التميمي و مشاركوه
AL TAMIMI & CO.

Abu Dhabi Court of First Instance
Action No. 1046-2023
26.02.24

The case relates to a commercial dispute regarding a contract for the supply of medical equipment drawn up between the Claimant - a branch of a foreign construction company with a branch in Abu Dhabi - and the Defendant – a company operating in the UAE that contracted the Claimant to supply medical equipment.

The facts, as set out in the statement of claim and other papers, can be summarized in that the Claimant had entered into a contract with the Defendant (project owner), dated 22.12.15, for the supply and installation of US$ 35 million worth of outpatient clinic services and IT services at a hospital. On 29.08.17, by the first addendum to said contract, the supply operations were divided into two streams and the contract price was adjusted to US$ 45,671,271. In compliance with the contract, the Claimant delivered the agreed-upon supplies within the contract scope of works and the Defendant was able to commence operations on 24.02.21. The Claimant contacted the Defendant on 03.08.21 regarding a completion certificate but the latter did not respond. On 31.01.23, the Claimant gave notice to the Defendant of its desire to complete the second phase of the project without the Defendant, which the latter considered an arbitrary and unlawful termination of the contract. Then, on 15.09.23, the Claimant sent the Defendant a final payment request for all outstanding payments but received no response. In addition to the accrued amounts due from the Defendant under invoices related to the work, the Claimant is entitled to compensation totaling US$ 7,560,725.22 for the termination of the contract and the consequent retention of technicians, workers, and administrative personnel from August 2021 to December 2022. Hence, the Claimant's action.

Claimant's supporting docket:

The contract in question and its addenda, notice dated 03.08.21, letter dated 31.01.23, invoice no. AD-058-2021, purchase order dated 21.07.20, two schedules of variation works, final payment request dated 15.09.23, and a consultative expert report.

Claimant's final prayer:

Judgment against the Defendant for US$ 7,560,725.22 (or its UAE Dirhams equivalent) plus 9% legal interest per annum from the date of claim until payment.

Procedural history:

On 06.11.23, the Claimant filed a statement of claim seeking judgment granting the above-requested relief. The matter progressed through the preparatory stage before the Case Management Office and the hearings process, as recorded in the respective minutes. The parties were represented by their respective counsel. At the first hearing, dated 28.11.23, the Defendant's counsel raised a motion to dismiss the proceedings by virtue of an arbitration clause. The parties fought out the case through the exchange of briefs and exhibits setting out their defenses and arguments and all their legal points until the case became ripe and went to judgment.

As regards the Defendant's motion to dismiss the proceedings by virtue of an arbitration clause, which revolves around the following contentions put forth in their brief:

- Clause 20.4 of the contract provides for arbitration.
- The arbitration clause is valid, effective, and operative for DIAC arbitration under Articles 4 and 6 of Decree No. 34 of 2021 concerning the Dubai International Arbitration Center.

Under Article 8(1) of Federal Law No. 6 of 2018 on Arbitration, the court, before which an action was instituted regarding a dispute in respect of which an Arbitration Agreement exists, shall dismiss the action, if the Respondent moves to dismiss on this ground before making any other motions or plea on the subject matter of the action, unless the court finds that the Arbitration Agreement is void, or unenforceable.

It is clear to the Court that the Defendant's counsel had filed a reply at the first preparatory hearing in which he moved to dismiss on the grounds of an arbitration agreement. He filed the same motion in his subsequent reply. Therefore, the motion is valid in form and will be examined by the Court.

It is clear, reading Article 8(1) of the Arbitration Law, that it is a legal safeguard placed to ensure that the court dismisses the action before it if it finds that there is a valid arbitration agreement that is not void or impossible to perform. Thus, the Court will only examine the issues relating to that motion to the extent necessary to decide the same.

The Court prefaces its decision with a review of the contract terms which are as follows:

It is clear to the Court, reading the contract, that clause 20.4 states: "Unless the dispute is settled amicably, within 40 days of notification of the dispute under clause 20.3 (amicable settlement), the dispute shall be referred to arbitration and finally resolved in accordance with the DIFC-LCIA rules in force at the date of the dispute, which rules are incorporated by reference in this clause 20.4 (arbitration). In any arbitration such as this:

- The number of arbitrators shall be three. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall jointly appoint the third arbitrator.
- The seat, or legal place, of the arbitration shall be the DIFC, United Arab Emirates.
- An arbitrator shall not have the nationality of a state in which any party (to the arbitration) has its domicile or residence.
- The language used in arbitration proceedings shall be English.
- The arbitral tribunal constituted under this contract may consolidate the arbitration initiated under this contract with the arbitration under the coordination agreement, equipment supply contract, hospital management contract, and joint venture agreements concluded between [*redacted*] at the date of signature of this contract, including all contracts mentioned therein, based on their signing concurrently or after the said joint venture agreements were signed."

