

The Respondent also complained about the "*abnormal lightning speed*" from the commencement of arbitration to the publication of the award, and therefore was "*otherwise unable to present his case*", pursuant to section 86(1)(c)(ii) of the Arbitration Ordinance.

The HKAS Online Arbitration Rules, which were the applicable rules of the underlying arbitration, provide for a simple and streamlined procedure for dispute resolution – (i) a respondent was to file a response to the Notice of Arbitration within seven days of the service of the Notice of Arbitration, and (ii) the arbitrator must render an award within seven days after the deadline for the parties to make submissions, and (iii) the arbitrator may issue the award without a hearing.

In this present case, HKAS' award was made on 4 November 2024, with the Notice of Arbitration having been issued on 16 October 2024.

The Court pointed out that it was apparent that the purpose of the HKAS Online Arbitration Rules was to provide a speedy process, with the process being able to be utilised by an unrepresented party online, and was intended to avoid the delay and expense that is associated with conventional arbitration and court proceedings.

The Court concluded that there was no valid complaint merely on the basis of the tight time frame under the HKAS Online Arbitration Rules, and that this was not a case in which the Respondent had been unable to present his case.

OTHER GENERAL POINTS CONCERNING THE ARBITRATION PROCESS

Although the Court rejected the Respondent's challenge application, the Court addressed what it regarded as two unsatisfactory aspects of this case, namely (a) the Applicant's failure to send the supplemental loan agreements to the Respondent, and (b) the method in which the Notice of Arbitration was sent to the Respondent.

As regards (a), shortly after the agreements were signed, the Respondent requested the Applicant to send him copies of the loan agreements. However, the Applicant only sent the base loan agreements but not the supplemental loan agreements (where the dispute resolution / arbitration clauses had been included).

Although the Court held that there was no evidence that this had been done as an intentional deception, the Court commented that this had been a "*serious omission on the part of the Applicant*". Because of this omission, rather than ordering the customary indemnity costs order against the Respondent who lost this present challenge, the Court departed from the usual order and instead ordered that the Applicant's costs be paid by the Respondent only on the lower party and party basis.

As regards (b), the Court commented on the importance of giving proper notice of arbitration as an essential step in any arbitration, including an online arbitration like the present case.

The Court quoted with approval the commentary in Gary Born's leading textbook on arbitration[3], which stated that "*If a party defaults, the tribunal should proceed with the arbitration on an ex parte basis, first attempting to obtain the defaulting party's participation and thereafter ensuring at every step that the defaulting party receives notice of the ongoing proceedings*".

While the Court refrained from second-guessing the procedural decisions of the arbitrator in this present case (whom the Court stated "*was a very experienced arbitrator*"), the Court noted that, generally speaking, good practice suggested that an arbitrator should check whether the notice of arbitration actually had been received and understood as such by the non-participating respondent.

COMMENTARY

This case again illustrates Hong Kong courts' pro-arbitration stance and the high hurdle to overcome for challenges against an arbitral award under section 86 of the Arbitration Ordinance. As demonstrated in the present case, although the Court was critical of the way in which certain procedural aspects of this case proceeded, these matters were not sufficient to persuade the Court to exercise its powers to refuse the enforcement of the award.

This case also serves as a reminder of the importance of giving proper notice of the arbitration to the respondent, i.e. ensuring the respondent's receipt of the notice of arbitration. If an arbitrator decides to proceed with an arbitration *ex parte* without the participation of the respondent, the arbitrator (and the claimant in the arbitration) should do their utmost to update the non-participating respondent at each step of the ongoing arbitration, to avoid any potential complaint by the respondent about whether proper notice was given of the arbitration proceedings.

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[1] Date of Judgment: 18 July 2025.

[2] Sir William (Bill) Blair is a former Judge of London's Commercial Court whose expertise is in commercial and financial law and dispute resolution.

[3] §15.08 [DD] of *International Commercial Arbitration*, 3rd edition.

RELATED CAPABILITIES

- Litigation & Dispute Resolution
- International Arbitration

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