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Supreme Court Clarifies the Applicability of Domestic Contract Principles to the Enforcement of International Arbitration Agreements

by James J. Boland

A FREEBORN & PETERS LLP CLIENT ALERT

On June 1, 2020, the United States Supreme Court held that Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") does not preclude application of domestic equitable principles that permit the enforcement of arbitration agreements by parties that did not sign those agreements. *GE Energy Power Conversion France SAS, Corp., v. Outokumpu Stainless USA, LLC,* No. 18-1048, 2020 WL 2814297, 590 U.S. --- (2020).

The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, contains three chapters. Chapter 2 implements the New York Convention and applies to arbitration agreements arising out of relationships involving a party that is not a United States citizen or has a relation with one or more foreign states. At issue in *GE Energy Power* was Article II of the Convention, which requires contracting states to recognize "agreements in writing" to arbitrate, defined as "an arbitral clause in a contract of an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. New York Convention Art. II(1) and (2).

In *GE Energy Power,* ThyssenKrupp Stainless USA, LLC entered into contracts with F.L. Industries, Inc. to construct rolling mills at a plant in Alabama. F.L. Industries, in turn, entered into a subcontractor agreement with GE Energy Power Conversion France SAS, Corp. to provide motors to power the mills. The motors failed, and Outokumpu Stainless USA, LLC, which had acquired the plant, sued GE Energy in Alabama state court. GE Energy removed, and moved to compel arbitration based on the arbitration clauses in the contracts between F.L. Industries and ThyssenKrupp. The district court granted the motion, finding that despite not signing the underlying contracts, GE Energy qualified as party under the arbitration clauses because the contacts defined the terms "Seller" and "Parties" to include subcontractors. The Eleventh Circuit reversed, holding that under the New York Convention, parties must actually sign an arbitration agreement for it to be enforced. The court also held that GE Energy could not invoke state-law equitable estoppel principles to enforce the arbitration agreement as a nonsignatory, finding that those principles conflict with the Convention (*i.e.*, Article II(2)'s "signed by the parties" requirement).

The Supreme Court unanimously reversed. The Court first recognized that Chapter 1 of the FAA allows courts to apply state-law doctrines related to the enforcement of arbitration agreements, and that among these "traditional principles of state law" are doctrines of equitable estoppel that permit a nonsignatory to compel arbitration against a signatory. 2020 WL 2814297, at *3-4. Recognizing that Section 208 of the FAA provides that Chapter 1 applies to proceedings under Chapter 2 to the extent not in conflict with Chapter 2 or the Convention, the Court held that applying state law doctrines such as equitable estoppel does not conflict with the Convention. *Id.* at *4-5. The Court held that Article II(3) of the Convention, which requires contracting states to compel arbitration pursuant to valid agreements as defied in the Convention, provides only "that arbitration agreements must be enforced in certain circumstances" and "does not prevent the application of domestic laws more generous in enforcing arbitration agreements." *Id.* at *5.

GE Energy Power resolves a conflict among the federal circuits over Article II(2)'s signature requirement and, as the Court noted, is consistent with the decisions of other contracting states that similarly permit the enforcement of arbitration agreements by nonsignatories. *Id.* at *6, citing 1 G. Born, International Commercial Arbitration § 10.02, pp. 1418-1484 (2d ed. 2014).

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Jim has extensive experience and has represented a variety of corporations, businesses and professional firms in matters involving reinsurance (life & health, property & casualty), antitrust, securities fraud, accountant liability, consumer protection, shareholder and derivative disputes, mergers and acquisitions disputes, including post-closing disputes, and a variety of other commercial matters. He also has extensive experience in class action litigation, representing corporations and businesses in matters involving antitrust, securities fraud, residential and commercial mortgage practices, commercial leasing and other retail sales and marketing practices, and has experience in SEC and other governmental investigations.

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