It is clear to the Court, reading the submitted briefs and exhibits, that the scope of the issues that the Claimant has raised and presented for consideration, can be summarized as follows:

- The arbitration clause is void because the Defendant, in its present legal form, did not exist when the contract (containing the arbitration clause) was signed. The Defendant was not incorporated until 24.10.16, after the contract was made. Therefore, the person who signed the arbitration agreement on the Defendant's behalf did not have the capacity or authority to sign it and was not officially the company's director when the contract was signed. Further, any recourse to the arbitration clause taken after the signing of the contract is not binding on the parties under the amended contract since the arbitration clause binds only those that are party to it.

- It was impossible to adhere to the arbitration clause because of the DIFC-LCIA Arbitration Centre's abolition under Article 4 of Decree No. 34 of 2021 concerning the Dubai International Arbitration Center, which extinguishes the arbitration agreement. This is based on Article 54(4) of the Arbitration Law which states that if the arbitral award was made pursuant to an arbitration agreement that was incapable of being performed, then the arbitration agreement is invalid.

- The parties had intended to refer their dispute, not to the DIAC, which existed at the time the contract was made, but, rather, to the DIFC-LCIA as the designated forum. The matter of an alternative center was not addressed.

- The difference between the DIFC-LCIA and the DIAC lies in the supervisory authority the former has over the proper application of the arbitration rules and the proper conduct of arbitration conducted under its auspices, including the appointment of arbitrators, ruling on objections, and deciding on the continuation of arbitration.

- Article 31 of the DIFC-LCIA Arbitration Rules states that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any dispute which may arise out of the scope of these Rules, unlike the DIAC which is not subject to the supervision of any local courts in connection with the application of the arbitration rules. There are also differences in procedure, statutory timeframes, and the arbitrator challenge process.

- The parties had agreed on the application of the laws of Abu Dhabi and applicable UAE federal laws, given that the parties and the project were based in Abu Dhabi. Accordingly, the local laws of Dubai do not apply to the dispute and, consequently, Decree No. 34 of 2021 is inapplicable to the dispute at hand.

- A previous decision of the US courts, dated 06.11.23, dealt with the same issue of abolition of the DIFC-LCIA Arbitration Centre, holding that arbitration is a creature of contract and must be performed in accordance with its terms and that arbitration is strictly a matter of consent. Therefore, the US courts cannot compel arbitration if the arbitration clause does not exist. Neither the US courts nor any government can rewrite the arbitration agreement and order the arbitration proceeding to be held in a forum to which the parties did not contractually agree. The court concluded that the US court had jurisdiction, which must be adopted as guidance being the legal analysis applied by other courts.

The above points are substantive points that need to be examined in order to arrive at the truth of the matter. Accordingly, the Court will address those points below:

1- <u>The arbitration clause is void because the Defendant, in its present legal form, did not exist when the contract was signed and the person who signed the arbitration agreement did not have the requisite capacity or authority when the contract was signed.</u>

Regarding the first part, that the contract was signed before the incorporation of the Defendant company, the basic principle in contracts is the consent of the contracting parties and that which they have undertaken to do in the contract – Article 257 of the Civil Transactions Law. If a contract is valid and binding, it shall not be permissible for either of the contracting parties to resile from it, nor to vary or rescind it, save by mutual agreement, court order, or operation of law – Article 267 of the Civil Transactions Law. Further, it is settled in the Abu Dhabi Court of Cassation that a subsequent contract supersedes conflicting terms of a previous contract if the new contract has restructured the parties' relationship as to evince their intention to exclude conflicting terms in the previous contract – AD Cassation No. 880-2023 [Commercial] – 02.11.23.

