

SEVENTEENTH ANNUAL

**WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Vienna, Austria
26 March to 1 April 2010

Organized by:

**Association for the organisation and promotion of the
Willem C. Vis International Commercial Arbitration Moot**

and

SEVENTH ANNUAL

**WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong
15 - 21 March 2010

Organized by:

The Chartered Institute of Arbitrators (East Asia Branch)

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Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

July 15, 2009

Ms. Emma Matthews, Secretary General
Australian Centre for International Commercial Arbitration
Level 6, 50 Park Street
Sydney NSW 2000
Australia

Subject: Request for Arbitration and Statement of Claim

Dear Ms. Matthews:

I represent Mediterraneo Engineering Co. Pursuant to Article 4 of ACICA Arbitration Rules, Mediterraneo Engineering Co. hereby submits two copies of its request for arbitration against Equatoriana Super Pumps S.A. The request for arbitration also includes the statement of claim required by Article 21. I enclose a copy of my power of attorney to represent Mediterraneo Engineering Co. in this arbitration.

The total claimed is USD 1,534,550 plus interest and costs. The registration fee of A\$2,500 has been transferred to the bank account you indicated to my assistant yesterday on the telephone.

Mediterraneo Engineering Co. nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached.

The contract giving rise to this arbitration provides that the seat of arbitration is Vindobona, Danubia. I understand from Article 19.1 of your Arbitration Rules that this is an acceptable seat for the arbitration.

Sincerely yours,
(Signed)
Horace Fasttrack

Encl:
Power of Attorney
Request for Arbitration and Statement of Claim
Copy payment order
Arbitrator 1 curriculum vitae

Mediterraneo Engineering Co., Claimant

v.

Equatoriana Super Pumps S.A., Respondent

Notice of Arbitration and Statement of Claim

I. Parties

1. Mediterraneo Engineering Co. [hereafter “Engineering”] is a corporation organized under the laws of Mediterraneo. It is located at 415 Industrial Street, Capitol City, Mediterraneo. The telephone and telefax numbers are (0) 148-2020 and (0) 148-2021. The e-mail address is info@engineering.me. Engineering will be represented by Horace Fasttrack, Advocate at the Court, 75 Court Street, Capitol City, Mediterraneo. Tel. (0) 146-9845; Telefax (0) 146-9850; Fasttrack@lawyer.me

2. Engineering provides planning services for urban and rural development. It implements those plans as well as projects planned by other companies. In particular, it has carried out irrigation projects in Mediterraneo and six foreign countries.

3. Equatoriana Super Pumps S.A. [hereafter “Super Pumps”] is a corporation organized under the laws of Equatoriana. It is located at 58 Industrial Road, Oceanside, Equatoriana. The telephone number is (0) 927 8415. The telefax number is (0) 927 8410 and the general e-mail address is info@pumps.eq.

4. Super Pumps is a manufacturer of pumps for agricultural, municipal, and industrial water and irrigation systems. It sells to over 50 countries, including Mediterraneo. It provided Engineering with pumps for one of its projects two years prior to the events that have led to this arbitration.

II. Facts

5. On 4 May 2008 Mr. Samuel Barber of Engineering telephoned Mr. Richard Haycock of Super Pumps and informed him that Engineering was considering responding to a contract tender that had been published by Oceania Water Services [hereafter “Water Services”]. Water Services is a regional governmental entity in Oceania that provides water for household, industrial and agricultural uses. The tender offer was for the renewal of an irrigation project in the northwestern portion of Oceania, a country contiguous to Mediterraneo. Mr. Barber stated that the proposed irrigation project was similar to one in which the two firms had collaborated in Patria two years previously. Mr. Barber also stated that Engineering would be interested in purchasing the necessary pumps from Super Pumps. Mr Haycock replied that Super Pumps would be interested in working with Engineering on the bid and later, if the bid was successful, in furnishing the pumps for the project.

6. The following day Mr. Barber wrote a letter to Mr. Haycock confirming the conversation. (Claimant's Exhibit No. 1). Super Pumps reviewed Engineering's proposed bid and suggested which pumps would be needed and the prices at which they could be made available. A draft contract for the pumps was prepared contingent on the award of the contract for the irrigation project to Engineering.
7. On 25 June 2008 Water Services awarded the contract for the irrigation project to Engineering. Claimant's Exhibit No. 2 sets forth the letter from Mr. Barber to Mr. Haycock announcing the success of the bid. The contract for the sale of the pumps, which is the subject matter of this arbitration, was signed by the representative of Super Pumps on 1 July 2008, having already been signed by the representative of Engineering. (Claimant's Exhibit No. 3) The contract called for the delivery of pumps of various sizes and characteristics for distribution of the water into the fields plus three medium sized pumps, designated the P-52, to draw water from a reservoir that had previously been created for hydroelectric purposes.
8. The contract provided in part that the pumps were to meet certain technical specifications that are not in issue. Super Pumps warranted that the pumps were in compliance with all regulations in Oceania relating to the pumps. As set out below, the P-52 pumps as they were originally expected to be delivered would not have conformed to all of the applicable regulations by the time Super Pumps was ready to deliver them. Although the field pumps would have been in regulatory compliance under the modified delivery schedule set out below, they were not in regulatory compliance by the time Super Pumps in fact was ready to make delivery.
9. The contract contained the DES (Incoterms 2000) trade term providing that delivery to Engineering was to be at the port of Capitol City, Mediterraneo on or before 15 December 2008. It was important to Engineering that this delivery date was kept, since later delivery would impair Engineering's ability to perform under its contract with Water Services. Super Pumps was aware of the importance of the delivery date. (See Claimant's Exhibit No. 2)
10. On 1 August 2008 the Oceania Office of Environmental Health adopted a regulation restricting the use of beryllium in copper and steel products that had moving parts and that were to be used in enclosed spaces. On the day on which the new regulation was issued, Water Services sent a notice to Engineering and all other firms with which it had open contracts referring to the new regulation. (Claimant's Exhibit No. 4) Engineering immediately notified Super Pumps and attached a copy of the notice from Water Services. (Claimant's Exhibit No. 5)
11. The iron ore that is mined in Equatoriana contains, as do all such ores, traces of many of other elements including, in Equatoriana's case, beryllium. Although it would not be unduly difficult to eliminate the beryllium during the refining of the ore and the subsequent production of steel, such is not normally done in Equatoriana. Since beryllium can be introduced into the steel-making process to harden the steel, steel producers in Equatoriana see no need to eliminate it; after all, why spend money removing a naturally-occurring component to replace it with another hardening agent which would have to be imported and paid for? While the pumps to be used in the outdoor portions of the irrigation project would not be affected by the new regulation, the three P-52 pumps, the larger size to be used to draw water from the reservoir, would be housed in a pump house. Consequently, Super Pumps had to procure new steel for the three P-52s.

12. Super Pumps had anticipated a completion date for all of the pumps of 30 October 2008. (Claimant's Exhibit No. 6) Because of the need to procure new steel for the P-52s, production was completed on 15 November 2008. The pumps were loaded on a ship for delivery to Capitol City, Mediterraneo, which left port on 22 November 2008. The expected arrival date of the ship was 22 December 2008, i.e. one week after the contract date for delivery. (Claimant's Exhibit No. 7) Engineering reluctantly agreed to this delay in delivery. There would not have been much time left to unload the pumps, clear customs and deliver them by truck to the irrigation site in Oceania by the date they were due under the irrigation contract. However, if the ship had arrived by 22 December 2008, it still would have been possible. (Claimant's Exhibit No. 8)

13. Upon departure of the ship and issuance of the onboard bill of lading, Super Pumps presented the documents called for under the letter of credit to the confirming bank and the credit was paid. Super Pumps thereby was paid in full for the pumps, even though it had not as yet made delivery at the port of Capitol City, Mediterraneo, as called for by the DES trade term.

