

IN THE EASTERN CARIBBEAN SUPREME COURT
ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO AXAHCV2013/0102

In the Matter of the Arbitration Act RSA c.A105

And

In the Matter of Civil Procedure Rules 2000 Part 43

BETWEEN;

RICHARD VENTO et al

Applicants

And

KEITHLEY LAKE

FIDELITY INSURANCE CO LTD

ALLIANCE ROYALTIES INC

WESTMINISTER, HOPE & TURNBERRY LTD

Respondents

Appearances:

Mr. Harry Wiggin with Ms. Rayanna Dawden for the Applicant

Mr. Michael Bourne for the Respondents

2014; April 8th; 28th,

June 4th.

[1] **MATHURIN, J**; The applicants have, pursuant to the Arbitration Act of Anguilla and the Civil Procedure Rules 2000, Part 43 applied for an order to register and enforce the final arbitral award of arbitrator Lawrence Watson Jr. dated 23rd August 2013 and for judgment to be entered against the respondents jointly and severally in the sum of US\$7,419,000.00. The award was made

pursuant to an arbitration agreed between the applicants and the respondents and proceedings filed in the USVI Courts were stayed pending the determination of the arbitration. In the arbitration agreement, the parties agreed that the award would be binding without any right of appeal and waived their rights to a reasoned award. Additionally the parties also agreed that they would be bound by the decision of the Arbitrator and that the award could be enforced in both foreign and US jurisdictions without procedural or substantive objections to enforcement and that it could be enforced in any location where the losing parties' assets could be located.

[2] Rule 43.10 of the Civil Procedure Rules 2000 states;

“(1) This Rule has effect as to the –

(a) enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and

(b) registration of such an award so that it may be enforceable as if it were an order of the court.

(2) In this rule –

“award” means the award, order or decision which it is sought to enforce; and

“outside body” means any authority other than the court.”...

(5) The applicant must –

(a) exhibit to the affidavit the award or a copy of it ;

(b) give an address for service on the person against whom the applicant seeks to enforce the award; and

(c) (if the award is for the payment of money), certify the amount remaining due to the applicant.”

[3] The statutory provisions that the applicant relies on for the enforcement and registration of the award are sections 66 and 101 of The Arbitration Act 1996 of the UK (The UK Act) which currently applies to Anguilla by virtue of the Arbitration Act of Anguilla which provides that;

"The Arbitration Act (14 Geo 6 c 27)(UK) as amended from time to time shall be, and the same is hereby declared to be henceforth, in force in Anguilla, and all the provisions of the Act, so far as the same are applicable, shall mutatis mutandis apply to all proceedings relating to arbitration within Anguilla."

Domestic awards - Section 66

- [4] Section 2(2)(b) of the UK Act provides that section 66 which relates to enforcement of arbitral awards applies even if the seat of the arbitration is outside England and Wales or Northern Ireland or if no seat has been designated or determined. In this instance the Arbitration Agreement states at Article IV that the geographic locale for the hearing of the arbitration will be the British Virgin Island and also states that the USVI would be the governing law of the arbitration and the procedure would be governed by the Federal Arbitration Act. Section (3) provides that the seat of the arbitration means the juridical seat of the arbitration designated by the parties to the agreement and this determines the system of law that governs the agreement. It seems to me therefore that although the hearing of the arbitration was in the BVI, the parties clearly intended that it would be governed by USVI law.
- [5] The enforcement provisions in section 66 of the UK Act state that;

"(1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

(2) Where leave is given, judgment may be entered in terms of the award.

(3) Leave to enforce an award shall not be given where, or to the extent that, the person lacks substantive jurisdiction to make the award.

The right to raise such objection may have been lost (see section 73)

(4) Nothing in this section affects the recognition or enforcement of an award under any other enactment or rule of law, in particular under Part II of the Arbitration Act 1950 (enforcement of awards under Geneva Convention) or the provisions of Part

III of this Act relating to the recognition and enforcement of awards under the New York Convention or by an action on the award."

- [6] I am of the view that this section relates to applications for the enforcement of UK domestic arbitral awards governed by UK law. It is not a substantive provision on the enforcement of foreign awards or awards capable of enforcement under any other enactment or rule of law. In fact the section expressly directs attention to the fact that one must look elsewhere in the Act for provisions governing the enforcement of Geneva Convention or New York Convention Awards. The Act deals specifically with such awards in a separate Part III that is headed "**Recognition and Enforcement of Certain Foreign Awards**". In contrast, therefore, section 66 applies in Anguilla to the extent only that it deals with arbitrations governed by Anguillian law. In the present situation, the arbitration was not governed by Anguillian law and therefore section 66 cannot be used as the statutory basis for the enforcement of an award that is required by Part 43.10 of CPR 2000.

