

RTI Ltd (Respondent) v MUR Shipping BV (Appellant)

Case ID: UKSC 2022/0172

Case summary

Issues

Where a contractual force majeure clause contains a proviso requiring the party which is affected by force majeure to exercise reasonable endeavours to overcome it, can the proviso require the affected party to agree to accept a non-contractual performance?

Facts

The case concerns a force majeure clause in a contract of affreightment (the "Contract"). The force majeure clause had a reasonable endeavours proviso at clause 36.3(d), which required the party which was affected by force majeure to exercise reasonable endeavours to overcome it.

Under the Contract the Appellant agreed to carry bauxite for the Respondent from Conakry in Guinea to Dneprobuzky in Ukraine from 1 July 2016 to 30 June 2018. The Contract required the Respondent to pay in US\$. The Appellant invoked the force majeure clause when US sanctions impeded the Respondent's ability to make US\$ payments. The Appellant served a force majeure notice on 10 April 2018. The Respondent rejected the notice and offered to pay the Appellant in Euros instead and to cover the cost of transferring the payment from Euros to US\$. The Appellant rejected this offer and suspended operations under the Contract.

The Respondent commenced arbitration under the Contract in June 2018. The arbitral tribunal found that the consequences of US banks' risk-averse reaction to sanctions could not have been avoided and therefore that any US\$ payments by the Respondent under the Contract would have been at least delayed.

However, the tribunal found that accepting payments in Euros, as the Respondent had proposed, was a realistic alternative which the Appellant could have adopted without detriment. The tribunal concluded that Appellant's case on force majeure "failed because it could have been overcome by reasonable endeavours from the party affected," and ordered the Appellant to pay damages.

The High Court allowed the appeal against the arbitral tribunal's decision and held that "reasonable endeavours" from the party affected within clause 36.3(d) of the Contract could not include accepting payment in Euro rather than US\$. The Court of Appeal (by a majority) allowed the Respondent's appeal and reversed the High Court's decision.

Judgment appealed

[\[2022\] EWCA Civ 1406](#)

Parties

Appellant(s)

MUR Shipping BV

Respondent(s)

RTI Ltd

Appeal

Justices

Lord Hodge, Lord Lloyd-Jones, Lord Hamblen, Lord Burrows, Lord Richards

Hearing start date

6 March 2024

Hearing finish date

7 March 2024

Watch hearing

6 March 2024 [Morning session](#) [Afternoon session](#)

7 March 2024 [Morning session](#)

Judgment details**Judgment date**

15 May 2024

Neutral citation

[2024] UKSC 18