HCCT 73/2017

[2018] HKCFI 613

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTRUCTION AND ARBITRATION PROCEEDINGS

NO 73 OF 2017

IN THE MATTER of the enforcement of arbitration award dated 24 October 2016 made in an Arbitration in Dubai, United Arab Emirates (ICC arbitration Case No. 19376/MCP/DDA)

(Pursuant to section 87 of the Arbitration Ordinance, Cap 609 and Order 73 rule 10 of the High Court, Cap 4A)

BETWEEN

DUBAI INTERNATIONAL REAL ESTATE	Applicant/ Respondent in the Arbitration
and	
1. AL AHMADIAH CONTRACTING & TRADING 2. HIP HING OVERSEAS LIMITED	Defendants/ Claimants in the Arbitration

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Before: Hon Mimmie Chan J in Chambers (Open to Public)

Date of Hearing: 19 March 2018

Date of Decision: 19 March 2018

D E C I S I O N

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1. The ground of the 2nd Defendant's application to set aside the Order dated 9 January 2018 (granting leave to enforce the Award) is not specified in its Summons, as required by *KB v S* [2016] 2 HKC 325 and *T v C* HCCT 23/2015, 14 March 2016.

2. Even if the omission in the Summons is to be ignored, the **only** ground which is referred to in the supporting affidavit of Neil Roberts is s 89 (2)(f) of the Arbitration Ordinance, and the application for adjournment invokes s 89 (5).

3. Section 89 (2)(f) only applies where the Award "has been" set aside or suspended by the competent authority. Section 89 (5) applies only if an application for setting aside or suspension of an Award has been made.

4. On the 2nd Defendant's evidence, the Award has not been set aside or suspended, nor has any application for suspension, annulment or setting aside of the Award been made as at today's date, which is more than 2 months after leave to enforce the Award was granted by the Order of 9 January 2018, and more than 16 months after the date of the Award of 24 October 2016, giving ample time for the 2nd Defendant to do so, even taking into account the need for preparing translations and getting notarized and legalized copies of the relevant documents.

5. The Ordinance sets out the exclusive and exhaustive grounds on which enforcement of an award can be refused. The Court has held in *KB v S* and *T v C* that the grounds for setting aside an arbitral award should be clearly set out in the summons. The Court and the other side should not have to speculate which ground for setting aside is applicable to the facts relied upon by the respondent in any case.

6. The 1st hearing of a summons to set aside should not automatically be treated as the "call over" hearing only (*G v M*, HCCT 36/2009, 14 September 2009). If, on the materials before the Court, there are no arguable grounds for setting aside an order for enforcement of an award, the application can be disposed of immediately.

7. Even at the hearing today, no summons has been issued for amendment of the summons of 21 February 2018, to specify any additional grounds relied upon for the setting aside, as the 2nd Defendant has sought to argue to be possibly applicable.

8. Bearing in mind the aims and objectives of the Arbitration Ordinance, and the public policy considerations of enforcing arbitration agreements and arbitration awards and ensuring Hong Kong's observance of its obligations under the New York Convention, the application by the 2nd Defendant's summons of 21 February 2018 is dismissed, for failing to disclose any viable cause. The costs of the application for setting aside and its dismissal are to be paid by the 2nd Defendant on an indemnity basis.

(Mimmie Chan)
Judge of the Court of First Instance
High Court

Mr Nick Luxton, instructed by Stephenson Harwood, for the applicant

Mr Vincent Lung, instructed by DLA Piper Hong Kong, for the 2nd defendant