

CLARIFICATIONS TO THE PROBLEM

2019 LL.M. Moot Arbitration Competition

Errata:

For all purposes of this exercise, the claimant company is called **CLSA, Inc.** (incorporated in Delaware)

p. 6: Clause 1 of the Corporate Agreement (Exhibit C1), should read: "CLSA, Inc. is a company incorporated in the State of Delaware, U.S.A., legally represented by Wu Chong..."

p. 14: Paragraph 4 of Marcelo Lee's answer to the Notice of Arbitration: the Respondent's Exhibit is R1, not R3.

p. 18: Paragraph 26 of Marcelo Lee's answer to the Notice of Arbitration, at the end of the phrase: "as a payment to an *escrow* account to be opened in the M&M Bank, ..."

p. 21: Paragraph 1 of the CAM-CCBC Order: the paragraph should commence with the following phrase: "On 15 February 2018, CLSA, Inc. ("Claimant") presented a request for arbitration at CAM-CCBC against Marcelo Lee ("Respondent"), which was amended on 21 June 2018."

Clause 9 - ARBITRATION.

In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement, and within 60 days after the failure of the negotiation, any party may start arbitral proceedings for the unresolved controversy or claim. Such arbitration shall be in English in Panama or such other location as the parties may agree under the rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada.

Clarifications

1. Was CLSA incorporated and where was it incorporated?

Yes, CLSA was incorporated in the State of Delaware, United States of America. It is a closely held corporation.

2. Please specify why Claimant requests disgorgement of Marcelo Lee's salaries from the last three years.

Claimant demands disgorgement of the last three years' salaries because this is a reasonable amount of time in which it seems that Marcelo Lee was engaged in disloyal activities towards CLSA. The earliest email that Wu Chong has discovered is from early 2017, and it seems that they were already engaged in their deceptive activities for some time prior. In light of these circumstances, CLSA, Inc. claims disgorgement of salaries of the past three years (June 2014-june 2017).

3. Was Marcelo Lee a 33% shareholder in CLSA? When?

Marcelo Lee was a 33% shareholder until he left the company in June 30, 2017. He was, however, never compensated for the value of the shares that he returned to the company, and which are now held by Wu Chong, the only other shareholder in this company.

4. Was Respondent paid any salaries during his stay at the Stardust Beach Resort in May and June 2016?

No, Respondent was not paid his salaries. During the summer of 2016, CLSA went through difficult times due to lack of cash, and suspended payment of salaries during the two months of May and June.

5. Are the Endor proceedings civil or criminal in nature? Did Marcelo Lee participate in those proceedings and make allegations as to the jurisdiction and merits?

The Endor proceedings were civil in nature, and Marcelo Lee did not participate in the proceedings. The Endor courts tried to notify him, but he was living in Brazil at the time and the notifications were never done in a legally valid manner. It was through Cheoy Chen and So Fong that he found out about the judgment, which had included him among the responsible payees of the amounts due for the diversion of business.

6. What are the conditions under which Marcelo Lee was to become entitled to the shares pursuant to the CLSA Corporate Agreement?

CLSA and Wu Chong allege that Marcelo Lee breached the Corporate Agreement and thus is not entitled to reimbursement of his share value.

7. Is the Republic of Mustafar a state party to the 1958 New York Convention?

Yes, Mustafar is a party to the New York Convention, as are also all other countries mentioned in this exercise.

8. Did CLSA collect any monetary awards rendered in the Endor judgment and if it did, from whom and how much?

CLSA and Wu Chong in fact brought the Endor judgment to the courts of Brazil to enforce that judgment. It is expected that enforcement of this judgment, which will require, among other things, full translation of the English text, will take ca. 4 years. In the meantime, CLSA has initiated this arbitration.

9. Is there a history of non-compliance with arbitral awards by Claimant?

CLSA has had very few disputes so far, and most of them were handled by Wu Chong personally. Marcelo Lee only knows that in 2017 CLSA, Inc. was respondent in an arbitration involving the Puente Largo project. CLSA had secured third party funding for that case as well. However, the case was discontinued shortly after the constitution of the arbitral tribunal.

10. What arrangement exists between Claimant and the Royal National Bank regarding the payment of the loan?

The arrangement is that if Claimant wins the arbitration, it will repay the loan with a 4% interest. If Claimant loses the arbitration, it will only have the obligation to repay the nominal amount of the loan (without interest) over the course of 5 years.

11. What additional information can be provided about Marcelo Lee's undercharging in the Bypass Road at El Choto project?

Marcelo Lee had not been paid for his hotel expenses in May and June 2016 when he furthered CLSA's business by staying at the Stardust Beach Resort. He considered it only natural to retain some of the money from the Bypass Road project to keep as a safety net in case he would again be in a similar situation of not receiving compensation for his business development expenses.

12. Have the parties and arbitral tribunal signed the Terms of Reference?

The TOR are immaterial to the present claim, as all issues that are still disputed between the parties will be raised in the March 2019 hearing.

13. In which jurisdiction is Guangzhou Investment Co. incorporated?

Guangzhou Investment Co. is incorporated in the People's Republic of China.

14. How long have lasted the negotiations between the parties?

There existed several email exchanges about the dispute, but the only moment where the parties sat down and discussed the matter was on December 20, 2017.

15. What agreements bind Marcelo Lee with Sustainable Consultants?

Marcelo Lee is bound with Sustainable Consultants through the Co-operation Agreement and an Appendix to formalize the opt-in that took place shortly after June 30, 2017. There is no employment agreement, as all rights and obligations are laid out in the Co-operation Agreement.

16. What agreements bind Marcelo Lee with CLSA, Inc.?

Only the Corporate Agreement binds Marcelo Lee with CLSA, Inc. There is no independent employment contract.

17. When was the filing fee paid?

Claimant paid the full amount of the filing fee on June 16, 2018.

18. Did Marcelo Lee sign the Co-operation Agreement with Sustainable Consultants on December 20, 2016?

Yes, he did sign it on that date.

19. When did Wu Chong or CLSA become aware of the Sustainable Consultant Agreement?

When he read through the USB stick that his driver found in Marcelo Lee's apartment.

20. Was the work that Sustainable Consultants did for CLSA's former clients the same type of work that CLSA would have done?

It would have been exactly the same services.

21. Clarifications as to the email trails in Annex C2.

The first email, from Pedro Pablo to Marcelo Lee, refers to a project with Martín Rocapiedra that Sustainable Consultants is developing. There is no participation of CLSA.

The second email, from Marcelo Lee to Estéban Murillo, refers to an invoice that was slightly reduced for a client. The project is a different one from the Bypass Road in El Choto.