14. The scheduled route for the ship called for it to transit the Isthmus Canal on 29 November 2008. However, on 28 November 2008 an accident involving another ship caused extensive damage to the locks that took ten days to repair. (Claimant's Exhibit No. 9) Because of the backlog of ships waiting to transit the canal in both directions the vessel transited the canal on 12 December 2008 and arrived at Capitol City, Mediterraneo on 6 January 2009. (Claimant's Exhibit No. 10)

15. Throughout the month of November 2008 there had been extensive riots in Oceania. On 1 December 2008 the government resigned and the military took over. Although the legality of the military takeover has been hotly disputed, the military regime remains in place to this day. No issue arises in this arbitration concerning the legality of the takeover and we are proceeding here on the assumption that the takeover was indeed legal; however, for the avoidance of doubt, Engineering reserves its position and all its rights to take separate action in such regard.

16. On 28 December 2008 the military regime passed a decree on environmental matters effective 1 January 2009. As it affects this arbitration, the decree prohibited the import or manufacture of products containing any amounts at all of a number of elements, including beryllium. The scientific justification for this prohibitory order is open to serious question but is not in issue in this arbitration; however, for the avoidance of doubt, Engineering reserves its position and all its rights to take separate action in such regard. Individual exceptions would be made upon application to an office that was to be established. (Claimant's Exhibit No. 11) A spokesman for the military regime stated that it was expected that the office would be functioning within two months. It was widely believed that the decree was intended by the military regime as one of several measures to appease the general public by showing its concerns for the environment (and the safety of workers).

17. When the decree was passed on 28 December 2008 it was clear that the ship with the pumps could not arrive before 1 January 2009. As noted above, the ship was eight days away at best.

18. In addition to the environmental decree, the military regime cancelled a number of projects that had either not as yet begun or that were in a sufficiently early stage that they could be cancelled without significant losses. One of the instructions given to the various departments of the administration was that projects involving a foreign supplier of goods or services that had in

any measure breached a term of the contract should be cancelled on the grounds of the breach. Exceptions were to be made only with the approval of the Military Council. These extreme actions are understood to have been taken by the military regime in order to conserve foreign exchange.

19. On 5 January 2009 Water Services cancelled the contract for irrigation project IR 08-45Q on the grounds that the pumps had not as yet been delivered to Oceania as required by the contract. (Claimant's Exhibit No. 12) Although it may not have been known to Water Services at the time, the pumps other than the P-52 would have violated the military regime's environmental decree of 28 December 2008. Engineering immediately notified Super Pumps and avoided the contract for the pumps. Return of the purchase price that had been paid to Super Pumps by means of the documentary credit was requested. There was also an indication that there might be a claim for damages because of the loss of the irrigation contract. (Claimant's Exhibit No. 13)

20. On 15 January 2009 Mr. Horace Fasttrack as counsel for Engineering wrote to Mr. Haycock stating that the damages arising out of the cancelled contract between Engineering and Water Services had been calculated at US\$320,000. Since the cancellation of the irrigation contract was a direct result of the breach of contract by Super Pumps, he made demand on Super Pumps for that amount as well as return of the purchase price of US\$1,214,550 for a total of US\$1,534,550. He also asked for instructions as to the desired disposition of the pumps. (Claimant's Exhibit No. 14)

21. During the next two months Engineering unsuccessfully pressed Super Pumps on its claim, but Super Pumps reiterated its position that it had fulfilled its contractual obligations. Claimant's Exhibit No. 15 sets out one of the letters from the lawyer for Super Pumps. There were other communications, but they repeated the same arguments.

22. Super Pumps' offer stated in the letter to assist us in disposing of the pumps was written in such a way as to imply that Engineering was the owner of the pumps. However, since the contract of sale had been avoided, the pumps belonged to Super Pumps. Engineering's efforts to sell the goods were made pursuant to CISG Article 88. Those efforts were in vain and the pumps remain in Engineering's warehouse. (Claimant's Exhibit No. 16)

23. On 18 March 2009 Mr. Fasttrack, counsel for Engineering, wrote to Mr. Langweiler, counsel for Super Pumps, suggesting that the conference on The Future of Irrigation that was to be held in Vindobona on 28 to 30 May 2009 would be an opportune time for a conciliation as provided in clause 18 of the contract. Super Pumps agreed and the conciliation proceedings were held as provided for. They were not successful and on 4 June 2009 the conciliator wrote to both parties and the Danubia Conciliation and Arbitration Center stating that efforts at conciliation were no longer justified.

III. Applicable law

24. The contract has no choice of law clause. Equatoriana, Mediterraneo, Oceania and Danubia are all party to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

25. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. Danubia has also adopted the UNCITRAL Model Law on International Commercial Conciliation. Equatoriana, Mediterraneo, Oceania and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

IV. Arbitration Jurisdiction

26. The arbitration clause is found in paragraph 18 of the contract. It provides as follows:

18. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by conciliation in accordance with the UNCITRAL Conciliation Rules. The parties will be represented by their Chief Executive Officer. The conciliation shall take place in Vindobona, Danubia and be administered by the Danubia Arbitration and Conciliation Center.

If the dispute has not been settled pursuant to the said conciliation procedure, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Vindobona, Danubia. The language of the arbitration shall be English. The number of arbitrators shall be three.

27. The conciliation procedure, which is a prerequisite to arbitration under the arbitration agreement, has been held and failed. Therefore, all requirements to the commencement of arbitration have been fulfilled.

V. Substantive Legal Conclusions

28. Super Pumps was in fundamental breach of the contract dated 1 July 2008 in two regards: 1) the field pumps were not in conformity with the regulations in Oceania, as the contract required in clause 2. The relevant date for determining whether the pumps were in compliance was the date of performance, which under the DES term of the contract was the date they were delivered to the port of Capitol City, Mediterraneo. 2) Because the pumps were delivered later than the date the contract called for delivery, even as extended to 22 December 2008, they could not be used in the irrigation project IR 08-45Q as intended. Super Pumps was aware that the political situation in Oceania was tense and that it was important that the irrigation contract, and therefore the sales contract, was performed on time.

VI. Appointment of Arbitrator

29. The Claimant appoints the following individual as its party-appointed arbitrator:

Ms. Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
Email: arbitrator1@lawyers.mb

VII. Relief Requested

30. Mediterraneo Engineering Co. requests the Tribunal to find:

- that the tribunal has jurisdiction to consider the dispute between Mediterraneo Engineering Co., claimant, and Equatoriana Super Pumps S.A., respondent;
- that there was a breach of the contract by Equatoriana Super Pumps S.A.;
- that the breach of the contract constituted a fundamental breach;
- that Mediterraneo Engineering Co. properly avoided the contract;
- that Equatoriana Super Pumps S.A. is obligated to reimburse Mediterraneo Engineering Co. the purchase price of the pumps in the amount of US\$1,214,550;
- that Equatoriana Super Pumps S.A. is liable for damages arising out of the breach of the contract in the amount of US\$320,000.

31. Mediterraneo requests the tribunal to order Equatoriana Super Pumps S.A.

- to reimburse Mediterraneo Engineering Co. the purchase price of the pumps in the amount of US\$1,214,550;
- to pay damages in the amount of US\$320,000;
- to pay interest on the said sums; and
- to pay the costs of arbitration.

(Signed)
Horace Fasttrack

July 15, 2009

Claimant's Exhibit No. 1

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

5 May 2008

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Dear Mr. Haycock,

It was a pleasure talking to you on the telephone yesterday. I look forward to working with you and your colleagues on the bid we are intending to submit to Oceania Water Services for the irrigation project IR 08-45Q.

As I told you, Oceania Water Services is planning to renew its irrigation works in the northwest of Oceania. They are looking for a firm to furnish and install new pumps and to do certain other associated work.

The project appears to be similar to the one on which we collaborated in Patria two years ago. Our personnel will be in contact with you within the week for discussion about the proper pumps for the various elements of the project. Naturally, we would expect to purchase the pumps from you if we are awarded the project contract. A large number of small to medium sized pumps for distribution of the water will be necessary as well as three medium sized pumps for drawing water from the Sile Reservoir.

I am sure that working together we can prepare a bid for the project that has a high likelihood of success.

Sincerely,
(Signed)
Samuel Barber
Director

Claimant's Exhibit No. 2

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

25 June 2008

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by e-mail

Dear Mr. Haycock,

As I told you on the telephone earlier today, we have been awarded the contract for the irrigation project IR 08-45Q in Oceania.

