Non-Signatories to Foreign Arbitration Agreements May Be Able to Compel Arbitration

By: Thomas B. Fiddler and Eric B. Porter
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It is a long-standing federal policy that arbitration agreements between parties are favored by courts. This policy holds true even in the case of foreign arbitration agreements, which the U.S. has agreed to recognize and enforce (save for certain limited exceptions) pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention). Indeed, the United States Supreme Court recently reaffirmed the favored status of arbitration agreements by ruling that a non-signatory to a foreign arbitration agreement may be able to compel a signatory to arbitrate.

The Supreme Court case in question, *GE Energy Power Conversion France SAS v. Outokumpu Stainless Steel USA, LLC*, involved a dispute between a steel plant owner and a subcontractor with whom the owner did not have a direct contractual relationship. The owner, Outokumpu Stainless Steel USA, LLC (Outokumpu), sued GE Energy Power Conversion France SAS (GE Energy), alleging that GE Energy sold defective rolling mill motors for its plant and seeking millions of dollars in damages. Outokumpu (as the successor to ThyssenKrupp Stainless Steel, USA, LLC) was a party to three contracts in which it agreed to arbitrate any and all disputes arising therefrom. The counterparty to one of these contracts, FL Industries, Inc., agreed to construct cold-rolling mills for the plant and obtained the motors for the mills from GE Energy. Outokumpu and its insurers argued that GE Energy's motors failed, and filed suit against GE Energy in Alabama state court.

Upon being sued, GE Energy removed the matter to federal court under 9 U.S.C. §205, which allows for removal if the action "relates to an arbitration agreement . . . falling under the Convention." The district court initially granted GE Energy's motion to dismiss and compel arbitration, while the Eleventh Circuit reversed in part because GE Energy was not a party to the contract containing the arbitration provision.

In reversing the Eleventh Circuit, the Supreme Court ruled that because the Convention did not expressly state that only actual signatories could compel arbitration, non-signatories could potentially rely on state-law equitable doctrines to compel arbitration. The doctrine of equitable estoppel, for instance, has been used by non-signatories to enforce arbitration provisions against signatories so long as the signatory must rely on the contract containing the arbitration provision to assert its claims. Holding that such equitable doctrines do not conflict with the provisions of the Convention, the Supreme Court reversed the Eleventh Circuit and remanded the case.

The import of the GE Energy decision is clear. Parties who include arbitration provisions in their international contracts potentially may be compelled to arbitrate claims stemming from those contracts under the Convention, even if the claims are asserted against a party that never signed the contract at issue. The ultimate determination of whether a non-signatory will be able to compel a signatory to arbitrate an international contract will depend on the facts and circumstances of each case. Among the factors that courts will necessarily consider are the scope of the arbitration clause, the breadth of defined terms in the contract, and the existing case law on equitable estoppel principles.

If you have questions about this case, please contact Thomas Fiddler (fiddlert@whiteandwilliams.com; 215.864. 7081) or Eric Porter (portere@whiteandwilliams.com; 212.714.3078). Our International Group represents domestic and foreign clients in international commercial arbitrations on both U.S. and foreign soil. For more information, please contact David Creagan

(creagand@whiteandwilliams.com; 215.864.7032) or Tom Butler (butlert@whiteandwilliams.com; 212.714.3070).