With that in mind, it is clear to the Court, reading the addendum dated 20.03.18, that it explicitly refers to the parties' agreement to correct the contract by confirming the Defendant's current legal structure. Clause 2 of the addendum states that the contract shall be read and construed in its currently amended and corrected form as of the date of correction and shall remain in force as if the employer (owner) were a limited liability company that had been duly incorporated at the date of signature. Clause 2 further states that the rights and obligations of each of the contracting parties shall be deemed to have arisen at the date of signature of the contract and shall endure throughout its term. Clause 4 of the addendum states that, save as corrected or amended, the provisions of the contract shall remain in full force and effect.

In addition to all of the foregoing, clause 2.8 states that the provisions of clause 20 (claims and dispute resolution) of the contract shall apply to the addendum as if fully set forth therein.

With that in mind, Article 5(1) (sic) of the Arbitration Law provides that: "The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract." The reference to clause 20, which contains the arbitration clause, is sufficiently clear to affirm the applicability of the arbitration clause to any disputes that may arise. The implication of the foregoing is that the parties had expressly agreed in the addendum that the arbitration clause would continue to operate by way of reference.

The Court notes that the Claimant's arguments about the validity of the arbitration clause relate to the doctrine of separability of the arbitration agreement, which is provided for in Article 6(1) of the current Arbitration Law, in line with international arbitration standards and practices, as follows: "The arbitration agreement is independent of the other terms of the contract. The nullity, rescission, or termination of the contract shall not affect the arbitration agreement embedded within it if the clause is valid per se, unless the matter relates to an incapacity among the parties." The implication of this is that the nullity, rescission or termination of the main

contract containing the arbitration clause shall not affect the arbitration clause if it is valid per se. It follows that the Claimant's arguments in this regard are ill-founded. The totality of the foregoing demonstrates that the Claimant's arguments under this head are without merit.

Regarding the second part - incapacity of the signatory of the contract, Article 4(1) of the Arbitration Law states: "An Arbitration Agreement may only be concluded, on pain of nullity, by a natural person having the legal capacity to dispose of his rights or on behalf of a legal person by a representative with specific authority to arbitrate." With that in mind, it is clear to the Court, reading the underlying contract that it was signed by the Claimant's owner in his capacity as such, as per its trade license (as an SPC LLC). It is further clear that the company's current license, with the same number, is for an LLC. The essence of Articles 149 and 151 of the Civil Transactions Law is that, normally, the contacting party itself expresses an intent to make a disposition. Here, the Claimant's owner signed the contract which means that the signature was undertaken by a person with the authority to dispose of the right being disposed of. Based on the foregoing, the Claimant's arguments have no basis in fact or in law.

The Court would point out that Article 70[1] of the Civil Transactions Law is an embodiment of the estoppel doctrine, a legal principle inherent in many legal systems, whereby a party is restrained from going back on a previous position or a matter previously agreed or benefited from by denying or reneging upon the same. By application of Article 70 to the two-pronged contention of invalidity, it stands that the Claimant cannot claim lack of liability or dissatisfaction with acts they previously undertook and represented and agreed with the other party - who relied upon such acts or representations – in order to avoid the arbitration clause. After all, the Claimant had voluntarily signed and proceeded to act out the addendum, confirming their acceptance of the same.

2- <u>It was impossible to adhere to the arbitration clause because of the DIFC-LCIA Arbitration Centre's abolition under Article 4 of Decree No. 34 of 2021 concerning the Dubai International Arbitration Center, which extinguishes the arbitration agreement</u>.

It is clear to the Court that the basis of the disagreement under this head lies in the fact that the parties had previously agreed to refer disputes to arbitration under the DIFC-LCIA rules in force at the date of the dispute and to the seat, or legal place, of the arbitration being the DIFC, Dubai – clause 20.4 of the contract. With the enactment of Decree No. 34 of 2021 concerning the Dubai International Arbitration Center, the DIFC-LCIA Arbitration Institution was abolished – Article 4(2) - and the DIAC placed as the successor to all its rights and obligations. The Claimant relies on said decree to argue its point that the arbitration agreement is impossible to perform and, consequently, has been extinguished.

Given the above, it is imperative for the Court, while considering the issue, to verify whether the arbitration agreement in question was impossible or incapable of performance, as argued by the Claimant. It is clear to the Court from clause 1.4 (law and language) of the contract that the law by which the contract is to be governed

[1] No person may resile from what he has (conclusively) performed.

and construed is UAE federal law and Abu Dhabi law. This applies to the arbitration clause, in the absence of an agreement otherwise. Therefore, the impossibility of performance issue will be examined in the light of the law to which the arbitration agreement is subject.

