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15 OCTOBER 2019

## IT Contracts: Is There a Duty to Co-operate?

In *Sanderson Ltd v Simtom Food Products Ltd*,<sup>[1]</sup> the UK Technology and Construction Court found that an action for breach of contract could be sustained on the basis of one party's failure to co-operate in the implementation of an information technology (IT) project, whether or not such an obligation is expressly spelled out in the relevant contract.

### Background

The claimant is a company in the business of providing IT services related to the production and supply of food and beverages. The contract between the parties had envisaged the claimant supplying, among other things, electronic software to the defendant in a project to digitise and automate the defendant's existing food production and accounting systems (**Contract**).

The Contract was signed by the parties on 10 November 2014. As a result of considerable delays attributable to the defendant, it was subsequently agreed that performance of the Contract would recommence sometime in early 2017. Following this agreed suspension of works, in early 2017, the claimant endeavoured to once again kick-start the project. Despite the claimant's persistent inquiries, the defendant, however, declined to confirm a date of re-commencement. Thereafter, the claimant via its solicitors issued a notice to the defendant to terminate the Contract and eventually instituted proceedings against the defendant for breach of contract.

### Decision

The primary issue before the court was whether the defendant had committed a repudiatory breach of the Contract when it declined to co-operate with the claimant in re-starting the project in early 2017. In holding the defendant in breach, the court found that a duty of co-operation was to be incorporated into the Contract as an implied term, as without such a duty being implied, failure of the project was inevitable.

### Analysis and impact

The decision is entirely consistent with the familiar common law proposition that the courts, including those of Malaysia, will not shy

away from incorporating terms into contracts where such terms are necessary to confer business efficacy upon the relevant agreement. The scope for implying a duty to co-operate is indeed especially broad where IT contracts are concerned, as the nature and complex subject matter of such contracts invariably call for a higher degree of collaboration between parties in order to enable the implementation of the IT project in question.

*Sanderson* thus serves as a valuable reminder to all parties entering into IT contracts to remain alive to the fact that the discharge of their contractual obligations may not necessarily end with compliance with any express terms. An IT contract is inherently reciprocal in character, and notwithstanding that a duty to co-operate may not be expressly provided for, such a term will be implied by law where the successful performance of the contract hinges upon co-operation between parties.

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Published by the TMT Practice

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