



**International Chamber of Commerce**

*The world business organization*

## **ICC Dispute Resolution Services – ADR**

### **4th ICC International Commercial Mediation Competition – 2<sup>nd</sup> Session**

#### **JERSCONSULT V. MACHINVEST**

##### **GENERAL FACTS**

Keith Dealer ("KD") is a British citizen who spent the whole of his working life creating and developing Mitoc, a company incorporated in England, specialised in the import of machine tools from Germany for the British car industry.

Despite the growth of Mitoc, KD continued to take personal responsibility for:

- (a) the choice of suppliers and the equipment to be imported;
- (b) the marketing and sales of such equipment to the British car industry.

At the EMO Machine Tool Industries Trade Fair in Hanover (Germany) KD met representatives of Machinvest, a company incorporated in Istanbul (Turkey), specialised in investing in companies in the industrial field.

KD and Machinvest subsequently entered into two contracts, each governed by English law and each containing an ICC ADR clause:

- (a) an agreement between KD and Machinvest for the sale and purchase of the whole of the issued capital of Mitoc at a price of 20 million GBP;
- (b) an agreement between Machinvest and KD for the provision of consultancy services by KD to Mitoc.

After the sale, KD and his wife emigrated to Jersey (Channel Islands) and the consultancy agreement between KD and Machinvest was replaced by a consultancy agreement between JersConsult (a company incorporated by KD in Jersey) and Machinvest.

This consultancy agreement contained the following relevant terms:

- (a) it was to expire at a date being five years after the sale by KD of Mitoc to Machinvest;
- (b) JersConsult was to assist Machinvest in the running of the business of Mitoc;

## **ICC Dispute Resolution Services – ADR**

38, Cours Albert 1er, 75008 Paris, France

Tel. +33 1 49 53 30 52 Fax +33 1 49 53 29 29

Website [www.iccwbo.org/court/adr/](http://www.iccwbo.org/court/adr/) E-mail [iccmediationcompetition@iccwbo.org](mailto:iccmediationcompetition@iccwbo.org)

© Ronald Austin 2009

*All rights reserved. This work was especially prepared for the 4<sup>th</sup> ICC International Commercial Mediation Competition, and permission has been granted to ICC to reproduce it. No part of this work may be reproduced or copied in any form or by any means, or translated, without the prior permission in writing of the Author or ICC.*



International Chamber of Commerce

*The world business organization*

### **ICC Dispute Resolution Services – ADR**

- (c) Machinvest was to pay JersConsult a monthly fee of 5,000 GBP together with further annual fees based on the annual turnover of Mitoc: such fees were on an increasing sliding scale (the higher the slice of the turnover of Mitoc, the higher the annual fee), the lowest slice being 2% on turnover of Mitoc up to 5 million GBP and the top slice being 5% on turnover of Mitoc in excess of 20 million GBP;
- (d) An ICC ADR clause.

After some time, Machinvest purported to terminate the consultancy agreement claiming that no further payments would be made by it to JersConsult thereunder.

Machinvest based its termination on the fact that JersConsult was in breach of such agreement, in particular because, through KD, rather than acting as an independent consultant, JersConsult had acted as if KD had still been the owner of Mitoc. In particular, KD had denigrated Mitoc towards its staff, its suppliers and its customers.

KD considered that after the ownership of Mitoc had been transferred to Machinvest, it had been managed in a way which, in KD's opinion, was certain to cause its downfall.

For example, the machine tools it imported were of low quality and were being marketed and sold in a manner which was inconsistent with Mitoc's previous success: this caused damage to JersConsult, since part of its consultancy fee was based on the turnover of Mitoc.

KD considered that the sole purpose of Machinvest's purported termination of the consultancy agreement was to enable Machinvest to avoid paying consultancy fees for the remainder of its duration.

\* \* \*

### **ICC Dispute Resolution Services – ADR**

38, Cours Albert 1er, 75008 Paris, France

Tel. +33 1 49 53 30 52 Fax +33 1 49 53 29 29

Website [www.iccwbo.org/court/adr/](http://www.iccwbo.org/court/adr/) E-mail [iccmediationcompetition@iccwbo.org](mailto:iccmediationcompetition@iccwbo.org)

© Ronald Austin 2009

*All rights reserved. This work was especially prepared for the 4<sup>th</sup> ICC International Commercial Mediation Competition, and permission has been granted to ICC to reproduce it. No part of this work may be reproduced or copied in any form or by any means, or translated, without the prior permission in writing of the Author or ICC.*