

In the recent case of *Al Mana Lifestyle Trading LLC and others v United Fidelity Insurance Company PSC and others* [2023] EWCA Civ 61, the Court of Appeal allowed the defendants' appeal by deciding that an "Applicable Law and Jurisdiction" clause in several insurance policies did not confer the English court jurisdiction. Accordingly, the service of the claim form was ordered to be set aside.

Background

The defendants issued a series of insurance policies which contained the following clause:

"APPLICABLE LAW AND JURISDICTION :

In accordance with the jurisdiction, local laws and practices of the country in which the policy is issued. Otherwise England and Wales UK Jurisdiction shall be applied,

Under liability jurisdiction will be extended to worldwide excluding USA and Canada."

The claimants brought a claim under the insurance policies for the combined value of about US \$40 million. Pursuant to the clause, the claimants issued the claim form in England which was subsequently served on the defendants out of the jurisdiction.

The defendants challenged the jurisdiction of the English court. Their case was that, in each policy, the clause provided for the exclusive jurisdiction of the local court of the country in which the policy was issued, with a fallback for the English jurisdiction if the local court does not have or would not accept jurisdiction.

The claimants' case was that the clause gives whichever party that wishes to bring a claim a free choice. It may therefore bring proceedings either in the local court or in England. Alternatively, if that interpretation is wrong, the jurisdiction of the English court is available so long as the jurisdiction of the local court is not mandatory under the laws of that country. The judge at first instance accepted the claimants' case. The Defendants appealed the decision.

Appeal

Males LJ (with whom Nugee LJ agreed whilst Andrews LJ dissented) allowed the appeal for the following reasons:

1. His strong initial impression was that the first sentence contained the primary jurisdiction chosen by the parties, with a fallback for the English jurisdiction in the second sentence.
2. A choice of foreign law, together with the words "*in accordance with*", suggested that the choice of jurisdiction of the local court was mandatory.
3. In the context of a jurisdiction clause, the word "*otherwise*" was more likely to be used as an introduction to a fallback jurisdiction, in this case England, if the local court was unavailable.

Comment

What is perhaps the most interesting aspect of this case is not the specific reasoning for why the clause was interpreted as it was, but the fact that a High Court Judge and three Court of Appeal

Judges each wrote differing judgments. The case therefore illustrates the perils that a party can face when trying to interpret a poorly drafted contractual clause which has become subjective in nature and emphasises the need for certainty when drafting contractual clauses.