June 8, 2020

Supreme Court: New York Convention Doesn't Bar Nonsignatories to an International Arbitration Agreement from Seeking to Compel Arbitration

Key Takeaways

- In *GE Energy Power Conversion France SAS* v. *Outokumpu Stainless USA, LLC*, the Supreme Court held that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards does not preclude a nonsignatory to an international arbitration agreement from seeking to compel arbitration by invoking state-law doctrines of equitable estoppel.

- Because the New York Convention relies on domestic law to fill in its "gaps," the Convention creates only a floor, and not a ceiling, for the enforcement of international arbitration agreements. Moving forward, additional background principles of state contract law may be applied to the enforcement of international arbitration agreements.

On June 1, 2020, the Supreme Court unanimously held in *GE Energy Power Conversion France SAS* v. *Outokumpu Stainless USA, LLC*[1] that the Convention on Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the "New York Convention," does not preclude a nonsignatory to an international arbitration agreement from invoking state-law doctrines of equitable estoppel in order to compel arbitration. The Supreme Court's decision resolves a split of authority among lower courts and can be expected to further expand the scenarios in which a nonsignatory may seek enforcement of an arbitration agreement. Below, we describe the legal framework, the Court's decision, and its implications.

Legal Framework

The New York Convention is a multilateral treaty to which the United States and 162 other countries are signatories. While the Convention primarily relates to the enforcement of awards obtained through international arbitration, certain sections of the Convention impose requirements related to arbitration agreements. Of particular relevance here, Article II(3) of the Convention states that the courts of signatory states, in cases "in respect of which the parties have made an [arbitration] agreement . . . , shall, at the

[1] No. 18-1048, 2020 WL 2814297 (U.S. June 1, 2020).

request of one of the parties, refer the parties to arbitration, unless [the court] finds that the said agreement is null and void, inoperative or incapable of being performed."[2]

Congress implemented the New York Convention in Chapter 2 of the Federal Arbitration Act.[3] That chapter grants federal courts jurisdiction over actions governed by the Convention and provides that "Chapter 1 [of the Arbitration Act] applies to actions and proceedings brought under [Chapter 2] to the extent that [Chapter 1] is not in conflict with [Chapter 2] or the Convention."[4]

Chapter 1 of the Arbitration Act contains Section 2, the Act's primary substantive provision. Section 2 provides that written arbitration agreements "shall be . . . enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[5] The Supreme Court has previously held that Section 2 places arbitration agreements "upon the same footing as other contracts"[6] and does not "alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)."[7]

Background and Procedural History

The petitioner in *GE Energy* was a subcontractor that had designed, manufactured and supplied certain motors for a steel mill in Alabama; the respondent was the owner of the mill. The dispute between the parties arose when the motors allegedly failed, prompting the mill owner to file suit against the subcontractor in Alabama state court.

After removing the case to federal district court, the subcontractor filed a motion to dismiss and compel arbitration. In the motion, the subcontractor relied on an arbitration provision in several contracts between the general contractor and the prior owner of the steel mill. The subcontractor was not a signatory to those agreements, but it contended, among other things, that it could enforce the agreement under the state-law doctrine of equitable estoppel.

The district court granted the subcontractor's motion to dismiss and compel arbitration, but the Eleventh Circuit reversed. The Eleventh Circuit interpreted the New York Convention to include a "requirement that the parties *actually sign* an agreement to arbitrate their disputes in order to compel arbitration."[8] Because

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2 21 U.S.T. 2517, 2519, T.I.A.S. No. 6997.

3 9 U.S.C. § 201-208.

4 9 U.S.C.A. § 208.

5 9 U.S.C.A. § 2.

6 Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 474 (1989).

7 *Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 630 (2009).

8 *Outokumpu Stainless USA, LLC* v. *Converteam SAS*, 902 F.3d 1316, 1326 (11th Cir. 2018) (emphasis in original).

the subcontractor was "undeniably not a signatory to the [c]ontracts," the court deemed that requirement not satisfied.[9] The court then held that a nonsignatory to an arbitration agreement covered by the Convention could not rely on state-law doctrines of equitable estoppel because application of such doctrines would conflict with the signatory requirement.

The Eleventh Circuit's decision deepened a conflict among the courts of appeals regarding the question whether the New York Convention precludes the application of state-law doctrines of equitable estoppel.[10] The Supreme Court granted certiorari.

