



PAX MOOT

PAX Moot Court Competition 2022 – Borrás Round

CASE

Mr. Smith, a UK citizen is a solicitor practicing in the UK and Singapore. Mr. Smith's specific field of work is development aid to NGOs in Asia. He calls himself the "bridge across the development canyon". For many years his main focus was access to justice, but recently he has moved more into the area of clean and affordable energy. He assists wealthy business people to invest in such a manner that they can use a part of their profits for NGOs. In his private time, Mr. Smith also invests his own money. In 2017, Mr. Smith purchased ten apartments in Paris, France. In 2018, a construction company approached Mr. Smith and proposed to him to convert three of the apartments into a carbon-neutral multifunctional office space. Mr. Smith was thrilled to participate in this project: he dreamed to foster carbon neutral lifestyle activities and the space would permit him to make the space available to NGOs looking for temporary workspace. In order to finance the project, he considered different options including collaborating with the Singapore Green Building Associations, which promotes innovative industry solutions to enhance green building solutions both regionally and internationally to help build more sustainable cities for better living.

Mr. Smith decided to invest EUR 4,5 million in the project and found out that the interest of the loans in Singapore are rather low. He approached different banks in Singapore to fund his investment. The Singapore Investment Bank granted

Mr. Smith credit in the amount of EUR 4,5 million against mortgage of Mr. Smith's ten apartments in Paris to be returned on equal instalments for the period of 15 years.

The Credit Contract between Mr. Smith and the Singapore Investment Bank contained a specific dispute resolution clause as follows:

In the event of any dispute arising out of or in connection with the present Credit Contract, the parties shall first refer the dispute to the International Chamber of Commerce International Centre for ADR (ICC-ADR) to resolve the dispute in an amicable and fair manner.

If the dispute has not been settled by mediation by said institution within 45 days following the filing of a request, the dispute shall be resolved by the competent court of Singapore.

Mr Smith wrote to the bank and suggested that if the dispute cannot be settled amicably, the International Commercial Courts of Paris (ICCP) should have jurisdiction. The legal department did not immediately respond, and Mr Smith signed the documents, but crossed out "competent court of Singapore" and wrote in pen " International Commercial Courts of Paris (ICCP)". A few months later, he emailed the bank's legal department again and they responded by mail in the following manner:

Dear Mr Smith,

As a practicing solicitor, you no doubt know that our clauses are boiler-plate. We have checked the possibilities offered by the ICCP and their fees

and we agree that we should consider changing the clause for our European clients. Thank you for bringing this to our attention.

The legal team

Soon thereafter, at the beginning of 2020, COVID-19 spread and the workload in the law firm of Mr. Smith in London substantially decreased. Naturally, severe dismissals followed. In May 2020, the firm laid off 125 staff members and in June 2020; another 150 staff members along with Mr. Smith.

Thus, in June 2020 Mr. Smith had no job and enormous debt with the Singapore Investment Bank. Mr. Smith was unable to pay the July and August instalments to the Bank. On 25 October 2020, due to three late payments, the Bank declared the credit premature and initiated proceedings before ICCP against Mr. Smith under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment Procedure. On 25 November 2020, a European Order for Payment was issued.

The court tried to serve the European Order for Payment, but during the entire December 2020 Mr. Smith was not able to be found at the address specified in the contact details of the Credit contract in the UK, nor on his working address (as he no longer worked for the law firm), neither on his mortgaged apartments' addresses.

Beginning of January 2021, the court received Notice of return stating that Mr. Smith was visiting his sister in Amsterdam according to his neighbours.

On 28 January 2021, the court attempted to serve the European Order for Payment for a second time, managed to find Mr. Smith's Facebook profile and served the order in French via Messenger on the next day.

Mr. Smith was not sure whether there was a real case pending against him at the ICCP and on 1 February 2021 he filed a request for mediation to the ICC-ADR. Mr. Smith requested the Bank to reschedule his debt. He relied on the Bank's sustainability policy, published on his website, which states (excerpt):

Singapore Investment Bank subscribes to sustainability. In all we do, we aim to reverse the negative impact on the planet. Customers will see this in our business practices, our investment products and the types of projects we fund (not only the most financially viable!).

The Bank agreed to renegotiate the repayment schedule in a way that Mr. Smith ought to pay EUR 500.000 within 7 days and pay the rest of the amount of equal instalments in 10 years. From March on, Mr Smith's payments would be lower on the condition that he would find funding from Green Energy Company (GEP), based in Norway, to refund part of the debt. During the negotiations Mr Smith said that he was sure that the agreement with GEP would work out and showed them initial mails in which GEP was enthusiastic to participate in his project. The Singapore Investment Bank agreed to waive the EPO court proceedings if Mr. Smith complies with the first instalment of EUR 500.000 and if the refunding through GEP was successful.

The parties settled in an agreement which was signed on 14 February 2021 by Mr. Smith and the Singapore Investment Bank.

Mr. Smith paid the February instalment. When the bank heard nothing from him by 15 March, they contacted him. He admitted that he had not yet been able to secure the deal with GEP.

When the bank wanted to resume enforcement, Mr. Smith lodged a statement of opposition to the European Order for Payment. He stated that he should be considered a consumer, as the loan agreement was not connected to his work. He invoked the waiver, but the bank argued that this was conditional and that the condition had not been met. Mr. Smith was of the view that the time for fulfilling the condition had not yet lapsed and that the settlement agreement had to be recognised.

On 30 March 2021 the ICCP found that the time limit for opposition laid down in Article 16(2) Regulation 1896/2006 was not complied with and declared the European Order for Payment enforceable.

On 9 April 2021 the Bank started the actual enforcement in France. Mr. Smith received an invitation for voluntary performance of his obligation via Messenger on 13 April 2021 from a bailiff.

At that stage, on 15 April 2021, a stay of the enforcement proceedings against Mr. Smith was granted upon his request. On the same day, Mr. Smith filed an application for a review of the European Order for Payment under Article 20 Regulation 1896/2006 before the ICCP.

The Singapore Investment Bank on its turn considered that the application for review of the European Order for Payment was ill-founded and filed a statement in this regard. For the event that the application for review was justified, the Singapore Investment Bank filed a subsidiary claim based on the choice-of-court agreement in the contract and requested payment of the full amount of the loan.

The Claimant shall represent Mr. Smith and the Defendant shall represent the Bank before the IPCC. The Claimant and the Defendant are invited to present arguments on the following issues:

- 1. Is the application for review filed by Mr. Smith justified due to deficiencies in the service and/or due to lack of jurisdiction over the claim?**
- 2. In case the application for a review is successful, does the ICCP have jurisdiction to decide on the claim filed by the Bank based on the choice-of-court agreement in the credit contract?**
- 3. Can the settlement agreement of 14 February 2021 be recognised in France? For this question participants may assume that France ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Convention on Mediation”).**
- 4. Which law is applicable to the loan agreement?**
- 5. The ICCP would like information on which instruments (i.e. not English domestic law) might apply to the recognition in England of the judgment on the subsidiary claim. The judges request both parties to bring arguments on the matter.**



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