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Legal Update

U.S. Supreme Court Addresses Non-Signatory's Enforcement of Arbitration Agreement

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On Monday, June 1, 2020, the Supreme Court of the United States issued a unanimous opinion in GE Energy Power Conversion SAS, Corp. f/k/a Converteam Sas v. Outokumpu Stainless USA, LLC clarifying that non-signatories can enforce arbitration agreements against signatories where the issues between them arise under the arbitration agreement, notwithstanding the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention").

By way of background, on June 7, 1958 at a United Nations diplomatic conference, 24 nations adopted a multilateral treaty called the New York Convention. The New York Convention sets a framework for its signatory states to recognize and enforce arbitration agreements and awards established by the domestic law of other signatory states.

To date, more than 160 countries have adopted the New York Convention. In 1970, the United States consented to the New York Convention and Congress enacted implementing legislation to codify the terms of the New York Convention into domestic law. See 9 U.S.C. §§ 201–208. Despite the passage of more than 60 years, some facets of the New York Convention remained unclear, including whether the Convention conflicts with — and therefore preempts — certain U.S. legal doctrines.

For instance, generally speaking, American domestic courts utilize the doctrine of equitable estoppel to prevent an entity from simultaneously benefitting from a contract while also refusing to abide by its terms. See Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 630 (2009). Therefore, according to U.S. law, a non-signatory third party can enforce an arbitration agreement absent specific legislation or contractual provisions to the contrary. Id. Until now, it was unclear whether the New York Convention would conflict with the tradition of domestic estoppel as applied to non-signatories' attempts to enforce an arbitration agreement against a party.

In the GE Energy case, ThyssenKrupp Stainless USA, LLC ("ThyssenKrupp") entered into numerous agreements with F.L. Industries, Inc. ("FLI") for the construction of cold rolling mills at ThyssenKrupp's steel plant in Alabama, each containing an arbitration agreement (the "Cold Rolling Mills Agreements"). To perform its obligations under the Cold Rolling Mills Agreements, FLI subcontracted with GE Energy Power Conversion France, SAS, Corp. ("GE Energy") to design, create, and supply motors for the cold rolling mills (the "Subcontract"). After GE Energy delivered nine motors, Outokumpu Stainless USA, LLC ("Outokumpu"), an entity who had acquired the plant from ThyssenKrupp, later claimed that GE Energy's motors failed and filed a complaint in Alabama state court claiming damages stemming from the allegedly failed motors.

GE Energy removed the action to federal court under 9 U.S.C. § 205 that provides for removal of actions that relate to an arbitration agreement under the New York Convention despite the fact that Outokumpu's predecessor ThyssenKrupp and FLI — not GE Energy — were parties to the Cold Rolling Mills Agreements. The issue presented to the U.S. Supreme Court was whether the New York Convention's terms prohibited applying the domestic doctrine of non-signatory estoppel to prevent non-signatory enforcement of arbitration agreements; i.e., whether GE Energy, as a non-

signatory to the Cold Rolling Mills Agreements, could force Outokumpu to arbitrate the dispute between the parties over the quality and function of motors GE Energy supplied.

Justice Clarence Thomas, writing for a unanimous Supreme Court, held that the New York Convention does not conflict with applying domestic non-signatory estoppel. The Court reasoned the Convention's silence as to non-signatory estoppel coupled with an absence of any textual evidence in the Convention to the contrary, permits domestic non-signatory estoppel and that such interpretation is supported by the Convention's history and drafting and its signatory states' post-ratification understandings pursuant to Medellín v. Texas, 552 U.S. 491, 507 (2008); El al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 175 (1999); and Zicherman v. Korean Air Lines, Co., 516 U.S. 217, 227 (1996). The Court highlighted that the New York Convention does not, and was never intended to replace domestic arbitration law; to the contrary, per the auspices of Article II, domestic arbitration laws were intended to fill the gaps in the New York Convention. For instance, the Court noted that the Convention left the task of identifying arbitrable disputes to domestic law. See, e.g., Mitsubishi Motors Corp. v. Soler Chysler-Plymouth, Inc., 473 U.S. 614, 639, n.21 (1985).

As a result, at least in the United States, a non-signatory to an arbitration agreement under the auspices of the New York Convention can nonetheless enforce an arbitration agreement against a signatory thereto where the disputed issues are governed by the contract. Accordingly, entities should take care when entering an arbitration agreement governed by the New York Convention, and do so only with the knowledge and understanding that the consent to arbitration can be enforced by signatories and non-signatories alike. While the Court's ruling was fairly narrow, this ruling may serve as a harbinger for further support of arbitration in various arenas. Only time, and the Justices, will tell.

The text of the GE Energy Power Conversion case is available here.

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This Legal Update is intended to keep readers current on developments in the law, and is not intended to be legal advice. If you have any questions, please contact authors Ray Middleman at 412.566.6054 or rmiddleman@eckertseamans.com, Carolyn Boucek at 412.566.6122 or cboucek@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.