According to Article 8(1) of the Arbitration Law, the court before which a dispute is brought that is subject to an Arbitration Agreement shall dismiss the action if the Respondent moves to dismiss on this ground before making any other motions or plea on the merits, unless the court finds that the Arbitration Agreement is void, or unenforceable.

The above provision and the arbitration law, in general, do not determine the situations in which an arbitration clause would be impossible to perform. Therefore, the Court has decided to examine this issue in the light of the travaux préparatoires of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, which the UAE ratified into force on 19.11.06, thereby adopting the same as applicable domestic law. Article II(3) of the New York Convention states: "The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed." It is clear to the Court, looking at the travaux préparatoires on said article, that they did not contemplate that the extinction or abolishment of an arbitration centre should be among the criteria for determining whether an arbitration agreement is impossible or incapable of performance. Nowhere in the travaux préparatoires is there any reference to the criterion that must be applied by the national courts to establish whether an arbitration clause is impossible to perform. There is no further clarification either, in the travaux préparatoires, on the meaning of the terms "null and void," "inoperative," and "incapable of being performed," as used in said article.

With that in mind, the provisions of the UAE Arbitration Law confirm, overall, in their substance, that arbitration agreements are to be interpreted and handled from a broad perspective that validates and reinforces recourse to arbitration when there is a valid arbitration agreement in place. This can be inferred from the relevant policies enshrined in law which aim to recognize the practical reality that arbitration has become the de facto mechanism for solving all types of commercial disputes.

Article 257 of the Civil Transactions Law states that the basic principle in contracts is the consent of the contracting parties and that which they have undertaken to do in the contract. Article 265 of said law states that if the wording of a contract is clear, it may not be departed from by way of interpretation to ascertain the intention of the parties and that if there is scope for an interpretative construction of the contract, an inquiry shall be made into the mutual intention of the parties beyond the literal meaning of the words, and guidance may be sought in so doing from the nature of the transaction, and the trust and confidence which should exist between the parties by the custom current in (such) dealings.

With that in mind, it is settled in the Abu Dhabi Court of Cassation that the interpretation of contracts and agreements and determination of intent are matters

for the discretion of the trial court provided it does not depart from the meaning borne out by their language or goes beyond their plain meaning.

With that in mind, the Court, in conducting its examination, has scrutinized and analysed the arbitration agreement between the parties which is found to comprise four main sections:

1- An express agreement to not go to the national courts and to exclude them from considering any disputes covered by the agreement.

2- Exclusive recourse to arbitration by way of appointment of an arbitral tribunal to resolve the dispute.

3- Scope of the arbitration agreement and the matters governed thereby.

4- Determination of the procedural aspects of the arbitration, including the seat of arbitration, the procedure for the appointment of arbitrators, the language, and the forum (institution) that will administer the arbitration.

It goes without saying that the primary objective behind the arbitration agreement is to determine an effective way, from the parties' perspective, to finally resolve their commercial disputes. The parties had expressly and voluntarily stated an intention to resolve any disputes between them through arbitration. This was their underlying intention. Therefore, the absence of an agreed-upon procedure due, say, to the abolishment of the arbitration institution post-agreement, did not render it unenforceable and did not affect its other sections which were not covered by the addendum. Thus, the arbitration agreement remained valid and independent from the other sections which had become inoperable. Accordingly, since the arbitration agreement was duly constituted, its validity would not necessarily be affected by the non-existence or abolition of the arbitration institution that was agreed upon but then ceased to exist due to reasons beyond the parties' control.

In proof of this, the Court would point out that Article 13[2] of the Arbitration Law, read in the context of the additional phrase "fail to agree (on the procedure)" reveals a legislative intent that the arbitration agreement should not be invalidated or rendered unenforceable by the absence of an agreed-upon procedure for the appointment of arbitrators and that, in such a scenario, recourse is available to the competent court, upon request of the interested party, to carry out the necessary procedure. The conclusion to come to from this is that, under the Arbitration Law, the absence of stipulated procedure in the arbitration clause or the inability to perform any such procedure would not invalidate the arbitration clause so long as it is valid and enforceable per se. This applies here and confirms the Court's findings.

