

MOOT PROBLEM

SUPREME Manufacturing, Ltd.
Industrial Street 14
1234 Mount City
Monsantaneo

Claimant

AGAINST

PETERSON Power backup Generator Co.
3591 White Fort
7286 Peak Avenue
Atlantaneo

Respondent

I. THE FACTS OF THE CASE:

1. SUPREME Manufacturing, *Ltd.*, a Monsantanean company, is a manufacturer of Backup Power Generator and Installation equipment for use in commercial and multiunit residential buildings. Approximately 40 per cent of its production is exported.

PETERSON Backup Power Generator, Co., a an Atlantanean company, is a firm that specializes in the sale, installation and servicing of Power back up Generator equipment in offices, stores, factories and multiple residence buildings.

SUPREME and PETERSON have had infrequent, but continuous, business relations for the past ten years, during which time they have concluded a total of twenty-three contracts, including the contract involved in this request for arbitration, for the sale of Backup Power Generator units for a total contract price of \$20,260,000. Until the contract in question there have been no disputes between the two companies.

2. On 10 May, 2015, SUPREME and PETERSON concluded a contract for the sale of six model 100 KVA Backup Power Generator units at a price of \$100,000 per unit (total \$600,000) CIP (Incoterms 2010) *Port Sea View*, Atlantaneo. (Exhibit 1) The contract called for the first unit to be shipped from any port Mosantaneo within five months of the signing of the contract, *i.e.*, prior to 10 October 2015. The second and third units were to be shipped within seven months of the signing of the contract, *i.e.*, prior to 10 December 2015. The remaining three units were to be shipped within eight months of the signing of the contract, *i.e.*, prior to 10 January 2016. According to clause 7.1 of the General Conditions, payment for each shipment was due “thirty days after notification from the Vendor to the Purchaser that the goods have been dispatched”.

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3. On 10 October 2015, the first unit was shipped in a container on the MS Deep Sea Carrier from *Puerto Naci*, Monsantaneo. Notice of the shipment was sent by email on 11 October 2015. (Exhibit 2) It arrived at Port Sea View, Atlantaneo on 21 October 2015. PETERSON transshipped the unit to Model City, Atlantaneo, where it and the other five model 100 KVA Backup Power Generator units were to be installed by PETERSON in a multi-unit residential building under construction by Atlantaneo Construction Co.

4. On 9 November 2015 SUPREME received an email from PETERSON saying “Model 100 KVA Backup Power Generator unit delivered to construction site. Having difficulties getting unit to work. Will let you know more soon.” (Exhibit 3). SUPREME replied on 10 November 2015 asking for more details and repeated its inquiries on 12 November and 20 November. (Exhibits 4, 5 and 6) On 22 November PETERSON replied that the Alternator system did not function properly and requested SUPREME to repair it. (Exhibit 7)

On the same day, 22 November 2015, SUPREME notified PETERSON by email that it was shipping by air a replacement Alternator unit for PETERSON to install. SUPREME pointed out that replacement of the Alternator system by PETERSON would be considerably less expensive than if SUPREME were to send its personnel to Atlantaneo to repair the Alternator unit in place. (Exhibit 8)

On 24 November 2015 PETERSON sent an email to SUPREME that its personnel were not available to repair the unit and threatened to go to another supplier if SUPREME did not send its personnel to Atlantaneo to install the replacement parts. (Exhibit 9)

The following day, 25 November, 2015, SUPREME notified PETERSON by email that the replacement Alternator unit had been shipped the previous day and repeated that PETERSON was obligated to install the replacement parts at SUPREME’s expense. (Exhibit 10) SUPREME also made demand for payment of the price for the first unit, less the cost to PETERSON of installing the replacement parts, *i.e.*, \$100,000 less an estimated \$3,500.

