



We Agreed to What? Lessons From a Recent Federal Court Decision on Arbitrability

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Cutting corners in a rush to conclude a lucrative business deal may lead to a contract that misses important legal terms and conditions, such as an arbitration clause, that the company actually intended to include in the agreement. Following appropriate contracting procedures is especially important for non-U.S. companies that expect resolution of their disputes by a neutral arbitration but, instead, could be hauled into a U.S. court with unfamiliar procedures under foreign law. A recent Oregon federal court decision denying a Dutch company's request to arbitrate its dispute with an Oregon customer aptly demonstrates this point.

In *Meduri Farms, Inc. v. DutchTecSource B.V.*, Case No. 3:17-cv-906-SI (D. Or. Dec. 5, 2017), a dispute arose between Meduri Farms, Inc. ("Meduri"), an Oregon-based dried fruit producer, and DutchTecSource B.V. ("DTS"), a Dutch food-processing equipment manufacturer. Meduri claimed that the equipment it bought from DTS never worked properly. Consequently, it refused to pay full amounts due to DTS and requested that DTS remove the equipment and refund all amounts paid plus additional damages. Meduri initially filed its lawsuit in a state court in Oregon alleging breach of warranty and breach of contract. DTS then removed the case to the United States District Court for the District of Oregon and filed a request for arbitration with the International Court of Arbitration at the International Chamber of Commerce ("ICC"), seeking arbitration in Amsterdam; the arbitration was later set in Vienna.

The parties then clashed in a duel of motions with each side seeking to pursue legal proceedings in their chosen forum. DTS filed a motion to refer the parties to the arbitration before the ICC and stay the federal court proceedings while Meduri filed a motion for preliminary injunction, seeking to enjoin DTS from pursuing arbitration against Meduri at the ICC in Vienna and therefore keep the case in the Oregon federal court.

The principal issue became which contract was the operative contract between the parties. DTS argued that the operative contract incorporated Orgalime Conditions,¹ which included an arbitration clause. The reference to Orgalime Conditions was part of an email exchange between the parties and was included in an offer of the equipment that Meduri ultimately did not buy. Meduri, on the other hand, argued that the contract alleged by DTS in its motion was not the proper contract between the parties. Rather, Meduri contended that the operative and enforceable contract between the parties was based on an exchange of emails that did not contain an arbitration clause. In deciding the motions, the court would be required to resolve the issue of arbitrability of the dispute, *i.e.*, whether the dispute was subject to arbitration.

In an attempt to engage in the ICC arbitration, DTS argued that the issue of whether the parties were subject to arbitration was a gateway issue that should be decided by the arbitrator and not the court. DTS argued further that even in the event the court concluded it should decide the gateway issue of arbitrability, then the court should deny the relief sought by Meduri because Meduri had agreed to a contract that expressly incorporated a set of conditions, which contained a mandatory ICC arbitration clause.

¹ *Organisme de Liaison des Industries Métalliques Européennes* ("Orgalime"), known in English as the European Engineering Industries Association, is a European organization representing the interests of European businesses in mechanical, electrical, and other similar industries. See *About Us*, ORGALIME, <http://www.orgalime.org/page/about-us> (last visited May 12, 2018). Among other things, Orgalime publishes general terms and conditions that industry members commonly incorporate into their agreements when doing business internationally.

The court disagreed with DTS. The court explained that the gateway issue of contract formation is presumptively for judicial resolution, absent other compelling reasons that could allow an arbitrator to consider such a challenge. The court thus analyzed whether DTS's earlier offer, which contained detailed technical specifications and an arbitration provision, or a later email, which included minimal details and did not include an arbitration provision created the operative contract at issue. Ultimately, the court concluded that it was the later email that constituted the operative agreement between Meduri and DTS because it contained essential terms necessary to create a contract. The court explained that both under the law of the State of Oregon and under the United Nations Convention on Contract for International Sales of Goods ("CISG") a contract between merchants for the sale of goods need not contain all of the material terms. The court stated that "the UCC and the CISG, in dealing with merchants, expressly provide[s] that such sophisticated parties do not need to memorialize all the material terms in their contracts and can create enforceable contracts with only a few essential terms." Thus, the court found that the later email, even though it did not contain all of the material terms, but contained quantity and price, constituted a valid offer by DTS to contract for the sale of the equipment, which Meduri accepted by a responding email and its subsequent conduct.

The court also emphasized that the parties must agree to delegate issues of arbitrability to the tribunal clearly and unmistakably for such delegation to be recognized by the court. The court noted, "Had DTS wanted to ensure ICC arbitration of any dispute that might arise with Meduri, DTS could have explicitly done so in a clear, unmistakable, effective, and enforceable way. It did not."

For these reasons, the court granted Meduri's motion for preliminary injunction and enjoined DTS from continuing to pursue arbitration against Meduri at the ICC, and denied DTS's motion to refer the case to the ICC and stay the case. A key component of the court's decision was that the parties involved were "assumed to be sophisticated business parties" and thus were expected to memorialize in their contracts all of the details of their transaction, such as technical specifications, delivery dates, warranties, arbitration, and other terms.

At the end of the day, this case highlights how important it is for companies to review their operating procedures to ensure that a final agreement contains terms and conditions that the company actually intended to include, including arbitration and applicable law clauses.

If you have any questions regarding international arbitrations or related matters, please contact one of the authors or any member of AGG's International Business Practice.

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