3- The parties had intended to refer their dispute, not to the DIAC, which existed at the time the contract was made, but, rather, to the DIFC-LCIA as the designated forum. The matter of an alternative center was not addressed. The difference between the DIFC-LCIA and the DIAC lies in the supervisory authority the former has over the

[2] If a party breaches the agreed procedure for selection of arbitrators, the Parties fail to agree, or the two appointed arbitrators have not agreed on a matter requiring their agreement, or if the third party, including the Delegated Party, fails to carry out the responsibility assigned in this regard, the Court, at the request of a party, shall initiate and carry out the required procedure or action unless the provisions laid down in the agreement stipulate some other mode for the completion of this procedure. The court's procedure shall not be subject to challenge by any means of challenge whatsoever.

proper application of the arbitration rules and the proper conduct of arbitration conducted under its auspices, including the appointment of arbitrators, ruling on objections, and deciding on the continuation of arbitration.

The Court would initially point out that Decree No. 34 of 2021 concerning the Dubai International Arbitration Centre does not explicitly compel the parties to arbitrate before the DIAC. It is clear, reading Article 6(1), that arbitration agreements concluded before the issuance of the decree are considered valid and effective and that the DIAC would replace the abolished centre in relation to disputes arising out of said agreements, unless otherwise agreed by the parties. These provisions imply that parties are not compelled to arbitrate before the DIAC and have a right to choose an alternative arbitration centre. It is clear to the Court that the Claimant had not argued an intention, on their part, to arbitrate in the first place or to have the Defendant submit to the jurisdiction of an alternative arbitration centre. The Court would further mention that the court "dismisses the action" under Article 8(1) of the Arbitration Law based on its lack of jurisdiction to hear the dispute due to the existence of an arbitration agreement that has ousted its jurisdiction to hear the dispute. It follows that the court's decision (to dismiss) cannot, per se, be considered an order that either party arbitrates before a specific arbitration institution. Rather, the decision ensures that neither party will breach its obligation to perform the arbitration clause by approaching the courts, contrary to what was agreed, so long as the arbitration clause is not void and can be enforced.

4- The essence of the difference between DIFC-LCIA Rules and DIAC Rules lies in the matter of court jurisdiction given the parties' agreement that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any action, suit, or proceedings which may arise out of or in connection with any arbitration within the scope of the DIFC-LCIA Rules.

The Court would initially point out that the Claimant's arguments in this regard are ill-founded, based, as they are, on a misinterpretation of Article 31 of the LCIA Rules 2020 which, as the Court notes, is a limitation of liability provision in favor of the LCIA, including its employees and arbitrators, against any proceedings or actions which the parties (to the arbitration) may take against them. There is nothing in Article 31(3) (added in the LCIA's Updated Rules 2020) to indicate a jurisdiction for the courts of England and Wales other than in relation to actions brought against the LCIA and its employees. In other words, the Claimant's assertion of said courts' jurisdiction is a misunderstanding and misapplication of the scope and purpose of said article. Even if the Claimant were right in what they said, it runs contrary to what the parties had agreed upon in the contract, Article 23 of Federal Decree-Law No. 42 of 2022 promulgating the Civil Procedure Code, and, in turn, public policy. Legal inaccuracies and misinterpretations aside, the Court confirms that the Claimant's arguments do not affect the validity of the arbitration agreement or render it unenforceable.

5- There are differences in procedure and statutory timeframes between the DIFC-LCIA Rules and DIAC Rules.

Under Articles 257 and 265 of the Civil Transactions Law and the parties' clear agreement in clause 20.4 of the contract to refer the dispute to arbitration in order

to be finally resolved in accordance with the DIFC-LCIA rules in force at the date of the dispute;

Considering that the phrase "in force at the date of the dispute," indicates the parties' express agreement that DFIC-LCIA Rules shall apply, as may be amended after the arbitration agreement; and

Given that arbitration institutions have the autonomy to update their rules as would allow for them to be developed and brought in line with developments and innovations in the arbitration field;