Foreign Awards - Sections 100 et seq;

- [7] The UK Act makes specific provision for the enforcement and registration of foreign awards. In this instance, the Arbitration Agreement is stated to be governed by the USVI law. USVI is party to the New York Convention on Enforcement of Foreign Awards and Anguilla, where Counsel is seeking to enforce the award, is not. It is to be noted that UK is also party to the New York Convention having ratified the same on the 4th September 1975 but the Convention has not been extended to Anguilla as a British Territory.
- [8] It is not in dispute that the award in this instance is a New York Convention Award. A New York Convention Award is defined in Section 100(1) of the UK Act as an award made, in pursuance of an arbitration agreement, in the territory of a state (other than the United Kingdom) which is a party to the New York Convention. In other words, the UK Act permits the registration and enforcement of New York Convention Awards between other signatories to the Convention outside of the UK. This is in conformity with Article I of the Convention which states that "*When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State.*"

[9] I am of the view that the enactment of this section of the UK Act provides, in the UK, the statutory basis for the recognition and enforcement of a New York Convention Award in the UK pursuant to the New York Convention. That provision recognizes the fact that the UK is a signatory to the New York Convention. The question is therefore whether the provisions of the UK Act with reference to the registration and enforcement of New York Convention Award are imported into Anguilla by virtue of the Arbitration Act of Anguilla, the terms of which are referred to in Paragraph 3 above. In my view the short answer to this question is this: the provisions in the UK Act are expressly declared to be in force in Anguilla "so far as the same [i.e the provisions] are applicable" If a provision of the UK Act is not applicable in Anguilla, it has no force in Anguilla. Sections 100 et seq of the UK Act can have effect in Anguilla if it is demonstrated that Anguilla became a signatory to the New York Convention. This is a prerequisite to the application of the recognition and enforcement provisions.

[10] Anguilla could become a party to the New York Convention either by Order in Council by Her Majesty that extended the New York Convention to Anguilla or by domestic legislation giving effect to the New York Convention. It is recognized that Anguilla has not passed domestic legislation giving effect to the New York Convention.

[11] Section 100(3) of the UK Act states that;

"If Her Majesty by Order in Council declares that a state specified in the Order is a party to the New York Convention, or is a party in respect of any territory so specified, the Order shall, while in force, be conclusive evidence of that fact."

The parties recognize that no such Order has been made in respect of Anguilla. Effectively then, Anguilla is not a party to the New York Convention.

[12] Counsel for the applicant argues that the terms of treaties can be adopted by means other than by extension of the treaty by Order in Council. He states that the BVI has adopted the New York Convention into its statutory laws by its Arbitration Ordinance 1976, and gives statutory effect to enforcement of New York Convention Awards. In **IPOC International Growth Fund Limited v LV Finance Group Limited** Civil Appeal No. 30 of 2006, Rawlins J.A; recognized that it was noteworthy that Parliament set out the whole of the New York Convention in the schedule to the

Act. He went on to state that *“The scheme of the Act, which accords with the intention of the New York Convention, is to facilitate the recognition and enforcement of Convention Awards.”*

[13] What was done in the BVI was to pass into law the New York Convention by its wholesale incorporation into the Arbitration Ordinance 1976. This has not been done in Anguilla where as earlier indicated there is no domestic legislation which specifically addresses the New York Convention.

[14] Therefore, I would conclude that Sections 100 et seq of the UK Act are not in force in Anguilla and are therefore not applicable to the present proceedings for registration and enforcement of this New York Convention Award. Further for the reasons given, sections 100 et seq cannot be relied upon as the statutory provision for the purpose of Rule 43.10 of CPR 2000 which would ground the jurisdiction of this court to grant registration and enforcement of a New York Convention Award. I do not agree therefore that by virtue of the importation of the UK Act into Anguilla, sections 100 et seq relating to the enforcement and registration of a New York Convention Award can have force in Anguilla without more. I would therefore refuse the application to register and enforce the award pursuant to sections 100 et seq.

[15] In conclusion, the application is dismissed with costs assessed to the respondents in the sum of US\$7,000.00. I thank Counsel for their industry in presenting this matter to the Court.

Cheryl Mathurin

High Court Judge