5. PETERSON failure to reply promptly and its failure to pay the purchase price that was due on 10 October 2015 caused SUPREME to feel insecure as to whether PETERSON had any intention to fulfill its obligations under the contract. SUPREME had heard rumors that as soon as PETERSON found that there was a problem with the Alternator unit and before it sent the imprecise email of 9th November 2015, PETERSON had been in contact with *Northnest Manufacturers Inc.*, a manufacturer of Backup Power Generator equipment in competition with SUPREME, to determine whether Northnest could deliver equipment to satisfy PETERSON's obligations under its contract with Atlantaneo Co. in the necessary time and at a lower price. As a result, on 30 November 2015, SUPREME sent another email to PETERSON stating that before it shipped the next two Backup Power Generator units, which was due by 10 December 2015, it insisted on payment of the outstanding balance of \$65,500 and establishment of a letter of credit for \$535,000 with a first class international bank, confirmed by a bank in Monsantaneo, that allowed for partial drawings. (Exhibit 11)

6. PETERSON replied on 2 December 2015 by email in which it purported to cancel the contract and stated that it was holding the Backup Power Generator unit for SUPREME. (Exhibit

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12) SUPREME replied by email the same day protesting PETERSON's purported cancellation of the contract and indicating that it was withholding the December shipment. (Exhibit 13) PETERSON sent a further email on 2 January 2016 requesting SUPREME to remove the Backup Power Generator unit. (Exhibit 14)

7. During the following six months there were unsuccessful negotiations between the two parties. On 10 June 2016 PETERSON sent an email to SUPREME stating that it had found a buyer for the unit it was holding at a price after repair of \$60,000. The email stated that PETERSON would sell for the account of SUPREME if there was no reply by 17 June 2016. (Exhibit 15) Since SUPREME had already indicated by its email of 2 December 2015 that it did not accept the cancellation of the contract and that the unit shipped belonged to PETERSON, a position it had continuously upheld in the subsequent negotiations, it saw no reason to reply. PETERSON sent a further email on 20 June 2016 that it was repairing the unit for the account of SUPREME and that it would sell the unit when the repairs were ready. (Exhibit 16) On 2 July 2016 PETERSON sent an email that it had sold the unit for \$60,000 and that it would remit to SUPREME \$40,900, which it claimed was the difference between the price of \$60,000 at which it sold the unit and its alleged costs and damages. (Exhibit 17) The following day, 3 July 2016, SUPREME replied by email that it continued to hold PETERSON in breach of contract, but that it was willing to settle the dispute if PETERSON would pay the \$100,000 for the unit shipped. (Exhibit 18)

8. Since SUPREME never received a reply from PETERSON, on 12 July 2016 it notified PETERSON by email that it would invoke the arbitration clause in the contract of 10 May 2015. (Exhibit 19)

II. THE LEGAL POSITION

1. Arbitration clause Clause 3 of the Special Conditions of the contract of 10 May 2015 provided that;

Any controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration as follows:

- If the Claimant is an Monsantaneo person or entity, the arbitration shall be conducted under the International Arbitration Rules of the American Arbitration Association in effect at the time of filing the claim,
- If the Claimant is a Atlantaneo person or entity, the arbitration shall be conducted under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Greek Federal Economic Chamber,
- The place of arbitration shall be Athens
- The number of arbitrators shall be three
- The language of the arbitration shall be English.

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2. Law applicable to the contract

Clause 2 of the Special Conditions provided that the contract was to be governed by the United Nations Convention on Contracts for the International Sale of Goods. That would have been the result in the absence of clause 2, since both Monsantaneo and Atlantaneo are, and were prior to the conclusion of the contract of 10 May 2015, parties to the Convention.

Clause 2 also provides that “Any matters not governed by the Convention shall be governed by the general principles of law governing international contracts.”

3. Legal rights of the claimant

a) SUPREME shipped the first model 100KVA Backup Power Generator unit within the period of time specified in the contract.

b) PETERSON lost any right it may have had to rely on a lack of conformity of the unit by not giving notice specifying the nature of the lack of conformity within a reasonable time after PETERSON discovered it or ought to have discovered it.

c) Even though SUPREME had no further obligations in regard to the model 100KVA Backup Power Generator unit shipped since adequate notice of the defect was not given within the required time, SUPREME rectified the defect by furnishing replacement parts to PETERSON’s to install at SUPREME's cost. This action on the part of SUPREME fulfilled any obligation that SUPREME might have had under the contract and the Convention to repair the defective unit.

d) PETERSON has not paid, and continues to refuse to pay, the \$100,000 due for the 100KVA model Backup Power Generator unit shipped.

e) PETERSON has unjustifiably repudiated the entire contract by purporting to cancel the contract in its email of 2 December 2015, leading to damages of \$100,000 for loss of profits on the five model 100KVA Backup Power Generator units remaining to be shipped.

