SCC CONFIRMS A "DEAL IS A DEAL": PARTY NOT ALLOWED TO RE-NEGOTIATE A CONTRACT BECAUSE IT NO LONGER LIKED THE TERMS

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In the recent Supreme Court of Canada ("SCC") case, *Churchill Falls (Labrador) Corp v Hydro-Québec ("Hydro-Québec")*,[1] the Court upheld the terms of a nearly 50 year old contract and confirmed the adage, "a deal is a deal."

In 1969, after lengthy negotiations, Hydro-Québec and the Churchill Falls (Labrador) Corporation ("CFLCo") entered into a contract to build a hydroelectric power station located on the Churchill River. Under the terms of the agreement, Hydro-Québec assumed the majority of the risk associated with the contract including the cost of construction overruns. Hydro-Québec also agreed to purchase most of the electricity generated by Churchill Falls at fixed prices regardless of need. Fast forward 50 years and, by 2009, electricity prices were significantly higher than they were in 1969. As a result, the fixed prices that at one time represented a significant risk to Hydro-Québec, now saw Hydro-Québec reaping substantial profits.

In a 7-1 decision affirming the decisions of the lower courts, the SCC found that, despite the disproportionate amount of profit, the parties nonetheless got what they bargained for. The Court determined that it had no basis to force Hydro-Québec to renegotiate the contract in the absence of any wrongdoing.

While the case was decided on principles found in Quebec's civil law regime, this decision nevertheless features some important reminders for corporate clients across Canada regarding commercial contracts and the laws that govern them.

Reminder #1: You can't get out of a contract just because it turned out to be a bad deal

Contracts between commercial parties are typically carefully negotiated with each side taking on varied levels of risk in return for something of value. Often, parties must make educated guesses when considering "known unknowns" such as price fluctuations and changes in the market that can impact the level of risk or reward they are taking on. Sometimes, as was the case in *Hydro-Québec*, those decisions turn out to be poor business decisions and one party is stuck with the losing end of the deal.

In *Hydro-Québec,* the SCC acknowledged that parties often accept risks when entering into a commercial contract, including the risk that unforeseen circumstances could affect the profitability or financial outcomes of a business arrangement. Importantly, the SCC's decision confirms that a party who, in hindsight, has made a "bad" deal is stuck with that bargain. The SCC articulated this point as follows:

...when all is said and done, CFLCo is seeking...to replace the Contract with a new agreement by undoing certain aspects of the Contract while keeping the ones that suit it...[and] it is asking its contracting partner to give up the benefits it obtained in exchange for the sacrifices it made during the first few years of the project...[n]either good faith nor equity justifies granting these requests.[2]

The SCC's decision highlights the applicability of the "high risk, high reward" concept. In this case, Hydro-Québec accepted much more risk than CFLCo did (a fact of which CFLCo was fully aware) and, accordingly, Hydro-Québec also reaped the benefits when the profits turned out to be much greater than anticipated. Finding yourself in a bad deal doesn't constitute a legal basis for the courts to re-open the contract that was entered in situations where the parties are of substantially equal bargaining power.

Reminder #2: Make sure your contract says everything it needs to say

The SCC's decision also serves as a reminder that commercial parties should ensure that their contracts comprehensively and accurately capture the obligations of both parties. In other words: if you want a renegotiation clause, make sure it appears explicitly in the contract!

The courts will not find an implied obligation where none exists. Reading in an implied term occurs only in very limited circumstances in which a gap must be filled in a contract in order to make it coherent. Implied clauses are not a mechanism for the courts to add duties to a contract after the fact. In Hydro-Québec the court found that there was no gap or omission in the contract and the words of the contract did not support CFLCo's arguments that there was an implied renegotiation clause in the contract.

Reminder #3: Acting in good faith doesn't mean sacrificing one's own interest

The principles of good faith and equity serve to connect legal principles with concepts of fairness, but what they don't do is alter the agreed-to equilibrium of a contract, or impose a new bargain on the parties.

In Hydro-Québec, the Court noted that there was nothing about the relationship between CFLCo and Hydro-Québec or the circumstances of the case that would justify an intervention on the basis of good faith or equity. There was neither inequality in bargaining power nor vulnerability in their relationship. Both parties to the Contract were experienced commercial entities, and the conduct of the parties demonstrated that they intended for one party to bear the risk of fluctuations in electricity prices.

The Court observed that CFLCo's reliance on concepts of equity and good faith in a contractual case such as this was part and parcel of its argument that a change in the circumstances of the parties to a contract was sufficient to justify the renegotiation of the contract. The Court observed that such an approach was out of step with the very purpose of contracts which, by their very nature, are binding and are intended to provide certainty to the parties.

The Court concluded that neither good faith nor equity could be used to order the sharing of profits that are honestly earned pursuant to the contract; nor could the concepts be expanded to penalize a party whose conduct has not been unreasonable. The concept of good faith does not negate a party's right to rely on the words of the contract. Refusing to renegotiate or share profits is not contrary to a party's duty of good faith in the absence of any wrongdoing or unreasonable behaviour.

Conclusion

This case confirms that courts cannot (and will not) intervene in a contractual relationship simply because the agreement entered into turns out to be a bad deal for one party. This is particularly so in circumstances where the contract adequately reflects the agreement reached by parties who are of equal bargaining power. Absent misrepresentation, mistake, frustration, illegality, or issues of capacity, a "deal is a deal," and parties to a contract must live with the terms of their bargain.

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[1] 2018 SCC 46.[ps2id id='1' target=''/]
[2] Ibid at para 138.[ps2id id='2' target=''/]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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