The draft contract for the sale of the pumps will be put in form for signing by our two firms within the next day. It will be sent to you by courier for signature as soon as it is ready.

I would like to underline the importance of meeting the delivery date called for in the contract (which remains the same as that in the draft contract). Our contract with Oceania Water Services has strict performance times with substantial penalties attached to delays and any delay in your delivery of the pumps would endanger our ability to meet at least some of the performance times. The people in Oceania are nervous about the political situation, which is leading them to be very strict in ensuring that all will be done properly.

I do not wish this letter to close with a negative tone. We are very pleased to have been awarded the contract with Oceania Water Services and we look forward to our further collaboration on this and, hopefully, further projects in the future.

Sincerely,
(Signed)
Samuel Barber
Director

Claimant's Exhibit No. 3

Contract Excerpts

1. Equatoriana Super Pumps S.A. hereby sells to Mediterraneo Engineering Co. the pumps from its N series as described in Annex I together with three P-52 pumps for a total price of US\$1,214,550 DES (Incoterms 2000) Capitol City, Mediterraneo. Delivery is to be in a single shipment and effected by 15 December 2008. The pumps are for installation in Oceania by Mediterraneo Engineering Co. under the contract between it and Oceania Water Services signed 25 June 2008 for the irrigation project IR 08-45Q.

2. The pumps shall meet the technical specifications set out in Annex I. Equatoriana Super Pumps warrants that the pumps are in compliance with all relevant regulations for importation into Mediterraneo and for use in Oceania.

3. Payment to be made against documentary credit subject to UCP 600 issued by a first class bank.

18. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by conciliation in accordance with the UNCITRAL Conciliation Rules. The parties will be represented by their Chief Executive Officer. The conciliation shall take place in Vindobona, Danubia and be administered by the Danubia Arbitration and Conciliation Center.

If the dispute has not been settled pursuant to the said conciliation procedure, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Vindobona, Danubia. The language of the arbitration shall be English. The number of arbitrators shall be three.

(Signed)
Mediterraneo Engineering Co.

(Signed)
Equatoriana Super Pumps S.A.

1 July 2008

Claimant's Exhibit No. 4

OCEANIA WATER SERVICES

NOTICE

This notice is addressed to all who have open contracts with Oceania Water Services for delivery of goods.

Earlier today the Oceania Office of Environmental Health issued a regulation restricting the use of beryllium in copper and steel products that had moving parts and that were to be used in enclosed spaces.

The Office of Environmental Health stated that studies had shown that airborne particles containing beryllium increased significantly the long-term risk of cancer. While the major focus of the regulation is on the environmental effects arising from the production of products made of copper and steel containing beryllium, the regulation also restricts the installation of new machinery with moving parts that are to be used within an enclosed space. The regulation is effective immediately upon its issue.

We bring this new regulation to your attention so that you may furnish conforming goods in place of any that would violate the regulation.

1 August 2008

Claimant's Exhibit No. 5

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

1 August 2008

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by e-mail

Dear Mr. Haycock,

I am attaching to this letter a copy of the notice received today from Oceania Water Services. It reports that the Oceania Office of Environmental Health issued a regulation restricting the use of beryllium in copper and steel products that had moving parts and that were to be used in enclosed spaces.

Since the P-52 pumps you are to send to us for the irrigation project would be enclosed in a pump house, they would be covered by the regulation. I seem to remember that the ore mined in Equatoriana has beryllium in it. If that means the steel used in producing your pumps contains beryllium, you will have to find steel from some other source in producing those pumps.

It would seem that there will be no difficulty with the field pumps you are to send us.

Sincerely,
(Signed)
Samuel Barber
Director

Encl: Oceania Water Services notice

Equatoriana Super Pumps S.A.

58 Industrial Road
Oceanside, Equatoriana
Tel. (0) 927 8415
Fax (0) 927 8410
info@pumps.eq

Richard Haycock
Sales Manager

Haycock@pumps.eq

2 August 2008

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Sent by e-mail

Dear Mr. Barber:

I am in receipt of your message of yesterday. This is a rather disturbing development. As you indicated in your message, the steel produced in Equatoriana has beryllium in it naturally, which is one of the reasons it is so durable. I cannot understand the reason for the regulation. It is correct that beryllium dust in the atmosphere has the potential to cause health problems. We are very careful in our manufacturing procedures to protect our work force and meet all of the workplace standards.

Having said that, the dust that would be produced from the wear of the moving parts in a machine made from steel containing beryllium would not even be measurable in the air. Whoever drafted this regulation simply does not understand what they are doing but, at least for the present, we both have to accept that this is the current law in Oceania.

We had expected to have completed the manufacture of the pumps by 30 October. However, procuring the steel, which will have to be imported, for the P-52 pumps, will delay the completion of the job by several weeks. Moreover, there will be an increase in costs of approximately US\$30,000.

Since all of the pumps that we will be shipping to you were regulation-compliant for export to Oceania when the contract was signed, we will have fulfilled our contractual obligation in that regard.

Naturally, we will procure the substitute steel so that you will have pumps that you will be able to install. However, we cannot be held responsible for the delay in shipping the pumps to you. Moreover, we cannot be expected to absorb the extra expense caused by the completely unforeseen change in the regulations in Oceania. As is obvious, we have no direct relationship with Oceania and had no reason to be monitoring political or regulatory developments, as you have.

Sincerely,
(Signed)
Richard Haycock
Sales Manager

Claimant's Exhibit No. 7

Equatoriana Super Pumps S.A.

58 Industrial Road
Oceanside, Equatoriana
Tel. (0) 927 8415
Fax (0) 927 8410
info@pumps.eq

Richard Haycock
Sales Manager

Haycock@pumps.eq

22 November 2008

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Sent by e-mail

Dear Mr. Barber:

I am pleased to be able to report that the pumps for the Oceania irrigation project have left port on the Merry Queen. The shipping and other documents you will need to take delivery and for customs clearance are being sent to you.

The Merry Queen should pass the Isthmus Canal around 29 November and arrive at Capitol City around 22 December. Although this will mean that arrival will be a week later than originally anticipated, you should be able to truck them to the project site in Oceania in more than sufficient time to meet your contract dates.

Sincerely,
(Signed)
Richard Haycock
Sales Manager

Claimant's Exhibit No. 8

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

24 November 2008

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by e-mail

Dear Mr. Haycock,

I am in receipt of your letter of 22 November 2008.

Arrival of the ship with the pumps on 22 December means that the pumps will arrive a week later than contracted for. We realize that there is little that can be done about it now, so we have to go along with you.

Normally, a week delay in the delivery of the pumps would be of little importance. However, I must emphasize what you already know. The schedule for moving the pumps to the irrigation site in Oceania will be very tight and it is imperative that we meet that schedule. The people in Oceania are nervous.

Any further delays and the entire irrigation project may be at risk.

Sincerely,
(Signed)
Samuel Barber
Director

Claimant's Exhibit No. 9

Equatoriana Super Pumps S.A.

58 Industrial Road
Oceanside, Equatoriana
Tel. (0) 927 8415
Fax (0) 927 8410
info@pumps.eq

Richard Haycock
Sales Manager

Haycock@pumps.eq

28 November 2008

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Sent by e-mail

Dear Mr. Barber:

We have just been notified by our freight forwarder that there has been an accident in which some ship in line ahead of the Merry Queen damaged the locks in the Isthmus Canal.

At this point it is not known just how long it will take for the locks to be repaired. I have enquired whether the Merry Queen might not take the long route around the continent, but was told that that would take much longer than any emergency repairs to the locks is expected to take.

As soon as I know more, I will let you know.

Sincerely,
(Signed)
Richard Haycock
Sales Manager

Claimant's Exhibit No. 10

Equatoriana Super Pumps S.A.

58 Industrial Road
Oceanside, Equatoriana
Tel. (0) 927 8415
Fax (0) 927 8410
info@pumps.eq

Richard Haycock
Sales Manager

Haycock@pumps.eq

12 December 2008

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Sent by e-mail

Dear Mr. Barber:

There is finally news about the Merry Queen. It transited the Isthmus Canal today.

I expect it to arrive in Capitol City on 6 January 2009. I hope there will be no further difficulties.

