U.S. Supreme Court Holds Non-Signatories May be Compelled to Arbitrate Disputes in International Arbitration

Client Advisories

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In recent years the U.S. Supreme Court has taken on a number of arbitration cases, but most of these cases have focused on domestic consumer issues such as the inclusion of class action waivers in contracts.[1] In a departure from this trend, on June 1, 2020, the Supreme Court in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA*, tackled an issue relevant to international arbitration agreements between two sophisticated businesses and relating to the enforcement of the New York Convention.[2]

The case involved an issue that is often litigated in both stated and federal courts, the extent to which courts should compel arbitration when the dispute involves a party that did not sign the underlying agreement containing the arbitration clause. In the domestic context, under the Federal Arbitration Act, courts will often look to established contract principles in determining whether to compel arbitration, considering for example whether the non-signatory is a third party beneficiary to the agreement containing the arbitration agreement or whether the party should be precluded from resisting arbitration under an estoppel theory, alter ego or veil piercing theory. The basic idea is that a litigant should not be able to avoid arbitration if it has somehow benefited from the terms of the underlying agreement. As demonstrated by *GE Energy Power Conversion France SAS*, the issue was not quite as clear in the context of international arbitration.

In 2007, ThyssenKrupp Stainless USA, LLC entered into contracts with F.L. Industries, Inc. for the construction of steel rolling mills at ThyssenKrupp's steel manufacturing plant in Alabama. The contracts all contained arbitration clauses. F.L. Industries, Inc. then entered into a subcontractor agreement with GE Energy Power Conversion France SAS ("GE Energy") which required GE Energy to design and supply motors for the rolling mills. Outokumpu Stainless USA, LLC ("Outokumpu") then purchased the plant from ThyssenKrupp.

In the underlying case, Outokumpu claims that GE Energy's motors failed causing more than $100 million in damages. Outokump then filed suit against GE Energy in Alabama state court, which GE Energy then removed to federal court. The district court dismissed the action against GE Energy in favor of arbitration because the

agreement between ThyssenKrupp and F.L. Industries defined "Parties" to include subcontractors, which would include GE Energy.

The Eleventh Circuit Court of Appeals reversed that decision, holding that the New York Convention required that the parties to an arbitration agreement "actually sign" an agreement to arbitrate their disputes. The court thus held that GE Energy could not satisfy this requirement because GE Energy never signed the underlying agreement and state law principles such as equitable estoppel did not apply as it conflicted with the New York Convention's signatory requirement.

The Supreme Court held that the New York Convention's silence on the issue of nonsignatory enforcement of arbitration agreements did not preclude such enforcement and that domestic law could be more generous in enforcing arbitration agreements. The Court similarly looked to other countries' interpretation of the New York Convention. The courts of multiple contracting states permit enforcement of agreements to arbitrate by non-signatories.

The Supreme Court similarly rejected the 11th Circuit's analysis because its conclusion that only signatories could enforce agreements under the New York Convention was overly formulistic and grounded in a provision relating to the recognition of arbitration agreements, but not who is bound by a recognized agreement.

This unanimous decision should provide some clarity and uniformity in the enforcement of international arbitration agreements and has been generally praised for being consistent with international law. This does not mean that the resolution of international arbitration and its enforcement will be free from procedural disputes.

For example, if a nonsignatory compels arbitration in the United States and obtains an award, it might then need to enforce that award in a foreign country. There is no guarantee that the country of enforcement would recognize that a nonsignatory can enforce an agreement to arbitrate under equitable estoppel or some similar theory. This would then provide a basis for courts in that foreign country to refuse enforcement of the award under the New York Convention.[3] Even though such a complex result is possible, international arbitration agreements still provide businesses with a much better option for resolving international business disputes than relying exclusively on the courts. This is especially true given that there are no international treaties that govern the recognition and enforcement of U.S. judgments in foreign countries.

If you have any questions about this case, or need advice about international arbitration, please contact Benjamin Eichel at 215-246-3118 or beichel@archerlaw.com. Ben is a member of the firm's Business Litigation Group and focuses his practice on complex breach of contract litigation, contract interpretation disputes, arbitration, international matters and antitrust and unfair competition litigation.

[1] *See e.g. Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019) *Epic Systems v. Lewis*, 138 S. Ct. 1612 (2018); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

[2] The treaty obligated the US and approximately 160 other signatory countries to enforce arbitration agreements between businesses and individuals of member states.

[3] Article V(2) of the New York Convention provides that a country where recognition and enforcement is sought may refuse enforcement if the dispute could not be resolved in arbitration in that country.

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