

# The English courts continue to uphold arbitration agreements



**Fanos Theophani**  
**Clyde & Co**  
+44 20 7876 4961  
fanos.theophani@clydeco.com



**Lucinda Roberts**  
**Clyde & Co**  
+44 20 7876 4260  
lucinda.roberts@clydeco.com

A recent decision of the English High Court reinforces the court's desire to uphold arbitration agreements wherever possible, even where the very existence of the arbitration agreement is disputed.

## The facts

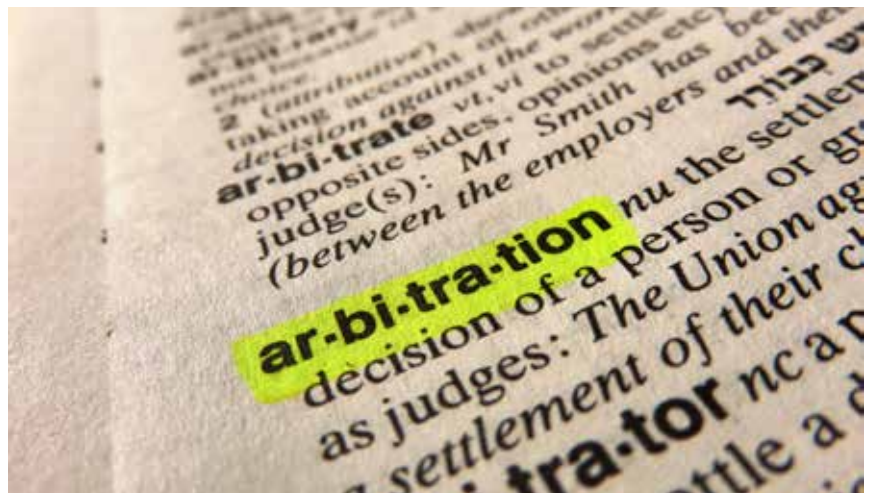
In *HC Trading Malta Ltd v Tradeland Commodities*<sup>1</sup>, the claimant alleged that the parties had entered into a binding commodities sale and purchase contract which contained a London arbitration clause. No shipments in fact ever took place under the contract.

The claimant wanted to claim under the contract against the defendant in London arbitration for its loss of earnings/profit. However, the defendant declined to accept service of its arbitration notice. The defendant indeed denied that there was any valid contract at all and took the position that if, or when, the claimant commenced London arbitration, it would contest the arbitrator's jurisdiction to hear the

dispute. For its part, the defendant did not have any claim against the claimant.

The claimant therefore issued proceedings in the English High Court, seeking a declaration from the court that there was a binding arbitration agreement between the parties. The defendant, however, claimed that the court had no jurisdiction to entertain the claim for relief in circumstances where the claimant was about to commence arbitration, since a tribunal has express power to determine its own jurisdiction under section 30 of the *Arbitration Act 1996* (the Act).

The defendant therefore applied to set aside the claim for relief before the court.



<sup>1</sup> [2016] EWHC 1279 (Comm)

---

### Decision

The judge agreed with the defendant that the court had no jurisdiction on the facts of this case and set aside the claim for relief for the following reasons:

- A party's ability to apply to the court for relief (as to jurisdiction or otherwise) once arbitration had been commenced was prescribed by the Act. Firstly, the arbitrator rules on his own jurisdiction and recourse to the court thereafter is subject to the conditions in section 32 of the Act.
- Where the Act lays down an extensive code for the governance of arbitrations, it would be wrong for the court to intervene.
- The Act's intention was that the court would not usually intervene outside the specific circumstances specified therein. It cannot have been intended that a party to a disputed arbitration agreement could, by merely not appointing an arbitrator, obtain a court decision on its existence without being subject to the restrictions contained in section 32 of the Act.
- There was no impediment to the claimant commencing arbitration, such that there was no need for the court to exercise its discretion here and grant the relief being sought.

---

### Comment

This case addresses a previously untested point: whether a party seeking to rely on a disputed London arbitration agreement can seek relief of the English courts before appointing an arbitrator. The answer given here was a firm 'no'.

Despite the defendant's assertion that there was no valid contract, and accordingly no valid arbitration agreement, it was clear that in order to have that issue determined, the claimant should still have commenced arbitration in accordance with the terms set out in the disputed contract. Questions of efficiency and costs cannot be used to deviate from the procedure set out in the Act.

The judge's decision serves as a timely reminder to parties considering the commencement of arbitration to ensure that reliance on the court's powers is not misplaced. On facts such as these, the provisions of the arbitration agreement (whether its existence may be disputed or not) must be followed before the English courts will be prepared to intervene.

The English courts will only consider interfering on rare occasions, where there is, say, a legislative gap that warrants the court exercising its discretion to make good any such lacuna. This was clearly not such a case and the court chose to give primacy to the contractually agreed (albeit disputed in this case) dispute resolution forum of London arbitration.