



Second Circuit Court of Appeals Win for Client Transmar

Partner Edwin Chociey and Associate Thomas Kenny successfully represented client Transmar Commodity Group Ltd. (“Transmar”) before the U.S. Court of Appeals for the Second Circuit in Cooperativa Agraria Industrial Naranjillo Ltda. v. Transmar Commodity Group Ltd. Transmar appealed a U. S. District Court for the Southern District of New York decision vacating a \$2.6 million arbitration award that Transmar had obtained from the Cocoa Merchants Association of America (“CMAA”) against Cooperativa Agraria Industrial Naranjillo Ltda. (“Naranjillo”), a Peruvian supplier of UTZ Certified Cocoa Butter to Transmar.

The Court of Appeals found that the District Court had erred as a matter of law by relying primarily on the face of the parties’ contract and a document – the CMAA’s standard form of contract – incorporated therein by reference in deciding that Transmar and Naranjillo did not agree to arbitrate their disputes. The District Court had so ruled notwithstanding that the incorporated CMAA standard form of contract required the parties to arbitrate any disputes under their contract. The Second Circuit explained that the District Court “should have also considered extrinsic evidence concerning ‘all relevant circumstances of the case, including negotiations, any practices which the parties have established between themselves, usages, and any subsequent conduct of the parties,’” citing the United Nations Convention on Contracts for the International Sale of Goods. The Second Circuit concluded that the District Court had “abused its discretion in failing to allow discovery, hold an evidentiary hearing, or both”, and remanded the matter to the District Court for proceedings consistent with its order.

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