

Silver Queen Marine Ltd-v- Persia Petroleum Services (18/11/2010)

When is a Deed delivered? .

The Message: Parties need to be careful not to settle disputes prematurely.

The Case: The High Court has clarified when it is too late for a party to withdraw from a settlement

Silver Queen was sub-contracted by Persia Petroleum to carry out an oil exploration survey in the Persian Gulf in 2008/9. Persia Petroleum were carrying out exploration and drilling services for the Iranian Offshore Oil Company ("IOOC").

A dispute arose regarding payment and proceedings were commenced. The parties then agreed to settle for 8.1 million euros subject to a Settlement Deed being prepared and completed. Persia Petroleum signed the agreed Deed and their solicitors then sent it on 21 July 2009 to Silver Queen's solicitors for signature by Silver Queen.

On the morning of 22 July 2009, Persia Petroleum's solicitors wrote to Silver Queen's solicitors stating that their client was withdrawing from the settlement as they had just learnt that Silver Queen had previously held negotiations direct with IOOC in which they had offered to settle for 6.5 million euros. They pointed out that such negotiations will have prejudiced the chances of Persia Petroleum now recovering from IOOC the full 8.1 million euros they had agreed to pay Silver Queen.

On the afternoon of 22 July 2009, the completed Settlement Agreement was returned to Persia Petroleum's solicitors but they maintained it was ineffective as their client had decided to withdraw before it was signed and dated and returned by Silver Queen.

The Court had to decide when a Deed was to be held to have been executed by a party and the party bound by it? A Deed does not bind a party until it has signed, sealed and then delivered it to the other party. There was no dispute that it had been signed and sealed but Persia Petroleum claimed it had not been delivered.

There are 3 ways a Deed can be delivered. Firstly, it can be delivered unconditionally so that it is irrevocable and takes immediate effect. Secondly, it can be delivered conditionally ("in escrow") so it is irrevocable but does not take effect until the conditions are fulfilled. Thirdly, it can be delivered conditionally upon the basis it is revocable until the conditions are met.

Whilst the Court heard evidence as to what the parties had believed and intended, it is the objective intention of the parties that has to be discerned. In this case the Settlement Deed had been delivered simply on the basis it was then to be signed by Silver Queen and returned. The terms had already been agreed and nothing was said about reserving any right to withdraw.

The Court held that the Deed had been delivered irrevocably and simply subject to the condition that it be signed and returned. Accordingly, Persia Petroleum could not recall the Deed and were bound by its terms once Silver Queen signed, dated and returned it the following day. If Persia Petroleum had wanted to reserve its right to withdraw, its solicitors would have had to have delivered the Deed on that basis.

Persia Petroleum also argued that they were not bound by the Deed because Silver Queen had had a duty to disclose its previous dealings with IOCC to them. However, the Court held that parties to a settlement do not ordinarily owe any duties of disclosure to each other. Otherwise, they would each have to disclose the weaknesses of their own positions. Parties to litigation may, therefore, be well advised to wait until after the disclosure of documents before agreeing to settle.

So, Persia Petroleum were bound by the Settlement Deed and will now be liable for the costs of the proceedings as well. Parties to any Deeds will now want to reserve their rights to withdraw until the last possible moment.