Sincerely,
(Signed)
Richard Haycock
Sales Manager

Claimant's Exhibit No. 11

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

28 December 2008

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by e-mail

Dear Mr. Haycock,

I have just received a telephone call from Horace Wilson, the procurement officer for Oceania Water Services who is responsible for our irrigation project. He has informed me that the Military Council has just adopted a decree effective 1 January 2009 prohibiting the import or manufacture of products containing any amounts of a number of rare elements, including beryllium. Applications for individual exceptions will have to be made to an office that is to be established.

Mr. Wilson said that it was vital for the pumps to be in Oceania by midnight of 31 December. When I told him that the ship carrying the pumps had been delayed and was now scheduled to arrive in Capitol City on 6 January, he said that he had no idea what the consequences might be from the delay.

I will keep you informed of developments as I learn of them.

Sincerely,
(Signed)
Samuel Barber
Director

OCEANIA WATER SERVICES

5 January 2009

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Irrigation Project IR 08-45Q

Sent by e-mail

Dear Mr. Barber:

The referenced project contract with Mediterraneo Engineering Co. required delivery of the necessary pumps to the specified locations within Oceania by 2 January 2009.

Since the pumps have not as yet been delivered, Mediterraneo Engineering Co is in breach of the project contract.

In conformity with the instructions issued by the Military Council, all contracts with foreign parties for the furnishing of goods or services in which the contracting party is in breach of any element of the contract are to be cancelled.

Since Mediterraneo Engineering Co. is in breach of the contract by failing to meet the required delivery schedule, contract IR 08-45Q is hereby canceled effective immediately.

Any claims you may have for work completed but not yet paid for may be submitted to my attention. Claims by Oceania Water Services arising out of your breach of contract will be considered at the same time.

Yours truly,
(Signed)
Horace Wilson
Procurement Officer

Mediterraneo Engineering Co.

415 Industrial Street
Capitol City, Mediterraneo
Tel. (0) 148-2020
Fax (0) 148-2021
info@engineering.me

Samuel Barber
Director
barber@engineering.me

5 January 2009

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by e-mail

Dear Mr. Haycock,

I have very bad news. The irrigation contract with Oceania Water Services has been cancelled on the grounds that we are in breach of our contract by failing to deliver the pumps by the contract date. That is only an excuse, of course. With any normal regime it might be possible to appeal. However, the military regime in Oceania does not seem to be one with which one can negotiate.

With the cancellation of the irrigation contract we have no further use for the pumps that are now due to arrive in port tomorrow. Consequently, we are in turn forced to cancel our contract with you.

I must point out that the cancellation of the irrigation contract is due to your failure to deliver regulatory compliant pumps to us by the contract deadline. I must also point out that you were aware of the tight time schedule and the importance of delivery by the contract dates.

Naturally, I must now ask you to arrange for the return of the purchase price of the pumps. You may also expect to hear from our lawyers in regard to the loss caused to us from the cancellation of the irrigation project.

I await your instructions as to what you wish us to do with your pumps when they arrive. We are willing to arrange for them to be discharged from the ship and to be stored for your account. If you intend to re-export them, we will be able to place them in a customs warehouse so that there will be no customs duty to be paid.

These are unfortunate developments for our two companies as well as for the people of Oceania. I hope that it will not adversely affect the possibility of our collaboration on some future irrigation projects.

Sincerely,
(Signed)
Samuel Barber
Director

Claimant's Exhibit No. 14

Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

15 January 2009

Mr. Richard Haycock
Sales Manager
Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Sent by courier

Dear Mr. Haycock,

I represent Mediterraneo Engineering Co.

On 5 January 2009 Mediterraneo Engineering Co. avoided the contract between it and Equatoriana Pumps S.A. signed 1 July 2008 for the furnishing of pumps to be installed in Oceania in the irrigation project IR 08-45Q.

I have been instructed to make demand on Equatoriana Super Pumps S.A. for reimbursement of the purchase price of the pumps that were originally contracted for on 1 July 2008.

The pumps are currently stored in the warehouse of Mediterraneo Engineering Co. You are kindly requested to give instructions as to the disposition of them.

Sincerely yours,
(Signed)
Horace Fasttrack

Claimant's Exhibit No. 15

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

22 January 2009

Mr. Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo

Dear Mr. Fasttrack:

Your letter of 15 January 2009 addressed to Mr. Richard Haycock, Sales Manager of Equatoriana Super Pumps S.A. has been referred to me for reply.

As already indicated in the letter of 2 August 2008 from Mr. Haycock to Mr. Barber, the pumps were regulation compliant for export to Oceania when the contract was signed. So long as the pumps were manufactured in compliance with the specifications contained in the contract, and they were, the date of the contract is the relevant date for determination whether they were regulation compliant.

Since it was the change in the regulations in Oceania subsequent to the date of signing the contract that caused the delay in manufacturing the three P-52s, which in turn caused the delay in shipping the pumps, the consequences of that delay must be borne by Mediterraneo Engineering Co.

I have been instructed to inform you that Equatoriana Super Pumps S.A. does not expect to pursue its claim against Mediterraneo Engineering Co. for the US\$30,000 in extra costs that it incurred for your account when it imported steel from outside Equatoriana to make the P-52s. It recognizes that Mediterraneo Engineering Co. has already suffered enough from the actions of the government of Oceania.

I have also been instructed to inform you that Equatoriana Super Pumps S.A. is willing to assist you in disposing of the pumps, if you so wish. No sales commission would be charged for that assistance. Equatoriana Super Pumps S.A. wishes to remain in a good relationship with you in the expectation that there will be further occasions for collaboration.

Yours truly,
(Signed)
Joseph Langweiler

Claimant's Exhibit No. 16

Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

26 January 2009

Mr. Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

Dear Mr. Langweiler:

Your letter of 22 January 2009 in regard to the contract of sale between Equatoriana Super Pumps S.A. and Mediterraneo Engineering Co. arrived today.

There is no doubt of Equatoriana Super Pumps' contract obligation to provide pumps that were in conformity with all relevant regulations in Oceania. There would seem to be no argument that the pumps that finally arrived in Mediterraneo on 6 January 2009 were not in conformity with the applicable regulations in Oceania effective on that date. Moreover, there can be no argument that the pumps arrived substantially after the contract date of 15 December 2008, or even the extended date of 22 December. The contract has been avoided and it is now a matter of the consequences.

Mediterraneo Engineering Co. has taken possession of the pumps and they are currently being stored in its warehouse awaiting instructions as to what should be done with them. If no instructions arrive within the next two weeks, Mediterraneo Engineering Co. will exercise its rights under the United Nations Convention on Contracts for the International Sale of Goods and will attempt to sell them for the account of Equatoriana Super Pumps S.A.

Sincerely yours,
(Signed)
Horace Fasttrack



20 July 2009

Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo

Dear Mr Fasttrack,

**ACICA Arbitration
Mediterraneo Engineering Co. and
Equatoriana Super Pumps S.A.**

I confirm receipt of your request for arbitration on behalf of Mediterraneo Engineering Co. dated 15 July 2009 addressed to the Australian Centre for International Commercial Arbitration (ACICA) .

The notice of arbitration and statement of claim, including its exhibits 1-16 enclosed with your request, comply with the Notice of Arbitration provisions in Articles 4.1 and 4.3 of the ACICA Arbitration Rules.

For the record I confirm receipt of the following additional documentation enclosed with your request:

- Power of Attorney
- Request for Arbitration and Statement of Claim, including exhibits 1-16
- Copy payment order
- Arbitrator 1 curriculum vitae.

ACICA also confirms receipt of the Registration Fee of \$AUD2,500 on 17 July 2009..

In accordance with Article 4.6 ACICA will now provide a copy of the Notice of Arbitration to Equatoriana Super Pumps S.A.

I note that the contract giving rise to this arbitration provides that the seat of the arbitration is Vindobona, Danubia. I confirm that Vindobona is acceptable to ACICA as the seat for the arbitration.

Please do not hesitate to contact me on +61 2 9286 3591 if you have any questions in relation to this matter.

