Kluwer Arbitration Blog

KluwerArbitration ITA Arbitration Report, Volume No. XX, Issue No. 12 (September 2022)

Roger Alford (General Editor) (Notre Dame Law School), Crina Baltag (Managing Editor) (Stockholm University), and Monique Sasson · Sunday, October 30th, 2022

The Institute of Transnational Arbitration (ITA), in collaboration with the **ITA Board of Reporters**, is happy to inform you that the latest *ITA Arbitration Report* was published: a free email subscription service available at **KluwerArbitration.com** delivering timely reports on awards, cases, legislation and current developments from over 60 countries and 12 institutions. To get your free subscription to the ITA Arbitration Report, click **here**.

The ITA Board of Reporters have reported on the following court decisions.

InterSystems Software (Beijing) Co., Ltd. v. Beijing Shiying Hezhong Digital Technology Co., Ltd., Supreme People's Court of the People's Republic of China, (2019) Zui Gao Fa Zhi Min Xia Zhong No. 477, 15 April 2020

Arthur X. Dong, JunHe LLP, ITA Reporter for China

The laws of the People's Republic of China ("PRC") mandate a valid arbitration agreement must manifest the parties' s clear intent of arbitration, and an arbitration agreement shall be deemed invalid if it provides both arbitration and litigation as methods of dispute resolution. Here the Supreme People's Court upheld the validity of such an arbitration agreement by distinguishing the disputes to be resolved by arbitration and litigation, which is worth revisiting.

Société Rio Tinto et autre v. Société Alteo Gardanne, Court of Appeal of Paris, 19/19201, 11 January 2022

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal refused to set aside an ICC Award confirming that the non-disclosure by the arbitrator of information is not sufficient per se to characterize a lack of independence or impartiality. It should give rise to a reasonable doubt in the parties' eyes, which was not the case.

République de Guinée Équatoriale v. M. Fotso et Société SA Commercial Bank Guinea Ecuatorial (GBGE), Court of Appeal of Paris, 19/05045, 22 February 2022

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal partially annulled an award rendered in favour of a Cameroonian investor and its bank against the Republic of Equatorial Guinea considering that the Arbitral Tribunal exceeded its mandate by ordering payments that were not requested by the parties neither in the Terms of Reference nor in the submissions.

Republique de Pologne v. Société CEC Praha et Société Slot Group AS, Court of Appeal of Paris, 20/14581, 19 April 2022

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal set aside an arbitral award rendered in favour of a Czech investor after finding that, pursuant to the ruling in the Achmea case, an intra-EU BIT cannot constitute a valid ground for the Arbitral Tribunal's jurisdiction.

La Republique [A] v. Société Groupement [B], Court of Appeal of Paris, 20/03242, 05 April 2022

Nataliya Barysheva and Valentine Chessa, MGC Arbitration, ITA Reporters for France

The Paris Court of Appeal annulled an award rendered in favour of a consortium that had carried out public road works in the Republic of A, considering that the evidence revealed a set of sufficiently serious, precise and concordant indicia of corruption, so that the recognition and the enforcement of the award would violate international public policy.

Plaintiffs X1 and X2 v. Defendants Y1, Y2 and Y3, District Court of Sapporo, , 08 February 2022

Akiko Inoue, Hisaya Kimura and Koki Yanagisawa, Nagashima, Ohno & Tsunematsu, ITA Reporters for Japan

Non-parties were bound by arbitration agreements in a construction dispute. The court granted a motion to dismiss by Defendants holding that the arbitration agreements shall bind Defendants who were non-parties to the agreements, taking into consideration various circumstances such as the history of the conclusion and performance of the relevant construction contracts and heavy involvement of the Defendants in conclusion and performance of the contracts.

Juan Ernesto Villamayor Tommasi and Sergio Andrés Coscia v. Municipalidad de Asunción, Court of Appeal in Civil and Commercial Affairs of Asunción, 40/2020, 29 July 2020

José A. Moreno Rodríguez, Altra Legal, ITA Reporter for Paraguay

On July 29, 2020, an Asunción Appeals Court rejected an annulment and appeal request, as it considered that the First Instance Judge correctly determined that national awards should go directly to an enforcement stage, omitting the recognition stage that is required for foreign awards.

Seatramp Tankers Inc. y otro v. Proyectos y Construcciones S.R.L., Court of Appeal in Civil and Commercial Affairs of Asunción, 146/2021, 07 December 2021

José A. Moreno Rodríguez, Altra Legal, ITA Reporter for Paraguay

On December 7, 2021, after considering that the grounds for denying enforcement of the New York Convention were not met, an Asunción Appeals Court partially granted an annulment request and overturned the ruling of the First Instance Judge that had denied the enforcement of an arbitral award.

Naviera Yeruti S.A. v. Naviera Conosur S.A., Court of Appeal in Civil and Commercial Affairs of Asunción, 17/2022, 14 March 2022

José A. Moreno Rodríguez, Altra Legal, ITA Reporter for Paraguay

On March 14, 2022, an Asunción Appeals Court rejected an appeal presented against a judgment that ordered the enforcement of a national arbitral award, thereby confirming the First Instance Ruling.

Reginald Middleton and Veritaseum, LLC v. T-Mobile US, Inc., United States District Court, Eastern District of New York, 20-CV-3276 (NGG) (JRC), 24 August 2022

Nicolas D. Franco, King & Spalding LLP, ITA Reporter for the United States of America

Defendant T-Mobile moved to compel arbitration of Plaintiffs Reginald Middleton and Veritaseum, LLC's claims under the Terms and Conditions included in Mr. Reginald's agreements for his T-Mobile account.

T-Mobile's motion to compel raised two issues: whether Mr. Middleton was sufficiently on notice of T-Mobile's contract terms and whether he assented to them.

The district court compelled arbitration of Mr. Middleton's claims, finding for T-Mobile on both issues. Mr. Middleton was deemed sufficiently on notice of the terms because the receipts of his purchases—displayed on a device at checkout or via DocuSign—included the entire agreement and referenced arbitration. Mr. Middleton assented to being bound by those terms by signing about 10 such agreements with T-Mobile over the course of about two years with T-Mobile.

The district court further compelled arbitration of Veritaseum, LLC's claims, concluding that, as a company whose sole owner was Mr. Middleton, Veritaseum received a direct benefit from the agreements from Mr. Middleton's use of T-Mobile's services to conduct business.

Jones Day v. Orrick, Herrington & Sutcliffe, LLP et al., United States Court of Appeals, Ninth Circuit, No. 21-16642, D.C. No. 4:21-mc-80181-JST, 01 August 2022

Chris Smith, King & Spalding LLP, ITA Reporter for the United States of America

Appellant-Petitioner Jones Day initiated JAMS arbitration in Washington, D.C., against former partner Michael Bühler, alleging that the Paris-based attorney breached his partnership agreement with Jones Day when he negotiated to join the partnership of Appellee-Respondent, Orrick, Herrington & Sutcliffe, LLP ("Orrick"). The JAMS arbitrator issued subpoenas to Orrick to appear before the arbitrator and produce documents. Orrick refused to comply with the subpoenas.

Jones Day petitioned the Superior Court of the District of Columbia to compel Orrick to comply with the arbitrator's subpoena. The court declined to do so, finding that it did not have personal jurisdiction over Orrick, whose principal place of business was in San Francisco. The court also declined Jones Day's request based on the fact that Section 7 of the Federal Arbitration Act ("FAA") "requires Jones Day to file its action to enforce an arbitral subpoena in a United States district court."

Jones Day then requested that the arbitrator sit for a hearing in the Northern District of California (the "District") and issue a revised subpoena requiring two Orrick partners residing in that District to appear at a hearing there. The arbitrator granted the request and issued the subpoenas. Orrick again refused to comply, and Jones Day filed an action in the District Court for the Northern District of California (the "District Court") to enforce the arbitrator's order.

