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ENGLISH COURT CLARIFIES UNFORESEEABILITY AND NOTICE REQUIREMENTS IN FORCE MAJEURE CLAUSES

In a recent judgment, *ADM Industries Centers Ltd v Inerco Trade SA* [2026] EWHC 1873 (Comm), the English Commercial Court provided useful guidance on how force majeure clauses are interpreted under English law. The Court held that an “unforeseeable” event need not be unimaginable but may include a risk so remote that it could commercially be disregarded. The Court also confirmed the importance of strict compliance with contractual notice requirements, holding that timely notice under the clause in question is a condition precedent to reliance on force majeure. Accordingly, an otherwise valid force majeure claim could fail if the required notice was not given in time, irrespective of whether the counterparty suffered prejudice.

I. FACTS

The dispute arose from an English-law contract for the sale of Ukrainian corn, incorporating GAFTA Form 48. Following Russia’s invasion of Ukraine, vessels entering the Black Sea to load Ukrainian grain were required to undergo inspections. While the sellers’ nominated vessel was awaiting inspection, Russian inspectors stopped inspecting inbound non-Russian vessels for 11 days, preventing the vessel from entering the Ukrainian Black Sea. Previous interruptions had generally lasted only one to two days.

The sellers invoked force majeure on the basis that the prolonged interruption constituted an “unforeseeable and unavoidable impediment to transportation or navigation”. More specifically, Clause 20 of GAFTA Form 48 defined force majeure events and prescribed the procedure for invoking them, providing in relevant part:

“Prevention of Shipment

[1] ‘Event of Force Majeure’ means (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports named herein is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or navigation, or (l) any other event comprehended in the term ‘force majeure’.

[2] Should Sellers’ performance of this contract be prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on

Buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the shipment period, whichever is later, with the reasons therefor.

[...]"

Clause 20 of GAFTA Form 48 defined an "Event of Force Majeure" to include, among other matters, "unforeseeable and unavoidable impediments to transportation or navigation". It further provided that performance would be suspended where prevented by a force majeure event, "provided that" the sellers served notice within seven consecutive days of the occurrence (or within the alternative period specified in the clause).

The sellers gave notice nine days after the interruption began. The buyers rejected the notice and maintained that shipment remained due under the original timetable. A GAFTA Board of Appeal ultimately found in favour of the sellers and awarded them approximately US\$3.12 million. The buyers appealed to the Commercial Court under section 69 of the Arbitration Act 1996.

II. THE COMMERCIAL COURT'S DECISION

1. The threshold of foreseeability under the force majeure clause

The Court held that an event may be "unforeseeable" where, at the time of contracting, its probability of occurring and affecting performance is so remote that it can be regarded as commercially negligible. In other words, the relevant probability must be so small that it can be commercially disregarded. It rejected the argument that an event is necessarily foreseeable merely because its occurrence can be contemplated, explaining that foreseeability depends on its contractual context. In reaching this conclusion, the Court considered the other events expressly included within Clause 20, many of which are conceivable but rare and unpredictable. Construing "unforeseeable" as requiring an event to be virtually inconceivable would therefore have been inconsistent with the clause as a whole. The Court emphasised, however, that it is not enough for an event simply to be "unlikely".

Importantly, foreseeability may also be a question of degree. Although short interruptions to inspections were foreseeable, the Board was entitled to find that a prolonged interruption was sufficiently different in degree to be unforeseeable. As the Court observed, "bad weather may be foreseeable, but three days of hurricanes may not be".

2. The requirement of strict compliance with notice provisions

The Court rejected the GAFTA Board's approach that non-compliance with the seven-day notice requirement could be disregarded because the buyers had suffered no prejudice. The Court found that the words "provided that" were, in context, "unmistakeably the language of condition precedent". The notice requirement also served the commercial purpose of allowing the parties to know where they stood, and nothing in the clause justified an exception based on the absence of prejudice.

The Court therefore held that timely notice was a condition precedent to reliance on Clause 20, such that late notice would prevent the sellers from relying on the force majeure provision even if a qualifying force majeure event had otherwise occurred.

The decision does not mean that every contractual notice requirement, or every use of the words “provided that”, will necessarily constitute a condition precedent. That remains a question of contractual construction. The significance of the decision is that clear contractual language linking entitlement to force majeure relief to compliance with a specified notice procedure may be construed strictly.

Whether the sellers’ notice was in fact late raised a separate question as to when the notice period began. For a continuing event, time may begin to run only when the circumstances qualify as force majeure, rather than necessarily when the underlying disruption first begins. Here, although a one- or two-day interruption was foreseeable, the sellers argued that the qualifying “unforeseeable” event arose only once the interruption continued beyond that period. The Court accepted that this was possible in principle but did not decide when the force majeure event actually commenced.

As the GAFTA Board had not determined when the qualifying force majeure event commenced, the Court remitted the issue to the Board. If the sellers’ notice was found to have been given outside the seven-day period, they would have failed properly to invoke Clause 20. Otherwise, the remainder of the award would stand.

III. KEY TAKEAWAYS

- 1. Force majeure depends on the contractual allocation of risk.** Whether an event is “unforeseeable” depends on the wording and commercial context of the relevant clause. Even where some disruption is foreseeable, a disruption of a materially different scale or duration may still be “unforeseeable”. This may be particularly relevant to contracts performed against a background of known geopolitical, transportation or supply-chain risks.
- 2. Notice requirements may be conditions precedent to force majeure protection.** Wording such as “provided that”, particularly when linked to a specific notice period, may require strict compliance. Where notice is a condition precedent, the absence of prejudice to the counterparty will not excuse non-compliance. Parties should therefore avoid assuming that late notice will be excused simply because the counterparty was already aware of the underlying disruption.
- 3. The contractual trigger for notice should be identified carefully.** For developing or continuing events, the notice period may not begin when the underlying disruption first occurs. Parties should identify when the circumstances satisfy the contractual definition of force majeure and comply promptly with any applicable notice requirements. In practice, potentially qualifying events should be escalated internally as soon as they arise, and notice should be considered at the earliest stage permitted by the contract.

For Korean companies involved in cross-border shipping, construction, commodities and other international commercial transactions governed by English law, the decision highlights the importance of carefully drafting force majeure provisions and having appropriate procedures in place when disruption occurs. Force majeure clauses should clearly identify the risks covered, the relief available and the applicable notice requirements. Companies should also ensure that potentially qualifying disruptions are promptly escalated to the relevant commercial and legal teams so that contractual notice requirements can be assessed and met within the applicable time limits.

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