Title:
ICC Award No. 14581, YCA 2012, at 62 et seq.

Permission Text:

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Content:

II. Interpretation of Arbitration Clause

[...]

1. Interpretation Criteria

[...]

c. Common standards of Swiss law and international law

[22] “From the foregoing, it can be seen that the rules of interpretation under Swiss law and under international law are very similar. Both Art. 18(1) of the Swiss Code of Obligations and the aforementioned provisions of international law provide that in a first step the parties’ common intent has to be established (subjective interpretation).”

[23] “In doing so, the literal meaning or a sometimes false or incorrect wording or expression is not decisive, but the true intent of the parties has to be ascertained. As a result, a term may be given a meaning which differs from both the literal meaning and the meaning which a reasonable person would give to it.”

[24] “If such common intention cannot be established, under Swiss law it then must be examined, based on the principle of good faith, how an average honest and diligent person had to reasonably understand or interpret the other party’s declarations and the particular provision (objective interpretation). The PECL and the UNIDROIT Principles both seek the understanding which a reasonable person of the same kind as the parties would give to the term, Art. 4.2(2) of the UNIDROIT Principles, Art. 5:101(3) of the PECL, the so-called ‘reasonableness’ test. While these standards differ in detail, they have in common that any objective interpretation must be reasonable.

[25] “In order to establish the Parties’ common intent, or, failing such common intent, to determine the objective/reasonable meaning of a term, one has to consider all relevant circumstances which include under both sets of rules the following: (i) the wording, (ii) the history of the Supply Agreement, (iii) the circumstances surrounding the entering into of the Supply Agreement, including time and place, (iv) the parties’ conduct after the entering into of the Supply Agreement, (v) the purpose of the Supply Agreement and the parties’ interests and (vi) business usage.”

12 “Abdullah, op. cit., p. 18; Commentary of the UNIDROIT Working Group for the Preparation of Principles for International Commercial Contracts to Arts. 4.1 and 4.2; Bianca/Bonell, Commentary on the International Sales Law, Milan 1987, Art. 8 CIGS, p. 98.”

13 “Art. 18(1) of the Swiss Code, Art. 5:101 (1) PECL.”

14 “Commentary of the UNIDROIT Working Group for the Preparation of Principles for International Commercial Contracts..."
to Art. 4.1."

15 “Swiss Supreme Court, 8 July 2003, ATF 129 III 675 (680); Abdullah, op. cit., p. 19; Wiegand, op. cit., Art. 18 Swiss Code, no. 11.”

16 “Commentary of the UNIDROIT Working Group for the Preparation of Principles for International Commercial Contracts to Arts. 4.1 and 4.2; Baumann, Regeln der Auslegung internationaler Handelsgeschäfte, Göttingen 2004, p. 59.”

17 “See Art. 4.3 of the UNIDROIT Principles, Art. 5:102 of the PECL and Wiegand, op. cit., Art. 18 Swiss Code, nos. 18 et seq. See also Expert H's expert opinion, para. 29 with further references.”

Referring Principles:

IV.5.1 - Intentions of the parties