U.S. Supreme Court Holds That New York Convention Does Not Bar Nonsignatory From Compelling International Arbitration

Foley & Lardner LLP
Article By
Max B. Chester
Angel L. Valverde
Foley & Lardner LLP
Legal News Alert

- ADR / Arbitration / Mediation
- Litigation / Trial Practice
- Global
- All Federal

Tuesday, June 9, 2020

On June 1, 2020, in an opinion authored by Justice Thomas, the U.S. Supreme Court unanimously held that the Convention on Recognition and Enforcement of Arbitral Awards (commonly known as the “New York Convention,” which is incorporated into Chapter II of the Federal Arbitration Act) does not bar a non-signatory from compelling arbitration with a signatory to an international agreement containing an arbitration clause. GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC, No. 18-1048. The Supreme Court previously held that under traditional principles of state law, domestic arbitration agreements may be enforced by nonsignatories through “assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.” Arthur Anderson LLP v. Carlisle, 556 U.S. 624, 631 (2009). In GE Energy, the Supreme Court extended enforcement by nonsignatories of international arbitration agreements under traditional principles of state law. Specifically, in GE Energy, the Court permitted a nonsignatory to invoke equitable estoppel and compel arbitration with a signatory where the signatory relied on the terms of the
agreement containing an arbitration clause in asserting claims against the nonsignatory.

In reaching its conclusion, the Supreme Court noted that the New York Convention focuses almost entirely on arbitral awards and does not address whether nonsignatories may enforce arbitration agreements under domestic doctrines such as equitable estoppel. The Court emphasized that Article II of the FAA (incorporating the New York Convention) contemplates the use of domestic doctrines to fill gaps in the New York Convention. The Court also explained that there is nothing in the drafting history of the New York Convention that suggests the Convention sought to prevent contracting states from applying domestic law that permits nonsignatories to enforce arbitration agreements in additional circumstances. Finally, the Court pointed out that the weight of authority from contracting states indicates that the New York Convention does not prohibit the application of domestic law addressing the enforcement of arbitration agreements. Justice Sotomayor filed a separate concurrence in which she expressed a view that any applicable domestic doctrine must be rooted in the principle of consent to arbitrate and that lower courts must determine, on a case-by-case basis, whether applying a domestic nonsignatory doctrine would violate the New York Convention’s inherent consent restriction.

The GE Energy decision is significant for many international commercial relationships involving U.S. parties. Many subcontractors, distributors, vendors, guarantors, and customers in the international commercial chains may not be signatories to agreements containing arbitration clauses. However, if a signatory asserts claims against a nonsignatory under such agreement, the nonsignatory may invoke one of many domestic doctrines to compel arbitration with the signatory.

© 2020 Foley & Lardner LLP