4. Prayer before the Arbitral Tribunal MAY IT PLEASE THE ARBITRAL TRIBUNAL

- to order PETERSON to pay SUPREME the \$100,000 due for the model 100 KVA unit that was shipped, plus interest at the rate of 6 per cent per annum from 21 October 2015 to the date of payment;

- to order PETERSON to pay SUPREME the \$100,000 in damages due for the breach of the contract to purchase the remaining five model 100 KVA Backup Power Generator units, plus interest;

- to order PETERSON to pay all costs of the arbitration, including the lawyers' fees. (signed) , 10 APRIL , 2017

Attorneys for SUPREME Manufacturing, Ltd., Claimant

III LEGAL POSITION

Legal Rights of the Respondent

1. There is common ground between PETERSON and SUPREME that the model 100KVA Backup Power Generator unit was defective.
2. PETERSON inspected the unit promptly after it was delivered to the construction site where it was to be installed. As soon as PETERSON had determined that the unit was defective it notified SUPREME of the defect.
3. SUPREME refused to repair the unit after PETERSON repeatedly required it to do so.
4. The unrepaired unit could not be used by PETERSON to fulfill its contractual obligations to CONSTRUCTION. PETERSON was being pressed by CONSTRUCTION to install the first of six functioning Power Backup Generator units promptly so that CONSTRUCTION could continue with the construction of the residential complex. Therefore, PETERSON was within its rights to cancel the contract with SUPREME and to purchase replacement units from another supplier.
5. PETERSON is entitled to reimbursement for its expenses in preserving and selling SUPREME's unit, including its expenses in repairing the unit prior to sale. Such reimbursement can be recovered from the \$60,000 for which SUPREME's unit was sold.
6. PETERSON is also entitled to recover the damages it was required to pay to CONSTRUCTION for delay in furnishing Backup Power Generator units under the contract between them of 10 May 2015, which delay was caused by SUPREME's failure to fulfill its obligations to PETERSON.

Accordingly; MAY IT PLEASE THE TRIBUNAL

- to declare that PETERSON was within its rights when it canceled the contract of 10 MAY 2015;
- to declare that PETERSON properly sold the Backup Power Generator unit for the account of SUPREME;
- to declare that SUPREME is liable to PETERSON for the expenses it incurred in preserving and selling SUPREME's unit, including its expenses in repairing the unit prior to sale.
- to declare that SUPREME is liable to PETERSON for the damages that PETERSON was required to pay to CONSTRUCTION for delay in furnishing Backup Power Generator units under the contract between them of 10 MAY 2015;

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- to declare that PETERSON may reimburse itself for these expenses and damages from the amount it collected for SUPREME upon the sale of the unit, leaving a balance due to SUPREME of \$40,900

- to order SUPREME to pay all costs of the arbitration, including the lawyers' fees.

CLAIMANT'S Exhibit 1

CONTRACT

This contract is between SUPREME Manufacturing Ltd., Ltd., Industrial Street 14, 1234 Mount City, Monsantaneo (hereafter referred to as 'Seller') and PETERSON Power backup Generator Co., 3591 White Fort, 7286 Peak Avenue, Atlantaneo (hereafter referred to as 'Buyer').

Seller agrees to sell and Buyer agrees to purchase six model 100 KVA Backup Power Generator units for \$100,000 per unit (total \$600,000) CIP (Incoterms 2010) Port Sea View, Atantaneo. Specifications as per Seller's catalog dated 1 January 2015.

Special Conditions

1. Shipping dates. The first unit shall be shipped from any port Monsantaneo within five months of the signing of this contract. The second and third units shall be shipped from any port Monsantaneo within seven months of the signing of this contract. The fourth, fifth and sixth units shall be shipped from any port Monsantaneo within eight months of the signing of this contract.