Yours sincerely,

President

Douglas Jones AM RFD

Vice Presidents

Alex Baykitch
Ian Govey
Peter Megens

Treasurer

Dr Clyde Croft SC

Immediate Past President

Michael Pryles AM

Board Members

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Malcolm Holmes QC
The Hon. Michael Kirby AC CMG
Robert Kus
Judith Levine
Peter McQueen
Gabriël Moens
Ian Nosworthy
Robert Regan
Ronald Salter
Michael Shand QC

Director of Arbitration

David Fairlie

Secretary General

Emma Matthews
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ematthews@acica.org.au

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Deputy Secretary General

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Western Australian Institute for Dispute
Management
South Street, Murdoch WA 6150
Ph: +61 8 9360 7563
gmoens@acica.org.au

www.acica.org.au
ACN 006 404 664

A handwritten signature in black ink, appearing to read "Emma Matthews". The signature is fluid and cursive.

Emma Matthews
Secretary General

Please reply to Emma Matthews
Secretary General, ACICA
Level 6, 50 Park Street
SYDNEY NSW 2000



20 July 2009

Equatoriana Super Pumps S.A.
58 Industrial Road
Oceanside, Equatoriana

Dear Sirs,

**ACICA Arbitration
Mediterraneo Engineering Co. and
Equatoriana Super Pumps S.A.**

The Australian Centre for International Commercial Arbitration ("ACICA") has been notified of a dispute between Mediterraneo Engineering Co. and Equatoriana Super Pumps S.A.

Counsel for Mediterraneo Engineering Co. has provided ACICA with a Notice of Arbitration including a statement of claim and exhibits in accordance with Article 4 of the ACICA Arbitration Rules ("the ACICA Rules").

I have enclosed a copy of the Notice of Arbitration and a copy of the ACICA Rules for your reference. I also enclose the curriculum vitae of the arbitrator nominated by Mediterraneo Engineering Co.

As outlined in Article 5 of the ACICA Rules, the following is required from you in answer to the Notice of Arbitration:

- The submission to ACICA of two copies of an Answer to Notice of Arbitration within 30 days of receipt of the enclosed Notice of Arbitration;
- the names, postal addresses, telephone and facsimile numbers and email addresses for yourself and your counsel;
- any plea that an Arbitral Tribunal constituted under the ACICA Rules does not have jurisdiction;
- your comments on the particulars set forth in the Notice of Arbitration; and
- your answer to the relief or remedy sought in the Notice of Arbitration.

As outlined in Article 5.3 of the ACICA Rules, the Answer to Notice of Arbitration may also include:

- the notification of the appointment of an arbitrator referred to in Article 10.1 of the ACICA Rules;

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www.acica.org.au
ACN 006 404 664

- the Statement of Defence referred to in Article 22 of the ACICA Rules; and
- any counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract. (The provisions of Article 4.3 will apply to any such counterclaim or set-off).

ACICA will provide a copy of the Answer to Notice of Arbitration to the counsel for Mediterraneo Engineering Co. in accordance with Article 5.4 of the ACICA Rules. ACICA will also transmit the file to the Arbitral Tribunal upon confirmation of the details of the panel.

Please do not hesitate to contact me on +61 2 9286 3591 if you have any questions in relation to this matter.

Yours sincerely,

A handwritten signature in black ink that reads "Emma Matthews". The signature is written in a cursive, flowing style.

Emma Matthews
Secretary General

**Please reply to Emma Matthews
Secretary General, ACICA
Level 6, 50 Park Street
SYDNEY NSW 2000**

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

17 August 2009

Ms. Emma Matthews, Secretary General
Australian Centre for International Commercial Arbitration
Level 6, 50 Park Street
Sydney NSW 2000
Australia

Subject: Answer to notice of arbitration and statement of defense: Mediterraneo Engineering Co.
v. Equatoriana Super Pumps S.A.

Dear Ms. Matthews:

I represent Equatoriana Super Pumps S.A. The notice of arbitration and statement of claim dated 15 July 2009 filed by Mediterraneo Engineering Co. with the Australian Centre for International Commercial Arbitration have been referred to me.

The answer to the notice of arbitration along with the statement of defense is enclosed. The statement of defense contains an objection to the commencement of arbitration because the conciliation procedure, which is a prerequisite to the commencement of arbitration, was not properly conducted.

Pursuant to ACICA arbitration rule 10.1, Equatoriana Super Pumps S.A. appoints Professor Arbitrator 2 to the tribunal. His curriculum vitae is enclosed.

(Signed)
Joseph Langweiler

Encl. Power of Attorney
Answer
CV Professor Arbitrator 2

Mediterraneo Engineering Co., Claimant

v.

Equatoriana Super Pumps S.A., Respondent

Answer and Statement of Defense

1. As indicated in the Statement of Claim, Equatoriana Super Pumps S.A. [hereafter “Super Pumps”] is a corporation organized under the laws of Equatoriana. It is located at 58 Industrial Road, Oceanside, Equatoriana. The telephone number is (0) 927 8415. The telefax number is (0) 927 8410 and the general e-mail address is info@pumps.eq.
2. Super Pumps will be represented by its counsel, Joseph Langweiler, 14 Capitol Boulevard, Oceanside, Equatoriana. His telephone number is (0) 214 77 32. His telefax number is (0) 214 77 33 and his e-mail address is langweiler@host.eq.
3. Super Pumps appoints Professor Arbitrator 2 to the tribunal. Professor Arbitrator 2’s address is 414 University Avenue, University City, Equatoriana. His telephone number is (0) 975 14 38. His telefax number is (0) 975 43 92 and his e-mail address is arbitrator2@ue.eq.
4. Super Pumps denies that the conditions prior to the commencement of arbitration set forth in the arbitral clause have been fulfilled.
5. As to the merits, Super Pumps denies that it was deficient in its performance of the contract between it and Mediterraneo Engineering Co. [hereafter “Engineering”] signed on 1st July 2008. On the contrary, it fulfilled every requirement of the contract.

Jurisdiction

6. As provided in the arbitration clause as found in clause 18 of the contract (Claimant’s Exhibit No. 3) and paragraph 26 of the Statement of Claim, it is only “[i]f the dispute has not been settled pursuant to the said conciliation procedure, [that] the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules.” Clause 18 also provides that “[t]he parties will be represented by their Chief Executive Officer.”
7. The conciliation procedures took place in Vindobona, Danubia on 28 to 30 May 2009 during a conference on The Future of Irrigation that was being held in Vindobona at that time. Super Pumps was represented by Mr. James Stecker, its Chief Executive Officer. Engineering was represented by Mr. William Holzer. As set forth in the Statement of Claim, paragraph 23, the conciliation failed. The week following the conciliation Mr. Stecker looked at the list of participants at the conference in order to find the contact information of a person he had met there and noticed that Mr. Holzer was the Deputy Chief Executive Officer of Engineering and not the Chief Executive Officer.

8. Since clause 18 clearly specifies that the representative of both parties is to be the Chief Executive Officer, the conciliation has not taken place in accordance with the agreement. Therefore, the prerequisite prior to the commencement of arbitration proceedings has not been fulfilled and the tribunal has no jurisdiction over the dispute.

Merits

9. Clause 2 of the contract (Claimant's Exhibit No. 3) provides that:

2. The pumps shall meet the technical specifications set out in Annex I. Equatoriana Super Pumps warrants that the pumps are in compliance with all relevant regulations for importation into Mediterraneo and for use in Oceania.

10. As acknowledged by Engineering in paragraph 8 of the statement of claim, the pumps provided by Super Pumps met the required technical specifications. In regard to the Oceania regulations, Super Pumps warranted that the pumps to be delivered were in compliance at the time of signing the contract. It did not undertake any obligations as to changes in the regulations that might occur prior to delivery.

