

BRIEFING NOTE

Singapore High Court Issues First Judgment on Pandemic Restrictions**- *What are the Key Takeaways?*****Sinyee Ong****11 January 2022****Introduction**

In *Dathena Science Pte Ltd v Justco (Singapore) Pte Ltd* [2021] SGHC 219, the Singapore High Court made its first determination on the effect of pandemic restrictions on contractual obligations. The judgment provided guidance on the instances whereby: (a) a contract would be deemed to be frustrated; and (b) the contractual terms would be deemed to be unfair.

Below, we discuss this landmark decision and share our comments on this decision.

Factual Background

In 2019, Dathena (a cybersecurity company) contracted with Justco (a workspace provider) for office space to house its servers and workforce between 1 May 2020 and 30 April 2022.

The contract was a Justco's standard membership agreement ("**Membership Agreement**"). The Membership Agreement provided, *inter alia*, that Justco could unilaterally replace the designated premises with alternative premises and that Justco had the unilateral right to terminate the Membership Agreement (but Dathena had no similar right to terminate).

Due to the pandemic restrictions, Justco was unable to handover the premises to Dathena on 1 May 2020. Whilst Justco suggested temporary alternative premises, Dathena was unable to accept these alternatives because they did not meet the technical requirements of Dathena. Subsequently, Dathena provided written notice to terminate the Membership Agreement (despite the lack of a right to terminate) and sought a refund of paid monies.

Decision of the High Court

The High Court had to decide, *inter alia*, whether: (a) the Membership Agreement was frustrated; and (b) the terms of the Membership Agreement were unfair.

Frustration. Whether or not a contract has been frustrated is to be objectively determined by the law. In circumstances where a supervening event occurred without the default of either party, which renders the contractual obligation radically different from what was agreed or which makes it impossible to perform the contract, the contract would be frustrated.

The High Court determined that the Membership Agreement has been frustrated. The fact that Justco sought to get Dathena to agree to entirely different (and less suitable) premises

when it could not deliver the designated premises confirms that the contractual obligations have been rendered fundamentally different. Therefore, the Frustration of Contracts Act 1959 prescribes that Dathena was entitled to the refund of paid monies.

Unfair Contract Terms. The Unfair Contract Terms Act 1977 applies in circumstances where one party is dealing as a customer on the other party's standard terms of business. In such circumstances, the contractual terms would need to satisfy the reasonable test.

The High Court determined that Dathena was dealing as a consumer with respect to the standard form Membership Agreement. In this regard, the provision for Justco to substitute alternative premises unilaterally was unreasonable and therefore unenforceable.

Comments

This is (probably one of) the first judgment on disruptions to contractual obligations arising from pandemic restrictions. The judgment is instructive on how the Singapore Courts would assess the allocation of contractual rights and liabilities following pandemic disruptions.

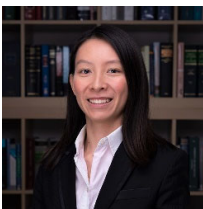
Not only does it provide guidance on instances of frustration (i.e., including pandemic restrictions) and unfair contract terms (i.e., including B2B contracts instead of only B2C contracts). It also provides a peek as to how the Singapore Courts could interpret other forms of disruptions to contractual obligations (i.e., construction contracts, insurance policies, etc).

How We May Assist

We have been advising clients with commercial and contractual claims since the declaration of the pandemic. To date, we have assisted clients across a wide range of industries on their contractual rights and obligations following the pandemic. We pride ourselves with delivering prompt and top-quality advice that is in the best commercial interest for our clients.

To find out more about how we can assist you, please reach out to any member of our team.

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