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Are you being served?

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When a dispute calls for arbitration, getting the arbitration notice in the hands of the correct individual is key to moving forward. On the surface, delivering the notice may appear to be the simplest aspect of arbitration, but serving it through the wrong channel or to an ancillary individual could lead to nullification of an arbitration award. In 2017 this issue presented itself through two significant cases that demonstrate the potential pitfalls and provide guidance in connection with serving notices.

Sino Channel Asia Limited -v- Dana Shipping and Trading PTE Singapore and another [2017] EWCA CIV 1703

The owner of a vessel (**Dana**) entered into a contract of affreightment with a charterer (**Sino**). Apart from signing the contract, Sino played no part in negotiations or performance. Rather, all communications were between Dana and a Mr Daniel Cai of Beijing XCity Trading Limited (**BX**), who was identified as the "charterers' guy" and presented himself as "Daniel of Sino Channel Asia". Disputes arose and Dana gave notice of arbitration by an email sent to danielcaix@vip.sina.com. All subsequent notices and messages were sent to the same email address.

Dana commenced arbitration. Sino was absent from the proceedings, and an award was issued in Dana's favour (**Award**). The Award was sent by hard copy to Sino's address in Hong Kong and received by them. This was the first Sino had heard of the arbitration.

Sino sought a declaration from the High Court of England and Wales that because it had not received notice of arbitration, the arbitral tribunal was not properly constituted and the Award had been made without jurisdiction. This was granted by the High Court.

On appeal, the Court of Appeal of England and Wales considered whether BX had implied actual authority or ostensible authority to receive notice on behalf of Sino. The Court of Appeal found that, given the complete delegation to BX of Sino's negotiation and performance of the contract, it was "unreal" to suppose that Sino required an arbitration notice to be served directly on them. The Court of Appeal concluded that in the "unusual" circumstances of this case, BX / Mr Cai did have implied actual authority to receive service on behalf of Sino. This was sufficient to decide the appeal in favour of Dana and it was held that the Award was binding.

Glencore Agriculture BV (formerly Glencore Grain BV) -v- Conqueror Holdings Ltd [2017] EWHC 2893

Conqueror Holdings Ltd (**Conqueror**) chartered their vessel to a charterer (**Glencore**) under a charterparty. Following delays at the port, an employee of Glencore, Mr Oosterman, sent three emails from his individual company address, instructing the vessel to remain in port. Conqueror claimed damages for the vessel's detention, and a letter before action (giving notice of commencement of arbitration) was sent to Mr Oosterman's email address. Further correspondence regarding the dispute was also sent to Mr Oosterman, specifically notice to appoint a sole arbitrator. No responses were received. Conqueror initiated arbitration and appointed a sole arbitrator. The sole arbitrator conducted the reference, and in doing so a number of submissions and directions were served on Glencore (sent by email to Mr Oosterman's email address). The sole arbitrator proceeded to make an award in Conqueror's favour.

Following Glencore's move to set aside the award, the High Court considered whether a notice of arbitration and notice to appoint a sole arbitrator was validly served on a party by being sent to an individual employee's email account.

The judgment in Sino Channel was considered. The Judge in Glencore distinguished this case based on the fact that Conqueror had sent the notice to a relatively junior employee, rather than to a third party agent. The Judge further distinguished the "general authority to conduct business and [the] particular authority to accept service of legal process", which is a "serious and distinct matter".

The High Court concluded that service of the notice(s) of commencement of arbitration and appointment of a sole arbitrator had not been effective, and Glencore was entitled to relief.

Best Practice

The Court's emphasis in Sino Channel of the unusual nature of the case points to the conclusion that claimants will be better placed if they adopt a "belts and braces" approach to serving notices by using multiple delivery channels, including an organisation's main address. Indeed, the Court described Dana's decision not to serve notice on Sino's registered office address as "creat[ing] room for the present dispute". Meanwhile, the judgment in Glencore Agriculture serves as a reminder to parties to take care when serving notices by email.

These cases serve as a warning of the risks of not getting service right. When serving notices of arbitration, claimants should always take the necessary steps to identify the correct defendant(s) and the appropriate person(s) upon whom such notice should be served.