11. When the contract of sale was signed on 1 July 2008, Super Pumps had several P-52 pumps in inventory that were ready for shipment and could have been shipped to Engineering. (Respondent's Exhibit No. 1) The subsequent change in regulations in Oceania prohibiting the installation of machinery with moving parts made with steel containing beryllium was in essence a change in the contract between Super Pumps and Engineering. At the time it affected only the P-52 pumps. Super Pumps acted to procure steel from outside the country in order to manufacture new P-52 pumps. It was in Engineering's interest that Super Pumps do so, since it was Engineering that was under the obligation to deliver the pumps to Oceania and install them. Super Pumps insisted at the time, and insists today, that the extra cost and the delay in having the entire order of pumps ready for shipment was the consequence of this change in the contract obligations and was to be borne by Engineering. (Claimant's Exhibit No. 6)

12. The entire shipment of pumps would have arrived in time for Engineering to deliver them to the irrigation site in Oceania if it had not been for the damage to the locks in the Isthmus Canal the day prior to the expected transit of the ship carrying the pumps. Even if Super Pumps was responsible for providing P-52 pumps that met the new regulations in Oceania, the delay in transiting the Isthmus Canal was an impediment beyond the control of Super Pumps. Consequently, Super Pumps is exonerated under CISG Article 79.

13. Furthermore, the irrigation contract IR 08-45Q would probably not have been cancelled if Engineering had delivered even a few pumps to Oceania that would have complied with the contract. (Respondent's Exhibit No. 2) That would have eliminated the loss suffered by Engineering because of the cancellation of the irrigation contract. It might also have meant that Engineering would have been able to deliver to Oceania and to install all of the pumps manufactured by Super Pumps. There were slightly used pumps for sale in Mediterraneo at the end of December 2008 that would have conformed to the requirements of the irrigation contract and that could have been delivered to Oceania prior to midnight of 31 December 2008. (Respondent's Exhibit No. 3) Those pumps would have comprised about one-quarter of the

number of field pumps called for by the irrigation contract. The adverse consequences to Mediterraneo Engineering Co. arising out of the cancellation of the irrigation contract would have been minimized and perhaps largely eliminated.

Relief Requested

14. Super Pumps requests the tribunal to declare that it has no jurisdiction in this dispute.
15. If the tribunal were to decide that it had jurisdiction, Super Pumps requests the tribunal to decide that Super Pumps was not in breach of its contract with Engineering.
16. If the tribunal were to decide that Super Pumps was in breach of its contract with Engineering, Super Pumps requests the tribunal to find that Engineering did not take the actions it should have taken to avoid or to minimize the adverse consequences.
17. Super Pumps requests the tribunal to award it its costs of this arbitration.

(Signed)
Joseph Langweiler

17 August 2009

Respondent's Exhibit No. 1

Equatoriana Super Pumps S.A.

58 Industrial Road
Oceanside, Equatoriana
Tel. (0) 927 8415
Fax (0) 927 8410
info@pumps.eq

Richard Haycock
Sales Manager

Haycock@pumps.eq

1 July 2008

Mr. Samuel Barber
Director
Mediterraneo Engineering Co.
415 Industrial Street
Capitol City, Mediterraneo

Sent by courier and e-mail

Dear Mr. Barber:

We are very pleased to be able to return to you the signed contract for the pumps to fulfill your contract with Oceania Water Services for irrigation project IR 08-45Q.

Particularly in light of the imperative nature of the delivery dates, which you emphasize in your letter, it is fortunate that we have several P-52 pumps in inventory ready for shipment. As you may well imagine, a pump of its size and complexity takes considerable time to manufacture.

We also have some of the field pumps in inventory and it will not take us an excessive amount of time to produce the remaining ones under the contract.

Sincerely,
(Signed)
Richard Haycock
Sales Manager

Respondent's Exhibit No. 2

Witness Statement of
Horace Wilson, Procurement Officer, Oceania Water Services

On 28 December 2008 I spoke on the telephone to Samuel Barber, Director, Mediterraneo Engineering Co., about the contract for the irrigation project, IR 08-45Q. He told me that the pumps were then due to arrive in the port of Capitol City, Mediterraneo on 6 January 2009. I told him that that was too late. The situation in Oceania was such that the contract was in serious danger of being cancelled. It would help if there could be at least partial delivery of pumps that would conform to the contract by 2 January. I realized the unlikelihood that that was possible, but I urged Mr. Barber to see whether he could do anything.

(Signed)
Horace Wilson

9 August 2009

Respondent's Exhibit No. 3

Witness Statement of
James Fisher, Sales Manager
Trading Company of Mediterraneo

The Trading Company of Mediterraneo deals in new and used industrial equipment of all types. On 12 November 2008 we purchased 28 used pumps that were appropriate for use in an irrigation project. The pumps were advertised for sale on our web site and were available for inspection at our premises in Gotham, Mediterraneo. The pumps were finally sold on 22 April 2009.

I have been furnished with a copy of the specifications of the pumps that were to be sold by Equatoriana Super Pumps S.A. to Mediterraneo Engineering Co. The pumps that we owned would have been in compliance with the specifications for some of the pumps that were covered by that contract.

If it had been a rush job, the pumps could have been loaded on a truck and delivered to Oceania within 36 hours. Gotham lies on the border with Oceania, which not only reduces the travel time but also means that the transport company we use is familiar with the procedures for delivering to Oceania. The military regime had not changed the border procedures during the month of December 2008, but only in the middle of January.

I was not contacted by Mediterraneo Engineering Co. about the pumps.

(Signed)
James Fisher

10 August 2009



21 August 2009

Horace Fasttrack
Advocate at the Court
75 Court Street
Capitol City, Mediterraneo

Dear Mr Fasttrack,

**ACICA Arbitration
Mediterraneo Engineering Co. and
Equatoriana Super Pumps S.A.**

I refer to the abovementioned matter and to your Notice of Arbitration dated 20 July 2009.

Counsel for Equatoriana Super Pumps S.A. has provided ACICA with an Answer to Notice of Arbitration, dated 17 August 2009.

I have enclosed a copy the Answer to Notice of Arbitration. I also enclose the curriculum vitae of the arbitrator nominated by Equatoriana Super Pumps S.A.

Please do not hesitate to contact me on +61 2 9286 3591 if you have any questions in relation to this matter.

Yours sincerely,

Emma Matthews
Secretary General

Please reply to **Emma Matthews**
Secretary General, ACICA
Level 6, 50 Park Street
SYDNEY NSW 2000

President

Douglas Jones AM RFD

Vice Presidents

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Ian Govey
Peter Megens

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Horace Fasttrack
Advocate at the Court
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Capitol City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850

2 September 2009

Ms. Emma Matthews, Secretary General
Australian Centre for International Commercial Arbitration
Level 6, 50 Park Street
Sydney NSW 2000
Australia

Subject: Reply to Answer: Mediterraneo Engineering Co. v. Equatoriana Super Pumps S.A.

Dear Ms. Matthews:

I enclose two copies of the reply of Mediterraneo Engineering Co. to the Answer submitted by Equatoriana Super Pumps S.A. in the referenced matter.

Sincerely,

(Signed)
Horace Fasttrack

Mediterraneo Engineering Co., Claimant

v.

Equatoriana Super Pumps S.A., Respondent

Reply to Answer

1. Engineering's representation in the conciliation proceedings by Mr. William Holzer was entirely proper. Mr. Holzer is the Deputy Chief Executive Officer of Engineering. He had full authority to represent Engineering in the conciliation. When the clause said that representation should be by the Chief Executive Officer of the two companies it did not mean that the person of the Chief Executive Officer had to be present. It obviously meant that the person actually present at the conciliation had to be acting with the authority of the Chief Executive Officer. Mr. Holzer had that authority.

2. If there was to be an objection to Mr. Holzer representing Engineering in the conciliation, the objection should have been made at the time of the conciliation. The list of participants at the conference on The Future of Irrigation was available at registration for the conference and Mr. Stecker certainly had a copy of it during the conciliation. A delay in raising an issue of this nature brings into play the waiver provisions of the ACICA arbitration rules as well as those of the UNCITRAL Model Law on International Commercial Arbitration, which is in force in Danubia.

3. The idea that Engineering should have searched for replacement pumps, purchased them and had them delivered to Oceania between 28 December 2008, when Engineering learned of the new decree, and midnight on 31 December 2008 is not to be taken seriously. The witness statement of Mr. Horace Wilson (Respondent's Exhibit No. 2) does not say that delivery of any amount, no matter how small, of pumps that would conform to the contract would keep the military regime from having the contract cancelled. He only said that it "would help". He must be understood to mean that it would help him argue with his superiors that the contract should not be cancelled. That is the basis for only a speculative argument that it would in fact have saved the irrigation contract.

