United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7047 **September Term, 2018**

FILED ON: APRIL 19, 2019

ANATOLIE STATI, ET AL.,
APPELLEES

v.

REPUBLIC OF KAZAKHSTAN,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-01638)

Before: WILKINS and KATSAS, *Circuit Judges*, and RANDOLPH, *Senior Circuit Judge*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. After full review of the case, the Court is satisfied that appropriate disposition of the appeal does not warrant an opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED and **ADJUDGED** that the decisions of the United States District Court for the District of Columbia be **AFFIRMED**.

From 1999 to 2000, Petitioners-Appellees Anatolie Stati, Gabriel Stati, Ascom Group, S.A., and Terra Raf Trans Traiding Ltd. ("the Statis") acquired controlling shares in two Kazakh oil companies: Ascom purchased a 62 percent interest in Kazpolmunay LLP ("KPM"), and the Statis purchased 75 percent interest in Toklynneftagaz LLP ("TNG"). These companies owned subsoil use rights to the Borankol oil and Tolkyn gas fields and the Tabyl exploration block in Kazakhstan. By 2001, the Statis invested an estimated one billion US dollars exploring and developing these projects.

These developments stalled in 2008 when the President of Kazakhstan received a letter from the President of Moldova, the Statis' home country. The letter stated that Anatolie Stati invested in UN-sanctioned areas using proceeds from Kazakhstan's mineral resources and that he

was concealing profits in offshore accounts. As a result, the Kazakh government began investigating Anatolie Stati and his companies.

For several reasons, Petitioners characterize this investigation as a "campaign of intimidation and harassment" to pressure the Statis to sell their investments to Kazakhstan's state-owned oil company at a substantially depreciated price. JA 21-22. They allege that Respondent-Appellant Kazakhstan publicly accused the Statis of fraud and forgery, which clouded their title to TNG. Moreover, according to the Statis, Kazakhstan levied more than $70 million in back taxes against KPM and TNG, and it arrested and prosecuted KPM's general manager for "illegal entrepreneurial activity." JA 21-22. Kazakhstan defends the validity of its investigation and claims that the back taxes were properly assessed and KPM's general manager was justly prosecuted pursuant to a legitimate criminal investigation. On July 21, 2010, Kazakhstan terminated KPM and TNG's subsoil use contracts.

On July 26, 2010, the Statis filed a Request for Arbitration ("Request") with the Stockholm Chamber of Commerce ("SCC") in Sweden. The Request claims that Kazakhstan's actions violated its obligations as a signatory to the Energy Charter Treaty ("ECT"). The ECT is an international agreement that permits signatories to arbitrate disputes in foreign tribunals, such as the SCC. Under the ECT, the SCC rules governed the arbitral proceedings.

On December 19, 2013, the tribunal issued an award in favor of the Statis. The tribunal found that Kazakhstan's actions "constituted a string of measures of coordinated harassment," which constituted "a breach of [its] obligation to treat investors fairly and equitably, as required by Art. 10(1) ECT." JA 67. The tribunal awarded the Statis $497,685,101 for damages, and Kazakhstan was also required to pay the Statis $8,975,496.40 in legal costs.

On September 30, 2014, the Statis filed a Petition to Confirm Arbitral Award in the District Court under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), which has been incorporated into the Federal Arbitration Act. *See* 9 U.S.C. §§ 201-208. On April 5, 2016, after the parties had completed their merits briefings in this case, Kazakhstan filed a motion for leave to file "additional grounds" in support of its opposition to the petition to confirm the arbitral award. The District Court denied Kazakhstan's motion after considering whether justice required permitting it to add new grounds to its opposition to the petition to confirm the award. Kazakhstan then filed a motion for reconsideration of the District Court's denial of its motion to supplement. On March 23, 2018, the District Court issued a memorandum opinion denying the motion for reconsideration and confirming the arbitration award.

We affirm the District Court's grant of the Statis' petition to confirm the arbitral award. There is an "emphatic federal policy in favor of arbitral dispute resolution," thus district courts have "little discretion in refusing or deferring enforcement of foreign arbitral awards: the [New York] Convention is 'clear' that a court 'may refuse to enforce the award only on the grounds explicitly set forth in Article V of the Convention.'" *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 727 (D.C. Cir. 2012) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*,

473 U.S. 614, 631 (1985), and *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 935 (D.C. Cir. 2007)). Kazakhstan has failed to show that any exceptions to enforceability under the New York Convention are appropriate here.

In its primary argument on appeal, Kazakhstan contends that the arbitral award is not enforceable under the New York Convention because the SCC appointed Kazakhstan's arbitrator on its behalf and without notice, in violation of the governing arbitration rules. We defer to the SCC's interpretation of its own rules and hold that the SCC Board's appointment of the arbitrator was proper because Kazakhstan had notice and the opportunity to name an arbitrator but failed to do so.

Kazakhstan also claims that the District Court should have refused to enforce the arbitral award because the Statis failed to comply with the "cooling-off" provision that was an express condition of Kazakhstan's agreement to arbitrate. But their argument elides the fact that Kazakhstan received a stay – the precise remedy they sought. In January 2011, Kazakhstan sent a letter to the SCC objecting to the Statis' failure to comply with the cooling-off provision before commencing arbitration, and it proposed a stay of arbitration to cure the defect. Kazakhstan does not contest that, in response, the tribunal granted a three-month stay of the arbitral proceedings.

Kazakhstan's final argument is that the District Court erred by denying both its motion for leave to submit additional grounds in support of its opposition to the petition and its motion for reconsideration of that denial, because it had a right to present proof that the award was procured by fraud. We review the District Court's denial of Kazakhstan's motion for leave to submit additional grounds for defense for abuse of discretion, "requiring only that the court base its ruling on a valid ground." *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996). We find that it was not an abuse of discretion for the District Court to deny Kazakhstan's motion because the District Court based its ruling on multiple valid grounds. We further agree with the District Court that Kazakhstan improperly presented new facts in its motion for reconsideration that it had not introduced in its original motion to supplement.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after the disposition of any timely petition for rehearing or petition for rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk