Case Update: Dassault Aviation SA v Mitsui Sumitomo Insurance Co Ltd (2024)

The decision from the Court of Appeal in the case of *Dassault Aviation SA v Mitsui Sumitomo Insurance Co Ltd* [2024] EWCA Civ 5 which considered contractual interpretation of a no-assignment clause, deciding that the assignment in question was not caught by the restriction because it had occurred as an operation of law rather than being made "**by a party**" to the sale contract.

The Court of Appeal rejected the earlier High Court decision that the voluntary action of placing insurance and subsequently claiming and accepting payment under the insurance had led to the transfer by operation of law. It is a further reminder that where the words in a contract are clear, the courts will apply the meaning of those words without needing to consider if they make "*business common sense"*, as may be the case where there are different possible interpretations.

Case summary and the High Court's Decision

Dassault Aviation SA ("**Dassault**") entered into an English law governed sale contract to manufacture aircraft for Mitsui Bussan Aerospace Co Ltd ("**MBA**") to supply to the Japanese Coast Guard. The sale contract included a no-assignment clause placing a restriction on assignment/transfer of rights under the sale contract without the prior written consent of the other party. MBA placed insurance to protect it from its liabilities for late delivery. The aircraft were delivered late and the Japanese Coast Guard claimed liquidated damages from MBA. MBA made a claim under its insurance policy. The insurer accepted the claim and paid MBA. Under Japanese insurance law, MBA's claim against Dassault under the sale contract was transferred by operation of law to enable the insurer to bring proceedings in its own name against Dassault. The insurer submitted a request for arbitration, however, Dassault challenged jurisdiction on the basis the sale contract prohibited assignment/transfer of rights. The High Court supported the argument that the transfer to the insurer was prohibited by the no-assignment clause in the sale contract and found in Dassault's favour, deciding that whilst the claim was transferred to the insurer by operation of Japanese law, this was ultimately as a result of the voluntary placing of insurance by MBA.

The Court of Appeal's Decision

Overturning the High Court's decision and finding in MSI's favour, the Court of Appeal found that the assignment did not breach the no-assignment clause as the correct question was whether the transfer was made by MBA, not whether the transfer was caused *as a consequence of certain actions taken by MBA*. The transfer was not made by MBA, it was made by operation of law. The Court took an objective view of the language in the clause and found it to be clear and unambiguous and determined that the no-assignment clause specifically prohibited assignments made by a party to the sale contract. There was no need to undertake a "*detailed iterative process of interpretation*" to decide between two possible constructions of the clause. As this assignment had occurred as an operation under Japanese law, this transfer fell outside the restrictions of the no-assignment clause.

Our previous briefing (Client Briefing (cms-lawnow.com)) which reported on the High Court's decision discusses more fully the factors lenders should take into account when considering taking security by way of assignment.