4. Engineering repeats its request for relief as set out in the Statement of Claim.

(Signed)
Horace Fasttrack

2 September 2009



7 September 2009

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

Dear Mr Langweiler,

**ACICA Arbitration
Mediterraneo Engineering Co. and
Equatoriana Super Pumps S.A.**

I refer to the abovementioned matter and to the Notice of Arbitration dated 15 July 2009 and the Answer to Notice of Arbitration dated 17 August 2009.

Counsel for Mediterraneo Engineering Co. has provided ACICA with a Reply to your Answer to Notice of Arbitration. The reply is dated 2 September 2009.

I have enclosed a copy of the Reply to your Answer to Notice of Arbitration.

Please do not hesitate to contact me on +61 2 9286 3591 if you have any questions in relation to this matter.

Yours sincerely,

Emma Matthews
Secretary General

Please reply to **Emma Matthews**
Secretary General, ACICA
Level 6, 50 Park Street
SYDNEY NSW 2000

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16 September 2009

Ms. Emma Matthews, Secretary General
Australian Centre for International Commercial Arbitration
Level 6, 50 Park Street
Sydney NSW 2000
Australia

Subject: Mediterraneo Engineering Co. v. Equatoriana Super Pumps S.A.

Dear Ms. Matthews:

I am in receipt of the reply to the answer in the above referenced arbitration.

Equatoriana Super Pumps S.A. has no comments to make on it. The reply adds no new facts or arguments and any comments that we might make would not help the tribunal reach the correct decision.

Sincerely,
(Signed)
Joseph Langweiler

Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
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arbitrator1@lawyers.mb

18 September 2009

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

Re: Mediterraneo Engineering Co. v. Equatoriana Super Pumps S.A.

Dear Mr. Langweiler:

I have been appointed by Mediterraneo Engineering Co. as party-appointed arbitrator in the above referenced arbitration.

I wish to inform you that eight years ago I was appointed arbitrator by Mr. Fasttrack in an arbitration before the Mediterraneo Arbitration Centre. I bring this to your attention even though the 2004 IBA Guidelines on Conflicts of Interest in International Arbitration in section 3.3.7 provide that prior appointment as an arbitrator appears on the Orange List only if there have been more than three appointments from counsel in the current arbitration within the previous three years.

I have had no other contact with Mr. Fasttrack or the Mediterraneo Engineering Co. that would raise any question as to my independence or impartiality in the above referenced arbitration as provided in the ACICA Arbitration Rules, section 13.1.

Sincerely,
(Signed)
Arbitrator 1

Cc: Mr. Horace Fasttrack
Ms. Emma Matthews, Secretary General, ACICA

(A SIMILAR LETTER WAS SUBMITTED BY PROFESSOR ARBITRATOR 2 AND LATER
BY DR. ARBITRATOR 3)

Arbitrator 1
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18 September 2009

Ms. Emma Matthews, Secretary General
Australian Centre for International Commercial Arbitration
Level 6, 50 Park Street
Sydney NSW 2000
Australia

Subject: Mediterraneo Engineering Co. v. Equatoriana Super Pumps S.A.

Dear Ms. Matthews:

In conformity with ACICA Arbitration Rules, Article 10.1, Professor Arbitrator 2 and I have consulted as to the person who should serve as chairman of the tribunal.

We have agreed that Dr. Arbitrator 3 should serve as chairman. Dr. Arbitrator 3 has agreed to the appointment and will submit to the parties and to you a statement of independence.

Sincerely,
(Signed)
Arbitrator 1

Cc: Mr. Horace Fasttrack
Mr. Joseph Langweiler

Mediterraneo Engineering Co.

v.

Equatoriana Super Pumps S.A.

Procedural Order No. 1

1. ACICA Rule 17.3 provides that the presiding arbitrator may decide questions of procedure alone. Pursuant to that authority on 2 October 2009 I convened a conference call with counsel for Mediterraneo Engineering Co. [hereafter Engineering] and Equatoriana Super Pumps S.A. [hereafter Super Pumps] to discuss the procedure to be followed in this arbitration.

2. Engineering has instituted the arbitration to recover the purchase price for pumps that were to be used in an irrigation project in Oceania.

3. It was agreed that the arbitration procedure should be considered in separate stages. In the first stage the challenge to the jurisdiction of the tribunal will be considered along with the question as to whether Super Pumps was in breach of the contract. In a second stage the tribunal will consider the relief to be given to Engineering or Super Pumps as the case may be. Any calculation of damages, interest to be paid or allocation of costs of arbitration will be considered in the second stage of the proceedings. Although mitigation of damages relates to the calculation of damages, it also relates to the actions taken or not taken by the claimant. Therefore, any determination as to whether the damages claimed might or should have been mitigated will be considered in the first stage of proceedings while any calculation of the extent to which those damages might have been mitigated will be considered in the second stage.

4. The factual issues that may need to be developed for the first stage of the arbitration will be determined in accordance with the procedures found in the Rules of the Seventeenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten by e-mail at eric.bergsten@chello.at, by Thursday, 22 October 2009. The answers to the requests for clarification will be distributed in Procedural Order No. 2 as promptly thereafter as possible.

5. It was agreed that a memorandum further developing its legal arguments should be prepared by Mediterraneo Engineering Co. for submission by e-mail by Thursday, 3 December 2009. Equatoriana Super Pumps S.A. is to submit its memorandum by e-mail by Thursday, 21 January 2010.

6. The memoranda should discuss the following issue in regard to jurisdiction of the Tribunal:

- Were the preconditions to arbitration as provided in clause 18 of the contract properly fulfilled?

The memoranda should discuss the following issues in regard to the merits of the claim:

- Did Super Pumps have an obligation to provide pumps that were in conformity with regulations adopted after the date of the contract?
- Was Super Pumps in breach of its obligation to deliver the pumps by the delivery date in the contract of 15 December 2008 or as extended to 22 December 2008?
- Did Engineering fail to mitigate the consequences of the cancellation of irrigation contract IR 08-45Q?

7. Oral arguments will be scheduled in the month of March and April 2010 in Vindobona (Vienna) and in March in Hong Kong. All participants in the Vienna arguments will be invited to a welcoming event followed by a reception on the evening of Friday, 26 March 2009. Arguments will take place beginning the following morning, Saturday, 27 March 2009. Participants will also be invited to a welcoming party sponsored by the Moot Alumni Association on Thursday evening, 25 March 2010. Participants in the Hong Kong arguments will receive their schedule independently.

(Signed)
Chairman of the Arbitral Tribunal

October 2, 2009

Mediterraneo Engineering Co.

v.

Equatoriana Super Pumps S.A.

Procedural Order No. 2

In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

1. Procedural Order No. 1

The parties should understand paragraph 6 of Procedural Order No. 1 in regard to the merits as follows: The memoranda and the subsequent oral argument should discuss all matters that go to whether Super Pumps must reimburse to Engineering the purchase price of the pumps and/or must pay damages to Engineering. Those issues might include arguments that would establish Super Pumps' obligations or that might excuse the consequences of either or both of those obligations. However, the memoranda and oral arguments should not attempt to quantify the amount of money that might be payable. Furthermore, the memoranda and oral arguments should not discuss whether interest should be paid on any sum due or the rate at which it would be calculated or the allocation of the costs of arbitration.

Legal Rules and Situation in Oceania

2. Are Equatoriana and Mediterraneo common law or civil law countries?

Equatoriana is civil law and Mediterraneo is common law.

3. Are any of the countries involved members of the European Union?

No.

4. What did the parties to the contract know about the political situation in Oceania during the period from May 2008 to October 2008?

There had been general unrest for several years, but there was no sense that a political crisis was imminent in July 2008 when the contract was signed. Tension started to grow during the month of October 2008 leading to the riots in November 2008.

5. What did the parties to the contract know about the environmental policy in Oceania during the period from May 2008 to October 2008?

Engineering was more aware of developments in Oceania than was Super Pumps, since Mediterraneo and Oceania were contiguous countries while Equatoriana was on a different continent. Oceania was not known to have an active environmental regulatory policy. In particular, Engineering was not aware of any plans to restrict the use of metal products that contained beryllium.

Contract negotiations and performance

6. What were the specifications that were set out in Annex I to the contract?

The specifications related to such matters as the type of pump (direct lift, displacement, velocity, buoyancy or gravity pump), the pumping power and the pumping efficiency. None of these specifications is at issue in the arbitration. Nothing was said about the composition of the steel to be used in the pumps.

7. Did Super Pumps know that the P-52 pumps would be used in an enclosed space?

Yes, they were aware that the pumps would be installed in a pump house. The pump house already existed and the P-52 pumps would replace the pumps that had previously been in the pump house.

8. Was Super Pumps the contractually specified supplier of the pumps in the contract between Water Services and Engineering?

No.

9. Who drafted the sentence in the contract between Super Pumps and Engineering that “Equatoriana Super Pumps warrants that the pumps are in compliance with all relevant regulations for importation into Mediterraneo and for use in Oceania?”

Engineering insisted on the warranty. Super Pumps supplied the sentence and Engineering agreed that it was satisfactory.

10. What was the contract delivery date?

The delivery date of 15 December 2008 was specified in clause 1 of the contract. Although in Procedural Order No. 1 the Chairman of the Tribunal mentioned the delivery date as “extended to 22 December 2008”, the tribunal has not determined that the contractual date of delivery had in fact been extended.

11. Could Super Pumps have shipped the pumps that had already been manufactured by 30 October 2008 instead of waiting for all the pumps to be produced?

It would have been physically possible for Super Pumps to have shipped all but the P-52 pumps by 30 October 2008. It did not do so because the contract provided that delivery was to be in a single shipment. A single shipment would be less expensive than multiple shipments. The two parties could have modified the contract if either had taken the initiative to do so. Neither did.

12. Since manufacture of the pumps was completed on 15 November, why did it take until 22 November 2008 for the ship with the pumps to leave port?

As soon as Super Pumps had been confident that all of the pumps would be ready by 15 November, it contacted its freight forwarder to arrange for the shipment. The Merry Queen was the first ship available after 15 November that was scheduled to call at Capitol City, Mediterraneo. In any case, one week was a normal period of time to pack the pumps (they were stuffed into a container), bring them to the port and load them on the ship. They were in fact on the ship for two days before the ship left port.

13. Are ships that pass the Isthmus Canal often delayed?

It is a rare occurrence, but it has happened before.

14. Could Super Pumps have shipped the goods by air or on a ship taking a different route?

The use of the DES (Incoterms 2000) trade term meant that the parties had contracted for ocean shipping. The pumps could have been shipped by air at a great deal of extra expense. There was no other route for ocean shipping that was faster than through the Isthmus Canal. Once the pumps were on the Merry Queen it would have been almost impossible to have transferred them to another ship going around the continent. The pumps were in a container along with numerous other containers and the task of removing any single container out of sequence is time-consuming and expensive. Even if it could have been done, the pumps would not have arrived in Mediterraneo any sooner.

15. Was Super Pumps aware that Engineering was contractually obligated to deliver the pumps to the project site in Oceania by 2 January 2009?

Yes, it had been mentioned in the telephone conversation between Mr. Barber and Mr. Haycock on 25 June 2008.

16. Did Engineering pay customs duty on the pumps?

No duty has been paid. The pumps were released under custom's seal for storage in Engineering's warehouse. Duty would be payable if the pumps were to be used in Mediterraneo. If the pumps were either shipped to another country, including surface shipment by rail or truck through Mediterraneo, there would be no customs duty payable in Mediterraneo.

17. Did Engineering respond to the messages sent by Super Pumps on 28 November 2008 and 12 December 2008 (Claimant's Exhibits Nos. 9 and 10) prior to its message of 28 December 2008?

It acknowledged receipt of the messages, but said nothing that either party thought of sufficient interest to bring the communications to the attention of the tribunal.

18. Were there any holidays in Mediterraneo between 28 December 2008 and 31 December 2008?

No.

19. Have any of the 50 countries to which Super Pumps has previously delivered adopted the two regulations adopted in Oceania regarding beryllium?

No, the regulations in Oceania may be unique. There are regulations in a number of countries dealing with working conditions where beryllium dust may occur during manufacturing processes. Moreover, regulations that limit the discharge of pollutants that contain beryllium into navigable waters and into waste treatment works are fairly common.

20. Has the office that the Military Council said would be created to consider exceptions to its decree been created and has it made any exceptions?

The office began operating on 2 March 2009. By the time it was created there were 73 requests for an exception pending. The first decisions were issued 16 April 2009. Of the 73 original requests, 27 were granted.

21. Did Engineering request an exception?

No, it did not. It considered doing so prior to sending the letter of 5 January 2009. (Claimant's Exhibit No. 13) In essence it had to choose between accepting the pumps when they arrived on the chance the office to be created in Oceania would grant an exception or to declare the contract with Super Pumps avoided and seek to recover the money it had already paid for the pumps. Engineering considered that the chances that the office would be created relatively promptly and that an exception would be granted were highly problematical.

22. Did the contract between Engineering and Water Services have any provisions regarding the consequences of late delivery?

The contract specified a schedule for performance, which included the dates for delivery of the pumps. However, the only provision regarding the consequences of late performance provided penalties for delay in completion of the project. No penalties for delay in delivering the pumps to the project site were mentioned.

23. Had Engineering previously done business with Trading Company of Mediterraneo?

Mr. Haycock and several other personnel in Engineering were aware of Trading Company of Mediterraneo, but Engineering had never purchased equipment from it or sold to it.

24. Had Super Pumps previously done business with Trading Company of Mediterraneo?

Super Pumps had never heard of Trading Company of Mediterraneo prior to preparation of its case for the arbitration.

25. Would the used pumps that Trading Company of Mediterraneo had available have satisfied the desire of Water Services to have "furnish[ed] and install[ed] new pumps" in the irrigation project?

The statement in Mr. Barber's letter of 5 May 2008 (Claimant's Exhibit No. 1) meant that Water Services wished to replace the existing pumps. Water Services anticipated that the pumps would be newly manufactured, but it was not specified in the contract. The pumps available from Trading Company of Mediterraneo were only slightly used and would have been acceptable to Water Services. They did not contain beryllium or any of the other elements mentioned in the decree.

26. Did Engineering have the financial resources to have purchased the pumps from Trading Company of Mediterraneo or any other source of pumps that might have been available?

Yes.

Conciliation Procedure

27. What was the reason that clause 18 of the contract called for the representative of the parties in the conciliation should be the CEO of each company?

Clause 18 was a regular provision of Super Pumps' sales contracts. It had been used for the previous three years and had been included in the contract of 2006 concerning the irrigation project in Patria. During the entire three year period there had been no disputes that had led to invocation of the procedure set out there.

28. What were the functions and authority of Mr. William Holzer, Deputy CEO of Engineering, in the ordinary course of business?

Mr. Holzer was in charge of operations. He exercised such other duties as were delegated to him by the CEO. The law in Mediterraneo does not specify any particular duties of a Deputy CEO.

29. Was Mr. Holzer's name with his title in the list of participants at the conference?

Yes. Mr. Stecker, CEO of Super Pumps, received a copy when he registered at the conference on 28 May 2009.

30. Why did the CEO of Engineering not participate in the conference?

His daughter was getting married on 29 May 2009. He had full confidence in Mr. Holzer to represent Engineering in the conference and in the conciliation proceedings.

31. Were the names and addresses of the representatives of the two parties communicated in writing to the other party as provided in Article 6 of the UNCITRAL Conciliation Rules?

Yes, but the titles were not given. Mr. Stecker did not know the name of the CEO of Engineering.

32. Did the parties participate actively in the conciliation proceedings?

Yes, but neither party was particularly conciliatory. They were both sure of their legal positions. Since they did not have regular business dealings with one another, both were willing to sacrifice

any future business contacts. After two days of fruitless discussions and after consulting the parties the conciliator declared that further efforts at conciliation were no longer justified. No proposals for a settlement of the dispute, as envisaged by Article 7 of the UNCITRAL Conciliation Rules, had been made. His written declaration to the parties in writing with a copy to the Danubia Arbitration and Conciliation Center was dated 4 June 2009.

(Signed)
Chairman of the Arbitral Tribunal

October 29, 2009