

YCAP/IBA Symposium, May 29, 2014 (Toronto)
Choosing the Right Path between Commercial and Investment Arbitration

From: Joseph Mozart
Sent: January 1, 2016
To: Senior Arbitration Counsel
Subject: URGENT CONTRACT ISSUE

Dear Counsel,

A very significant matter has arisen that requires your urgent consideration of possible legal solutions to ensure my business remains solvent. In short, our most important contract has gone terribly awry and as a result, we are facing financial ruin.

The present situation arose from celebratory birthday plans for Joe Verdi, the absolute dictator of the newly-renamed Republic of Verdica. He planned to celebrate his birthday at a summit of the G-20 + 1 (Verdica had been added to the G-20 as a result of its near monopolist ownership of the world's deposits of siwec, a rare wood which was proven to cure multiple viral infections, baldness, crankiness, and when burned, emits a gas that reverses climate change) in December 2015.

As you know, my business, Mozart Industries, manufactures and sells harpsichords from our headquarters in Toronto, Canada. Our harpsichords have become immensely popular since the "Beyoncé / Bieber Baroque Tour" of 2015. Orders have been pouring in from all over the world. Notably, small quantities of siwec are also vital to the production of harpsichords and we have a lucrative concession agreement with the Ministry of Siwec Extraction (MSE) in Verdica to harvest a small amount every year for our production.

Joe Verdi wanted to have the largest harpsichord symphony ever assembled to entertain the world's leaders at the summit and celebrate his birthday in style. He asked Verdica's Ministry of Foreign Affairs to work with his brother, the hapless Sal Puccini, to get it done. Sal is the black sheep of the family, barely able to heat his small garret apartment in Luz, Verdica's capital city.

Foreign Affairs asked Sal to take the lead. The Foreign Affairs Minister, Don Carlo, was busy negotiating treaties throughout the world and didn't have time to organize the summit or the birthday celebration. Chief among Don Carlo's vision for Verdica is a robust bilateral and multilateral investment treaty system. He thinks that entry into the system will do wonders for FDI in Verdica and will protect the increasingly affluent investors who have made their siwec fortunes and are investing in other jurisdictions.

Sal called Mozart Industries and asked if we would be willing to make 50 harpsichords for USD 50 million to be delivered on October 31, 2015 in time for the summit and birthday bash on December 31, 2015. We were thrilled with the deal and leapt at the excellent opportunity to display our product on a world stage. Accordingly, we asked for a small increase in the amount of siwec we are permitted to harvest under the concession agreement with MSE. Sal said "fine, fine, sounds good – but not because of this deal, because I like how much you invest, you have that great truck that comes and goes all the time". He wrote a provision in the purchase order referring to the fact he will amend the concession agreement to grant Mozart Industries an additional 5 acres of harvest.

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The purchase order contains a basic and valid ICC arbitration clause calling for arbitration “arising out of or connected with” the dispute to occur in Paris with three arbitrators under the newly amended ICC Rules.

A recent multilateral treaty between Canada, the United States, Mexico, and Verdica, adopted Chapter 11 of NAFTA verbatim.

Unfortunately, the deal went sour in October 2015. We faced corruption allegations, in which we were accused of involvement in a secret campaign deal to ensure our choice for mayor of Toronto. This was investigated by Canadian tax authorities and Mozart Industries was eventually cleared after a small fine was paid. However, we were closed for 4 weeks and no longer will meet the deadline. We can only produce 35 harpsichords.

We informed Sal and offered to take only USD 35 million for delivery of the 35 harpsichords. However, Sal is furious and will not reason with us. He is sure that he will meet the same dubious fate as his brother Fredo, who was last seen in 2012, unless he gets all 50 delivered. Sal has told us that we are on the hook for the whole 50 and that delivery of less than 50 is a breach of the agreement. The USD 100 million already spent on the birthday will be wasted unless the harpsichords are delivered (Joe recently was quoted as saying, “without the harpsichords, I am canceling everything”).

Sadly, the birthday bash and the summit were cancelled. 35 harpsichords were delivered on time, but we were never paid for them. Verdica has cancelled the concession agreement and no longer allows Mozart Industries to harvest siwiec.

As you can imagine, this is all deeply troubling for Mozart Industries. We are desperate to know what options we have to recover damages. If we can’t recover our losses from this disaster, we are ruined.

In addition, the concession agreement is integral to the continued production of our internationally renowned harpsichords. Please advise whether you think we can have the agreement reinstated.

Furthermore, I am frustrated with your inflated legal fees. I authorize you to spend no more than one hour preparing your advice on this matter.

Sincerely,

Joseph Mozart
President, Mozart Industries