

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-3324 PA (PLAx)	Date	July 8, 2013
Title	Wires Jolley LLP v. Zia Shlaimoun, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
Paul Songco	N/A		N/A
Deputy Clerk	Court Reporter		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court is a Petition to Confirm Arbitration Award filed by petitioner Wires Jolley LLP ("Petitioner") (Docket No. 1). Petitioner seeks confirmation of an arbitration award issued in its favor and against respondents Zia Shlaimoun and Oussha Arda Shlaimoun (collectively "Respondents") in Canada. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for July 15, 2013, is vacated, and the matter taken off calendar.

I. Factual Background

Petitioner is a law firm in Ontario, Canada. Petitioner was retained by Respondents, who are alleged to reside in California, to represent them in a legal proceeding in Canada. Pursuant to the written retainer agreement between Petitioner and Respondents, any dispute "arising out of or in relation to the retainer and services provided will be resolved by a single arbitrator and ADR Chambers in Toronto." Petitioner represented Respondents in the Canadian legal proceeding from July 2011 through November 2012. When Petitioner's representation of Respondents ended in November 2012, Petitioner contended that Respondents owed Petitioner \$326,000 in unpaid legal fees.

Petitioner commenced an arbitration proceeding as contemplated in the retainer agreement. The arbitrator issued his decision on April 22, 2013. In his decision, the arbitrator concluded that the "effort and involvement by David Wires on behalf of Respondents, taking cognisance of the instructions given to him and the services performed by Mr. Wires and his firm, were acceptable." Concluding, however, that the rate charged for, and number of hours billed by, one junior associate were excessive, the arbitrator reduced Petitioner's award by \$100,000. The arbitrator therefore awarded Petitioner \$227,504.46 plus interest at 2% from November 26, 2012.

Petitioner now seeks to confirm the arbitrator's final award. In their Opposition to the Petition, Respondents contend that this action should be stayed in favor of an action Petitioner brought in Los Angeles Superior Court against them and related entities in which Respondents have asserted cross-claims against Petitioner for malpractice, breach of contract, and fraud. Respondents alternatively request that this Court remand the Petition but cite no authority in support of such a proposition.

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II. Analysis

This action arises under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, codified at 9 U.S.C. § 201, et seq. The Convention governs judicial confirmation of arbitration decisions that arise out of agreements between U.S. citizens and citizens of foreign nations that have signed the Convention. The Convention, supra at Art. I(1); see also Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, Inc., 126 F.2d 15, 18-19 (2d Cir. 1997). “Congress has given federal courts jurisdiction to hear actions falling under [the Convention].” Ministry of Def. of the Islamic Rep. of Iran v. Gould, Inc., 969 F.2d 764, 770 (9th Cir. 1992) (citing 9 U.S.C. § 203).

“Under the Convention, the district court’s role in reviewing a foreign arbitral award is strictly limited.” Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, Inc., 126 F.2d 15, 19 (2d Cir. 1997). “The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the . . . Convention.” 9 U.S.C. § 207. The party opposing enforcement has the burden of proving the existence of one of the specific defenses enumerated in Article V of the Convention or grounds for deferment pursuant to Article VI. Europcar Italia, S.p.A. v. Maiellano Tours, Inc., 156 F.3d 310, 313 (2d Cir. 1998); see also Toys “R” Us, 126 F.3d at 23 (“[T]he showing required to avoid summary confirmation is high.”) (quoting Ottley v. Schwartzberg, 819 F.3d 373, 376 (2d Cir. 1987)). Article V(1) of the Convention provides:

Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- (a) The parties to the agreement were . . . under some incapacity, or that said agreement is not valid under the law to which the parties have subjected it or . . . under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the . . . the arbitration or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration . . . ; or

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- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or . . . the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended

Article V(2) permits the Court to refuse enforcement if: (a) “The subject matter of the difference is not capable of settlement by arbitration under the law ... or (b) The recognition or enforcement of the award would be contrary to the public policy of that country.” However, the exceptions set forth in Article V(2) are to be narrowly construed to effectuate the general policy favoring expedient dispute resolution. See Europcar, 156 F.3d at 315.

Respondents raise none of the seven grounds enumerated in Article V to justify denial of summary confirmation. There is no argument over the validity of the arbitral award. Rather, Respondents urge the Court to exercise its discretion to stay confirmation. Article VI sets forth a single ground for stay of confirmation: “A court has discretion to adjourn enforcement proceedings where an application has been made in the originating country to have the arbitral award set aside or suspended.” Europcar, 156 F.3d at 316 (citing the Convention, supra at Art. 6). However, several courts have ruled that the Court may “defer proceedings for prudential reasons” beyond the one enumerated in the Convention. See, e.g., Hewlett-Packard Co. v. Berg, 61 F.3d 101, 105 (1st Cir. 1995); Europcar, 156 F.3d at 316-17; Altomar Girassol v. Lumbermens Mut. Cas. Co., No. 04 C 7731, 2005 WL 947126, at *3 (N.D. Ill. Apr. 12, 2005) (relying on Europcar, 156 F.3d at 317; Four Seasons Hotels & Resorts v. Consorcio Barr, 377 F.3d 1164, 1172 (11th Cir. 2004)). However, even the cases that have construed the district court’s discretion the most broadly have warned that “a stay of confirmation should not be lightly granted.” See, Berg, 61 F.3d at 106.

Under the circumstances presented by this case, the Court finds that staying confirmation would be inappropriate. Defendant presents no evidence that a foreign action challenging any part of the arbitral award is pending; nor does it point to any substantial risk of prejudice or other circumstance that “would tend to shift the balance in favor of . . . adjournment.” Cf. Europcar, 156 F.3d at 318 (finding that “controversy surrounding the enforceability” of the parties’ arbitration proceeding “may tend to favor adjournment”); Berg, 61 F.3d at 105 (holding that the plaintiff’s insolvency substantially increased the relative hardship defendant would face if the court granted confirmation where arbitration of a related counterclaim was still pending).

Here, as the arbitrator’s decision makes clear, Respondents had an opportunity to assert claims concerning the competence of Petitioner and the amount Respondents owe to Petitioner. The arbitrator made a specific finding concerning the quality of Petitioner’s work. Moreover, the arbitrator reduced the amount owed by Respondents based on a review of the reasonableness of the rate and hours billed by a junior associate. To stay this action to allow Respondents to assert these same claims, even if it

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was within this Court’s authority to do so, would impermissibly thwart the purpose of the Convention, “to expedite the recognition of foreign arbitral awards with a minimum of judicial interference,” and “arbitration’s twin goals of settling disputes efficiently and avoiding long and expensive litigation.” Cf. Berg, 61 F.3d at 318; Europcar, 156 F.3d at 317-18 (stating that the central factors in deciding whether a stay is appropriate should be deference to the goals of arbitration, weighed against the status of the pending foreign proceedings); Altomar, 2005 WL 947126 at *3 (emphasizing the Convention’s policy favoring confirmation of arbitral awards). Therefore, the Court grants Petitioner’s Petition to Confirm Arbitration Award and denies Respondents’s request to stay this action or remand it to Los Angeles Superior Court.

CONCLUSION

For all the foregoing reasons, Petitioner’s Petition to Confirm the Arbitration Award is granted. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

_____: _____
Initials of Preparer _____