The Supreme Court's Decision

In a unanimous decision authored by Justice Thomas, the Supreme Court reversed the Eleventh Circuit's decision. The Court held that, because "[t]he text of the New York Convention does not address whether nonsignatories may enforce arbitration agreements under domestic doctrines such as equitable estoppel," there is no conflict between the New York Convention and the application of such doctrines that would preclude their application under the Arbitration Act.[11]

The Court began by noting that Section 2 of the Arbitration Act "permits a nonsignatory to rely on state-law equitable estoppel doctrines to enforce an arbitration agreement."[12] And because Section 2 applies to actions governed by the New York Convention "to the extent that [the two are] not in conflict," the Court explained that the question to be resolved was whether any provision of the New York Convention in fact conflicted with those state-law doctrines.[13]

Examining the text of the New York Convention, its negotiating and drafting history, and the understanding of parties to the Convention after ratification, the Court held that no conflict was present. The Court stressed that, while Article II(3) requires courts "[to] refer the parties to arbitration" if they have entered into a written arbitration agreement, that provision created a floor, not a ceiling, for the enforcement of those agreements. That is, because Article II(3) lacks any exclusionary language, it "does not prevent the application of domestic laws that are more generous in enforcing arbitration agreements."[14] To the contrary,

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9 *Ibid.*

10 Compare *id.*, and *Yang* v. *Majestic Blue Fisheries, LLC*, 876 F.3d 996, 1001–02 (9th Cir. 2017), with *Aggarao* v. *MOL Ship Mgmt. Co.*, 675 F.3d 355, 375 (4th Cir. 2012), and *Sourcing Unlimited, Inc.* v. *Asimco Int'l, Inc.*, 526 F.3d 38, 48 (1st Cir. 2008).

11 GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC, No. 18-1048, 2020 WL 2814297, at *2 (U.S. June 1, 2020).

12 *Id.* at *4.

13 *Ibid.*

14 *Id.* at *5.

the Court explained that the New York Convention "requires courts to rely on domestic law to fill [in its] gaps."[15] Although the Court primarily relied on the text of the Convention to reach its decision, the Court also explained that the negotiating and drafting history, as well as the post-ratification understanding, confirmed the Court's reading.[16]

After holding that the New York Convention did not conflict with the enforcement of arbitration agreements by nonsignatories through equitable estoppel, the Court remanded the case to the Eleventh Circuit to determine whether the applicable state law of equitable estoppel permitted enforcement of the particular arbitration agreements at issue.[17]

Justice Sotomayor wrote a short concurring opinion. She stated that, while the New York Convention "does not categorically prohibit the application of domestic doctrines, such as equitable estoppel," the Arbitration Act limits their application based upon the fundamental principle that arbitration is a matter of consent.[18]

Implications

The unanimous decision in *GE Energy* reinforces the ability of nonsignatories to an arbitration agreement to demand arbitration under state-law doctrines of equitable estoppel. Previously, in *Arthur Andersen* v. *Carlisle*, the Court permitted the application of equitable estoppel under Section 2 of the Arbitration Act. Through *GE Energy*, the Court has now also held that Chapter 2 of the Arbitration Act also permits the application of equitable estoppel, removing the New York Convention as a potential bar for the enforcement of arbitration agreements by nonsignatories where that doctrine applies. The combination of *Arthur Andersen* and *GE Energy* solidifies the place of equitable estoppel in federal arbitration jurisprudence.

Although the Court's decision explicitly pertains to equitable estoppel, language in the opinion suggests that the Court views state law as playing a significant role in cases implicating the New York Convention. The Court's decision is premised on the view that the New York Convention "requires courts to rely on domestic law to fill [in its] gaps," and, consequently, the Convention does not "preclude[] the use of domestic law to enforce arbitration agreements."[19] The Court thus held that the New York Convention sets certain minimum thresholds with respect to the enforcement of international arbitration agreements, but that state law can permissibly go beyond these minimum thresholds. As a result, *GE Energy* potentially clears the way for the

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15 *Ibid*.

16 *Id*. at *6.

17 *Id*. at *7–8.

18 *Id*. at *8.

19 *Id*. at *5.

application of additional background principles of state contract law for the enforcement of arbitration agreements.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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