

Court orders parties back to arbitration

Written by **SAM DORNE**



The recent case of *Sesderma, S.L. v Seeky International Limited and Golong Co. Ltd* [2023] HKCFI 1619, heard in the Hong Kong Court of First Instance, examined the law of issue estoppel and the governing law of arbitration agreements.

An issue estoppel arose as a prior Hong Kong Court ruling held that the contract between the disputing parties which contained an exclusive jurisdiction clause had been superseded by the contract containing a China International Economic and Trade Arbitration Commission (CIETAC) arbitration clause.

The Court found that regardless of the issue estoppel the parties were bound by the arbitration clause and the proceedings were stayed.

Back to arbitration

→ The Hong Kong Court of First Instance has ordered parties back to arbitration in light of issue estoppel and their arbitration agreement.



Background

The dispute in question arose from a distributorship arrangement between Sesderma, S.L. (**S**) and Golong Co., Ltd (**G**). Initially, the parties entered into a 2017 agreement, which included an exclusive jurisdiction clause favouring the Hong Kong courts should any dispute arise. Subsequently, a 2018 agreement was concluded, extending G's distributorship to other jurisdictions and containing an arbitration clause for CIETAC arbitration in the People's Republic of China (**PRC**).

S commenced Hong Kong court proceedings against Seeky International Limited, an allegedly related company of G, advancing claims of trademark squatting and unlawful interference with business and contracts.

G was later joined as a defendant and applied to stay the proceedings, arguing that the claims fell within the scope of the arbitration clause in the 2018 agreement.

Court proceedings

The Court, presided over by Justice Mimmie Chan, granted the stay primarily on the basis of issue estoppel.

Issue estoppel is a legal doctrine that prevents a party from relitigating an issue that has already been decided in a previous case. It is based on the principle that once a Court has made a final decision on a particular issue, that decision is binding on the parties and cannot be re-litigated in subsequent proceedings unless by way of an appeal to an appellate Court.

As such, S was barred from arguing that the exclusive jurisdiction clause in the 2017

agreement applied to the dispute, as previous Court findings in enforcement proceedings had established that the 2017 agreement had been replaced and superseded by the 2018 agreement.

Furthermore, the Court held that even if issue estoppel did not apply, there was a prima facie case that the parties were bound by the arbitration clause in the 2018 agreement. The Court referred to expert evidence on PRC law, which indicated that the dispute over trademark squatting fell within the scope of the arbitration clause.

The Court also applied the "Fiona Trust" presumption, suggesting that absent clear language excluding certain questions, rational business people would likely intend any dispute arising from their relationship to be decided by the same tribunal.

In concluding, the Court held: a prima facie case is all that is required as to the existence of a valid arbitration agreement, and unless the point is clear that there is no such agreement, or that any

arbitration agreement is invalid, inoperative or incapable of being performed, the matter should be referred to the tribunal for decision as to its own jurisdiction. There is no suggestion that the arbitration agreement in the 2018 Agreement is in any way invalid, inoperative or incapable of performance.

Conclusion

This case provides insights into the application of issue estoppel and the governing law of arbitration agreements. The Court's decision reinforces the importance of honouring arbitration clauses, and highlights the presumption that the governing law of the main contract will generally extend to the arbitration agreement unless exceptional circumstances dictate otherwise. This case serves as a reminder of the significance of carefully drafting and interpreting arbitration agreements to avoid potential disputes and ensure effective dispute resolution mechanisms.

About the author

Sam Dorne works as a Knowledge Manager in The ADR Centre's Knowledge Management Team, working with NZDRC and NZIAC. He recently returned to NZ after nearly 19 years of living in the UK where he spent the last several years working as a civil litigation solicitor mainly dealing with the recoverability of legal costs and consumer claim cases. He has experience in advocacy, case management and legal drafting and had several cases go to the Court of Appeal in England.