


The United Kingdom, England and Wales High Court (Commercial Court), [2015] 1 All ER (Comm) 560 – [2015] EWHC 140 (Comm), Sierra Fishing Company & Ors v Farran & Ors, first instance, 30 January 2015.

Member State

 United Kingdom

Topic

Independence and impartiality of arbitrators, with a special focus on the lack of impartiality or equidistance from the parties (internal aspect).

Deciding Court Original Language

England and Wales High Court (Commercial Court)

Deciding Court English translation

England and Wales High Court (Commercial Court)

Registration N

N/A

Date Decision

30 January 2015

National Follow Up Of (when relevant)

Not applicable

EU legal sources and CJEU jurisprudence

Not directly mentioning EU law but relevant to it in light of Opinion 1/17 and the ECJ's case law on the independence and impartiality of judicial organs.

ECtHR Jurisprudence

Not applicable

Subject Matter

In this dispute, the internal aspect of independence is at stake. In particular, the arbitrator is thought to have a potential conflict of interest in favour of one of the disputing parties.

Legal issue(s)

The case is related to impartiality.

Request for expedited/PPU procedures

Not applicable

Interim Relief

Not applicable

National Law Sources

Not applicable

Facts of the case

The claimant challenged the appointment of the sole arbitrator on the basis of apparent bias based on several grounds. The relevant circumstances included: the arbitrator worked for a firm of Lebanese lawyers (of which the arbitrator's father was a leading partner), which is the country of nationality of the Respondent; the arbitrator's firm regularly worked for the Respondent in his business dealings; the arbitrator's father was listed as counsel for a bank, whose top executive management included the Respondent; the arbitrator's CV indicated that he also had acted as legal counsel for the same bank.

To be more specific, the three applicants were Sierra Fishing Company (SFC), a Sierra Leonean

company involved in the supply of seafood, and two of SFC's affiliates. The three respondents were two lenders – Dr Farran, chairman of a Lebanese bank, and another individual involved in providing financing to SFC – and Ali Zbeeb, a Lebanese lawyer and partner in a law firm which he had founded together with his father. The dispute arose out of a loan which the two lenders had advanced to one of the applicants in 2011 for the purchase of fishing vessels to be operated by SFC. The loan agreement provided for disputes to be referred to arbitration. When no repayments were made under the loan agreement, the lenders served a request for arbitration in London and appointed Zbeeb as their arbitrator in mid-2012. They invited the applicants to appoint their own arbitrator. When the applicants did not do so, the lenders submitted that Zbeeb should act as sole arbitrator. During the remainder of 2012 and in 2013, the parties conducted settlement negotiations and suspended the arbitration on a number of occasions. Zbeeb was involved in the drafting of a first settlement agreement, which provided that some of the shares in SFC should be transferred to the lenders in satisfaction of the debt. However, neither this nor subsequent settlement agreements were performed. The arbitration was revived and the lenders filed their statement of claim in mid-2014. Rather than seeking monetary relief pursuant to the initial loan agreement, the lenders based their claim on the settlement agreements and sought to have the shares in SFC transferred to them. The applicants registered an objection against Zbeeb and requested that he step down as arbitrator, arguing that he had never been properly appointed as a sole arbitrator and that he had no jurisdiction over agreements which post-dated his appointment. They also expressed doubts as to his impartiality because of an alleged relationship between Farran and Zbeeb's father, whom Farran had retained as legal counsel.

Zbeeb refused to resign. He claimed that:

- he had been validly appointed as sole arbitrator;
- it was incumbent on the parties to ascertain whether circumstances existed that gave rise to doubts as to his impartiality; and
- any right to object to his appointment had in any event been lost by reason of Section 73 of the act.

The applicants applied to the High Court pursuant to Section 24 of the act to have Zbeeb removed.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court reasoned that the connections emerged give rise to justifiable doubts as to the arbitrator's impartiality. In particular, a "fair minded observer would take the view that [there was] a real possibility that [the arbitrator] would be predisposed to favour [one party] in the dispute" [para. 57]

Relation of the case to the EU Charter

The case relates to the impartiality standards applicable in the EU to judicial organs as resulting from the Charter and the ECJ's case law.

Relation between the EU Charter and ECHR

Not applicable

Use of Judicial Interaction technique(s)

The Court relies heavily on domestic law and domestic case law. It does not make reference to supranational case law. Reference to the IBA Guidelines on Conflicts of Interest in International Arbitration is also made.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

In line with the common law tradition, the Court borrows heavily from previous domestic cases.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

Not applicable

Strategic use of judicial interaction technique (purpose aimed by the national court)

The main purpose of the national court is to maintain systemic coherence with similar precedents.

Impact on Legislation / Policy

This case, as other cases analysed above, has certainly played a role in the shaping of those provisions of EU investment agreements relating to the issue of double hatting, which can take many different forms (as the variety of situations commented in this casebook clearly demonstrates).

Notes on the national implementation of the preliminary ruling by the referring court

Not applicable

Impact on national case law from the same Member State or other Member States

Not applicable

(Link to) full text

<https://www.casemine.com/judgement/uk/5a8ff75160d03e7f57eab317>

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