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When the Firm's Biggest Client Comes Calling: Choosing the Right Arbitration Rules for the Right Dispute

From: Joseph Mozart
Sent: November 6, 2014
To: Senior Arbitration Counsel
Subject: URGENT CONTRACT ISSUE

Dear Counsel,

A very significant matter has arisen that requires your urgent attention.

As you know, my business, Mozart Industries headquartered in Toronto, Ontario, is the leading maker of harpsichords in the world. All of our harpsichords are custom made to a client's specifications and cost anywhere from \$500,000 to a million dollars.

In addition to their outstanding quality and craftsmanship, what sets our harpsichords apart is our use of synthetic touch-sensitive ivory, called "nivory", for our harpsichord keys. We've been told numerous times by our customers that without our nivory keys, they would buy their harpsichords elsewhere.

We source our nivory from LEKO, who unquestionably make the best synthetic ivory in the world.

LEKO is a joint venture between the OGEL Group of Denmark, and the Swedish company AEKI headquartered in Hamburg, Germany.

OGEL just informed me that they are going to unwind LEKO and take-over the production of nivory. OGEL really ran LEKO's business and grew frustrated with AEKI because other than providing directions – usually in the form of confusing diagrams and allen keys – AEKI did not do much of anything else, but share in LEKO's profits.

We have an exclusive rolling supply contract with LEKO for their nivory, but with its pending dissolution, there will be a 6-month break in the production of nivory while the production materials are transferred to OGEL's facilities.

Ever since the announcement of the "Drake / Ginette Reno Baroque Tour" we haven't able to keep up with the demand for our harpsichords and now our supply of nivory is at risk.

Despite previous assurances from LEKO that our supply of nivory would not be interrupted, OGEL now wants to use the remaining supply of LEKO's nivory in the production of its toy construction blocks. OGEL recently concluded a very lucrative contract with Belgium to build the world's largest model Taj Mahal. It seems that

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the last shipment of nivory will be ready to be shipped from LEKO's facilities to the project site in Ostend, Belgium in two weeks.

We've already paid LEKO \$5 million for our next supply of nivory in relation to our 25 outstanding orders. It's been our practice to inform LEKO of our sales as soon as they are concluded and we stood to make \$10 million in profit from these sales.

We cannot run the risk of OGEL obtaining the remaining amount of nivory. LEKO now claim that they terminated our contract in accordance with the termination clause and are entitled to keep the \$5 million.

Although we do not have a dispute resolution clause in any of our contracts with LEKO, we've agreed to resolve our dispute through arbitration. OGEL, however, is refusing to be a party to the arbitration and insists that only LEKO be a party. They've also told us that they'll agree with whatever arbitration procedure we want and will let us draft the arbitration agreement, but will not agree to an arbitrator appointment process.

We need your assistance to draft the arbitration agreement.

Seeing as LEKO is in the process of winding down, we need to initiate the arbitration immediately, and want OGEL to be joined as a party. It would be a disaster if we were successful in the arbitration but LEKO no longer existed and we couldn't secure the remaining nivory or recover our damages.

In addition, we want to keep the costs of the arbitration down as much as possible and value the predictability of knowing up-front how much the arbitration will cost including the institution's administrative expenses and arbitrator's fees.

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