

On 2 October 2020, Moulder J. handed down judgment in the Commercial Court in *Raiffeisen Bank International AG (RBI) v (1) Asia Coal Energy Ventures Limited (ACE); and (2) Ashurst LLP [2020] EWHC 2602 (Comm)*. Squire Patton Boggs acted for the successful First Defendant, ACE.

The case, which was featured in *The Lawyer's* Top 20 Cases of 2020, involved a US\$70 million claim by RBI arising out of ACE's takeover in 2015 of Asia Resource Minerals plc (ARM), the indirect owner of PT Berau Coal, one of Indonesia's largest coal producers.

The case was conducted at Squire Patton Boggs by Commodities and Shipping Group partners Christopher Swart and Katie Pritchard and associates Joseph Magoon and Alex de Wild, instructing Matthew Hardwick QC. The case transferred to Squire Patton Boggs from HFW in April 2020 when Chris, Katie and Joseph joined the firm together with corporate partner Brian Gordon, who had been instructed by ACE in the underlying takeover in 2015.

The claim was brought against ACE (an SPV) for specific performance of a 2015 SPA by which ACE had agreed to purchase a series of defaulted loans and underlying security from the bank, together with the shares it controlled in ARM. ACE opposed the claim on the basis that it was induced by the bank to enter into the SPA by misrepresenting the security it had over certain land, shares and vessels in Indonesia.

A claim was also brought against Ashurst LLP for damages for the alleged breach of its duties in respect of a "Solicitor's Confirmation" in relation to a US\$85 million escrow fund.

In a comprehensive success for ACE, and following a three-week trial in July 2020 (conducted entirely remotely due to COVID-19 with witnesses in Vienna, London and Hong Kong), Moulder J. accepted that (1) the bank had made a series of material misrepresentations (express and implied) to ACE in a data room marketing document (an Information Memorandum) provided during the due diligence period in relation to the status of the loans security; (2) ACE had relied on these false representations; and (3) ACE was entitled to rescind (and had rescinded) the SPA. The bank's claim against Ashurst also failed for related and other reasons.

ACE was managed by Argyle Street Management Limited, a Hong Kong-based hedge fund, of which Mr Kin Chan is chief investment officer. Mr Chan gave oral evidence at the trial and Moulder J noted that he had elected to defend the proceedings against an SPV in order to protect his reputation, and accepted his evidence on all contentious issues.

The judgment is of particular interest for the importance attached by the judge to the accuracy of due diligence data room marketing material and the reliance counterparties are entitled to make in respect of such documents. It also provides a modern example of the power of the equitable remedy of rescission. A link to the judgment can be found [here](#).

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