

Effective Advocacy - Hypothetical

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BACKGROUND FACTS TO HYPOTHETICAL

Starbright and Premium Glass entered into a written commercial agreement whereby Starbright agreed to supply expensive hand-made heat sealed glass panels for high rise commercial and residential buildings to Premium Glass. Starbright is based in Hanoi and is the manufacturer of these panels. Premium Glass is based in Singapore and is the exclusive distributor of these panels. These panels are supplied by Premium Glass to large construction projects all over South East Asia.

The contract between the parties contains an arbitration agreement whereby all disputes arising under the contract are to be referred to arbitration. The contract including the arbitration agreement is subject to English law and the seat of the arbitration is Malaysia. The arbitration agreement also refers to the ACICA Arbitration Rules.

Some months after the parties began doing business, a large delivery of panels was made to Premium Glass. The panels were defective. Premium Glass took delivery of the panels without inspecting them. A couple of days later, the delivery was checked by Premium Glass and it was discovered that the panels appeared to contain a structural defect which could cause the panels to buckle and eventually fall out of their installed locations. Premium Glass had made very onerous demands about fitness for purpose and requirements that the panels met specifications at the time of the making of the contract.

Premium Glass notified Starbright of the problem and requested a replacement delivery of new panels. Starbright refused to make a replacement delivery saying that there was no contractual provision about such strict technical specifications and that Premium Glass had accepted the panels because they did not notify Starbright of the alleged problem within 24 hours of delivery as was required by the contract. Starbright then submitted its invoice for payment of US\$45M to Premium Glass. Premium Glass refused to pay this invoice and a dispute arose between the parties. Starbright started arbitration proceedings in respect of the outstanding invoice amount.

The Arbitrator has been appointed and the parties are appearing at the First Preliminary Conference. The Arbitrator has a number of applications to deal with.