Three recent cases demonstrate the importance of technical and procedural accuracy in drafting and serving arbitration documents.

By Sarah Redding

Oao v Magneco Metrel UK Ltd [2017] EWHC 2208 (Comm)

Background

The supply contract between a Russian company ('Oao') and an English company ('Megneco'), was subject to Russian law. The contract contained an arbitration clause which provided for arbitration to be conducted in Russian, under the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry. A dispute arose causing the parties to cease contact. Oao referred the dispute to arbitration, and Megneco received the arbitration claim form and a series of letters which, excluding a few references to the English word 'arbitration', were almost entirely in Russian and did not include a translation.

Megneco did not participate in the arbitration and an award was made in Oao's favour to the sum of approximately US$270,000. Oao successfully applied to English Courts to enforce the award.

Megneco applied to have the award set aside. Its application relied on section 103(2)(c) of the Arbitration Act 1996, which provides that recognition of enforcement may be refused if *'the person against whom [the award] is invoked proves that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.'* Megneco claimed the notices it received in Russian did not constitute a valid notice, as Megneco was prevented from understanding the documents by the absence of an English translation.

Decision

The Court dismissed Magneco's application and upheld the award, but was sympathetic to the fact that more could have been done to alert Megneco to the arbitration.

The mere fact that the body of the letter was in Russian did not preclude it constituting proper notice of the arbitration. Megneco could not overcome the fact that the parties had contracted for arbitration under Russian law and that the language of any arbitration was to be Russian. The Court questioned what else Magneco could have thought the documents were and considered Megneco should have known that the documents related to arbitration. The documents therefore constituted valid notice of the arbitration. In reaching their decision, the Court contemplated several factors which weighed against Megneco, including:

- That despite the body of the documents being in Russian, the heading was in English, which unequivocally included the word 'arbitration' and references to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation.

- That it was reasonable for Megneco to have arranged to translate the documents, or part of them, and it should have done so.

The Court held that the letter was clearly likely to bring the relevant information to Magneco's attention. However, the Court left open that valid service is not black and white. Rather, it can be circumstantial: *the fact that notice of an arbitration is received in England in a language other than English should not in itself affect the validity of the notice, though it may do so, depending on the circumstances. It is easy to envisage some circumstances in which it would not amount to proper notice.*