The District Court denied Jones Day's petition, concluding that under Section 7 of the FAA only the federal district court where the arbitrator sits has the authority to compel attendance. Because the seat of arbitration was Washington, D.C., the District Court concluded that the enforcement action must be brought there. The District Court rejected Jones Day's argument that an arbitrator can be seated in more than one location.

The United States Court of Appeals for the Ninth Circuit (the "Ninth Circuit" or the "Court") disagreed. The Court held that because Orrick resided in the District of Columbia, for jurisdictional purposes, and Mr. Bühler was not a U.S. citizen, the New York Convention governed the arbitration, giving the District Court subject matter jurisdiction. Next, the Ninth Circuit moved to consider the issues of venue. The Court held that the general venue statute at 28 U.S.C.A. § 1391 provided that so long as a federal court has personal jurisdiction over the defendant, venue always will lie somewhere. The Ninth Circuit held that the FAA's venue provision supplements, rather than replaces, other venue rules such as those found in the general venue statute. The Court then found that the Northern District of California was the proper venue under the statute to enforce an arbitral summons issued by an arbitrator sitting in that district, where the District Court had personal jurisdiction over Orrick because its principal place of business was in the District.

ACE American Insurance Company v. University of Ghana, United States District Court, Southern District of New York, 21 Civ. 6472 (NRB), 15 August 2022

Xiaomao Min, King & Spalding LLP, ITA Reporter for the United States of America

Petitioner, ACE American Insurance Company ("ACE"), sought confirmation and enforcement of an alleged foreign arbitral award against Respondent, University of Ghana ("UG"), in the Southern District of New York. UG moved to dismiss the petition for lack of personal jurisdiction, lack of subject matter jurisdiction, and improper venue, or to stay the action in the alternative pending the outcome of the arbitration in London. The district court granted UG's motion to dismiss the petition for lack of personal jurisdiction.

ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V v. Bolivarian Republic of Venezuela, United States District Court, District of Columbia, Civil Action No. 1:19-cv-0683 (CJN), 19 August 2022

Elizabeth Warwick, King & Spalding LLP, ITA Reporter for the United States of America

Petitioners, three Dutch subsidiaries of ConocoPhillips, sought to confirm and enforce an arbitration award against the Bolivarian Republic of Venezuela, Respondent, rendered 15 years prior. The U.S. District Court for the District of Colombia granted default judgment in favor of Petitioners after Respondent failed to appear in the proceedings.

An ICSID tribunal had rendered an award in favor of Petitioners in September 2013, holding that Respondent had expropriated Petitioners' business interests in three oil projects in violation of the bilateral investment treaty ("BIT") between the Netherlands and Venezuela.

Respondent moved for reconsideration of the award, but the tribunal rendered an Interim Decision in January 2017 reaffirming its prior findings. In March 2019, a final award was rendered by the tribunal ordering Respondent to pay Petitioners US$8,754,907,155, with post-award interest to accrue from May 2019 until the date of full and final payment.

Respondent applied to ICSID for a stay of the enforcement, and ultimately annulment, of the Award.

In March 2019, Petitioners commenced an action in the United States District Court for the District of Columbia to enforce the Award. Respondent failed to respond, and Petitioners moved for entry of default judgment.

On finding (i) the Court had subject-matter jurisdiction, (ii) the Court had personal jurisdiction over Respondent, (iii) Respondent had failed to respond to proper service, (iv) Petitioners' claim for relief had been sufficiently established, and (v) the annulment proceedings did not disturb entry of Default Judgment, the Court granted Petitioners' Motion for Default Judgment.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe here. To submit a proposal for a blog post, please consult our Editorial Guidelines.

This entry was posted on Sunday, October 30th, 2022 at 8:29 am and is filed under ITA Arbitration Report
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.