2. Choice of law. The contract is to be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any matters not governed by the Convention shall be governed by the general principles of law governing international contracts.

3. Arbitration clause. Any controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration as follows:

- If the Claimant is an Atlantaneon person or entity, the arbitration shall be conducted

under the International Arbitration Rules of the American Arbitration Association in effect at the time of filing the claim,

- If the Claimant is a Monsantaneon person or entity, the arbitration shall be conducted under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Greek Federal Economic Chamber,

- The place of arbitration shall be Athens

- The number of arbitrators shall be three - The language of the arbitration shall be English.

4. General conditions. The general conditions of this contract are contained in General

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Conditions of Sale for the Import and Export of Durable Consumer Goods and of Other Engineering Stock Articles, No. 730 (prepared under the auspices of the United Nations Economic Commission for Europe, Geneva, March 1961).

CLAIMANT'S Exhibit 2

Text of an email sent by SUPREME to PETERSON on 10 May, 2015:

“Model 100 KVA Backup Power Generator Units shipped 10/10 MS High Sea Charter from Puerto Naci, Monsantaneo. Due Port Sea View 21/10. Documents follow.”

CLAIMANT'S Exhibit 3

Text of an email sent by PETERSON to SUPREME on 9 November, 2015:

“Model 100 KVA Backup Power Generator unit delivered to construction site. Having difficulties getting unit to work. Will let you know more soon.”

CLAIMANT'S Exhibit 4

Text of an email sent by SUPREME to PETERSON on 10 November 2015: "Please inform soonest nature of difficulties." **CLAIMANT'S Exhibit 5** Text of an email sent by SUPREME to PETERSON on 20 November 2015:

“Waiting to know nature of difficulties. Please advise.”

(signed, 10 May 2015)

(signed, 10 May 2015)

Jack Williams
Purchasing Agent

PETERSON Power backup Generator, Co

PatrikStevens

Sales Manager

SUPREME Manufacturing, Ltd.

CLAIMANT'S Exhibit 6

Text of an email sent by SUPREME to PETERSON on 20 November 2015: “Please inform if unit now operating.”

CLAIMANT'S Exhibit 7

Text of an email sent by PETERSON to SUPREME on 22 November 2015:

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“Automatic Alternator system does not function. Do not have personnel available to diagnose further. Please repair promptly.”

CLAIMANT'S Exhibit 8

Text of an email sent by SUPREME to PETERSON on 22 November 2015:

"Sending replacement Alternator system by air for you to install at our cost. Return defective control unit to us for repair. Too expensive to send our technicians.

“Payment due 21/10. Please send.”

CLAIMANT'S Exhibit 9

Text of an email sent by PETERSON to SUPREME on 24 November 2015: “Repeat, our personnel not available. Your responsibility to repair. We will pay when unit operates. Our buyer becoming insistent. Wants unit operating before closing access to building. We must go to other supplier if you do not repair promptly. Please acknowledge.”

CLAIMANT'S Exhibit 10

Text of an email sent by SUPREME TO PETERSON on 25 NOVEMBER 2015:

“Replacement control unit sent by air 24/11. We repeat, you obligated install at our cost. Expect you pay immediately 100,000 less repair cost. We estimate your cost 3,500.”

CLAIMANT'S Exhibit 11

Text of an email sent by SUPREME TO PETERSON on 30 NOVEMBER 2015:

“Have not received payment. Before shipping next two units, insist on payment \$ 65,000 and establishment confirmed L/C \$ 535,000, international bank, partial draw allowed, for remaining 5 units.”

CLAIMANT'S Exhibit 12

Text of an email sent by PETERSON to SUPREME on 2 DECEMBER 2015:

“Alternator unit still not working. You failed to repair as we insisted. Must supply our buyer working units. Canceling contract 10/05/2015. Holding defective unit for you at your cost.”

CLAIMANT'S Exhibit 13

Text of an email sent by SUPREME to PETERSON on 2 December 2015:

“Protest your actions. Holding you for price unit shipped and damages remainder of contract. In