The parties are presumed to have known, when selecting a particular arbitration institution, that its rules, including rolls of arbitrators, could be subject to change. This is because the parties' choice of a particular arbitration institution presupposes that its procedural rules would be routinely reviewed to bring them in line with legislative updates and best practices in the area of international commercial arbitration. This means that the rules of arbitration institutions are not permanent or fixed in their nature and, therefore, their amendment and development would not render the arbitration agreement inoperable or unenforceable. Likewise with rolls of arbitrators, which cannot be deemed inherently permanent or fixed. Notably, the DIFC-LCIA Rules had in fact been amended in October 2020 since the parties entered into their contract and the Claimant had not argued that any substantial differences in the rules would harm them should they proceed to arbitration outside the DIFC-LCIA. Accordingly, the Claimant may not avoid the arbitration clause embedded in the subject contract (whereby they agreed to submit any disputes arising thereunder to arbitration) by claiming different rules and statutory timeframes.

6- Decree No. 34 of 2021 concerning the Dubai International Arbitration Centre is inapplicable because the parties had agreed on the application of the laws of Abu Dhabi and applicable UAE federal laws.

The Court would initially reiterate the point made at the outset of its reasoning that it will only examine the issues relating to the motion to dismiss based on the existence of an arbitration agreement, to the extent necessary to decide the same. As such, the Court will not address the applicability of said decree to the parties' agreement here. Also, the Court had earlier noted that said decree does not compel the parties to arbitrate before a specific arbitration institution and does not contain any provisions which compel the courts to direct the parties to a specific arbitration centre. Therefore, the issues should not be commingled to draw the Court into an examination of legal points of no relevance to deciding the motion.

7- A previous decision of the US courts dealt with a similar case and must be adopted as guidance being the legal analysis applied by other courts.

In response to the Claimant's points regarding the US courts' decision, the Court, after carefully considering the issue at hand, compiled several case law citations from other jurisdictions, including the USA, dealing with similar issues, and concluded that the cited case law unanimously upholds the principle of party autonomy and validity of arbitration agreements, even where an institution or

appointing authority has ceased to operate or parties have agreed on arbitration institutions that never existed when they entered into their arbitration agreement.

With all due respect to decisions from other jurisdictions, ensuring due process and upholding the principle of party autonomy are the Court's foremost considerations. This aligns with the UAE Arbitration Law's commitment to advancing the arbitration field in the UAE and enhancing the UAE's status as a global hub for arbitration in the region.

Lastly, the Court's below-cited case law is consistent with its arbitration-friendly momentum, reflecting its approach and the consensus among many jurisdictions that the principle of party autonomy and party intentions should be upheld:

French Courts:

Epoux Convert v. Société Droga, Court of Appeal of Paris, France, 14 December 1983, 1994 REV. ARB. 483.

S.A.S A.D.B v REO Inductive Components AG, Court of Appeal of Paris, France, 20 March 2012, N 10/23578.

Swiss Courts:

Federal Tribunal, Switzerland, 8 July 2003, 129 III 675.

German Courts:

Kammergericht [KT] Berlin, 15 October 1999, XXVI Y.B. Com. Arb. 328 (2001).

OLG Munich, 6.8.2015, 34 Sch 3/15, BeckRS 2016, 4080.

OLG Karlsruhe, 28.2.2012, NJOZ 2012.

809 BGH, Beschluss vom 14.7.2011 - III ZB 70/10.

Hong Kong Courts:

Lucky Goldstar International Limited v. Ng Moo Kee Engineering Limited, High Court, Supreme Court of Hong Kong, Hong Kong, 5 May 1993, XX Y.B. Com. Arb. 280 (1995).

US Courts:

HZI Research Ctr. v. Sun Instrument Japan Co., 1995 WL 562181, at *2 (S.D.N.Y. Sept. 20, 1995).

Control Screening LLC v. Tech. Application Prod. Co., 687 F.3d 163, 166 (3d Cir. 2012).

The Court has refuted all the substantive issues raised by the Claimant. Its reasons provide a clear response to all the points raised in the Claimant's comments on the

Defendant's motion. Consequently, the Court concludes that the Defendant's motion was in accordance with the facts and the law, and that, therefore, the Defendant will be granted their motion and, as a result, the action will be dismissed due to the existence of an arbitration agreement, as explained by the Court in its reasoning.

The Court fees, costs, and advocate's fees will be borne by the Claimant under Article 133(2) of the Civil Procedure Law.

Wherefore, the Court rules, on the merits, to dismiss the action due to the existence of an arbitration agreement. Claimant to bear the Court fees, costs, and advocate's fees.