



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 226 OF 2022 (IKJ)

**IN THE MATTER OF THE ARBITRATION ACT 2012
AND IN THE MATTER OF THE FOREIGN ARBITRAL AWARDS ENFORCEMENT ACT
(1997 REVISION)**

AND IN THE MATTER OF AN ARBITRATION

BETWEEN

**(1) AGPL INVESTMENTS LTD (FORMERLY TAPL INVESTMENTS LTD)
(2) ANTANIUM GLOBAL PTE LTD (FORMERLY TRITERRAS ASIA PTE LTD)
(3) ENERTECH HOLDINGS PTE LTE**
(CLAIMANTS)

AND

**(1) LAM GLOBAL MANAGEMENT LTD. II (IN ITS CAPACITY AS GENERAL
PARTNER, AND ON BEHALF, OF LAM ENHANCED TRADE FINANCE FUND II LP)
(2) LAM GLOBAL MANAGEMENT LTD. III (IN ITS CAPACITY AS GENERAL
PARTNER, AND ON BEHALF, OF LAM ENHANCED TRADE FINANCE FUND III LP)**
(RESPONDENTS)

BETWEEN:

**(1) LAM Global Management Ltd. II (in its capacity as general partner, and on behalf,
of LAM Enhanced Trade Finance Fund II LP)
(2) LAM Global Management Ltd. III (in its capacity as general partner, and on behalf,
of LAM Enhanced Trade Finance Fund III LP)**

Plaintiffs

AND

AGPL Investments Ltd (formerly TAPL Investments Ltd)

Defendant

IN CHAMBERS

Appearances: Mr Jonathon Milne and Mr Spencer Vickers, of Conyers Dill & Pearman LLP, for the Plaintiffs

Before: The Hon. Justice Kawaley

Heard: On the papers

Date of decision: 2 December 2022

Draft Judgment Circulated: 12 December 2022

Judgment Delivered: 13 December 2022

INDEX

Leave to enforce foreign arbitration award-governing principles-Foreign Arbitration Awards Enforcement Law (1997 Revision), sections 5-7-Grand Court Rules Order 73 Part II

REASONS FOR DECISION

Introductory

1. By an Ex Parte Summons dated 14 October 2022, the Plaintiffs applied for leave to enforce “*the final arbitration award dated 9 June 2022 and the correction to the final arbitration award dated 5 July 2022 (together, the ‘Award’)* made by a Hong Kong seated tribunal administered by the Hong Kong International Arbitration Centre, Case number A20061 in favour of the Plaintiffs against the Defendant in the same manner as a judgment of the Grand Court or an order to the same effect”.

2. Having determined it was appropriate to deal with the application on the papers, the Plaintiffs' counsel filed a Skeleton Argument and Hearing Bundle on 1 December 2022. The following day I granted the relief sought on the Ex Parte Originating Summons.
3. These are the reasons for that decision¹.

Governing legal principles

4. The Foreign Arbitral Awards Enforcement Act (1997 Revision) (the "FAAEA") critically provides as follows:

"5. A Convention award shall, subject to this Law, be enforceable in the Grand Court in the same manner as an award under section 22 of the Arbitration Law (1996 Revision) and shall be treated as binding for all purposes on the persons between whom it was made and may accordingly be relied upon by any of those persons by way of defence, set off or otherwise in any legal proceedings in the Islands and any reference in this Law to enforcing a Convention award shall be construed as including references to relying upon such award."

5. The Arbitration Act (1996 Revision) provided:

"22. An award on an arbitration agreement may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the award."

6. The Arbitration Act was seemingly further revised in 2001 and was repealed and replaced by the Arbitration Act, 2012 (the "2012 Act"). The 2012 Act provides:

¹ Reasons were expressly requested by the Plaintiff's counsel.

“Award may be enforced like judgment or order of court

72. (1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with 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 against whom it is sought to be enforced shows that the arbitral tribunal lacked jurisdiction to make the award.

(4) Nothing in this section affects the recognition or enforcement of an award under any other written law or rule of law and in particular the provisions of the Foreign Arbitral Awards Enforcement Law, 1997 relating to the recognition and enforcement of awards under the New York Convention or by an action on the award.

(5) An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application to the court, shall be enforced subject (whether or not it is a convention award) to the provisions of sections 6 and 7 of the Foreign Arbitral Awards Enforcement Law, (1997 Revision).” [Emphasis added]

7. The effect of section 72(4) appeared to me to be that as far as the enforcement of awards under the FAAEA is concerned, the reference in section 5 to section 22 of the former Arbitration Act continues to have legal force and effect. As far as refusal of enforcement is concerned, the FAAEA provides in salient part as follows:

“Refusal of enforcement

7. (1) Enforcement of a Convention award shall not be refused except in the cases mentioned in subsections (2) and (3).

(2) Enforcement of a Convention award may be refused if the person against whom it is invoked proves —

(a) that a party to the arbitration agreement was (under the law applicable to him) under some incapacity;

(b) that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;

(c) that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

(d) subject to subsection (4), that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;

(e) that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or

(f) that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

(3) Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award...”

8. It was rightly submitted that these grounds of refusal essentially mirror the provisions of Article V (1)-(2) of the New York Convention². GCR Order 73 rule 31 sets out the procedural requirements for an application to enforce an award under, *inter alia*, section 5 of the FAAEA. An ex parte application is expressly provided for. The pro-enforcement policy of the New York Convention is well recognised by this Court and understood. Counsel’s submissions also referred to *Essar Global Fund Ltd v Arcelormittal USA LLC*, CICA (Civil) Appeal No 15 of 2019, Judgment dated 3 May 2021. Martin JA (with whom Rix JA and Golding P concurred) opined as follows:

“14...A foreign arbitral award is not automatically enforceable in the Cayman Islands; but, if leave is given on an application made under Order 73 of the Grand Court Rules, the award may be enforced pursuant to the Foreign Arbitral Awards Enforcement Law (1997 Revision)...By the time of the hearing of the appeal, however, leave had been given to enforce the Award, with the consequence that the appeal on this point had become academic. It was said by the appellants that the point involved an important issue of practice and principle which the Court of Appeal could and should address; but, as we made clear in the course of argument, we do not think it appropriate to deal with this point. In the majority of cases, obtaining leave to enforce an award is a straightforward matter; and we do not consider that the enforcement point is of sufficient practical importance to justify departing from the general practice that the court will not ordinarily address a point which has ceased to have relevance to the parties.” [Emphasis added]

9. As regards how the Court should approach the merits of the application, the Plaintiffs’ counsel submitted as follows:

*“22. The Privy Council (on appeal on from the Cayman Islands Court of Appeal) in *Gol Linhas Aereas SA (formerly VRG Linhas Aereas SA) v MatlinPatterson Global**

² United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958). The New York Convention extends to Hong Kong.

Opportunities Partners (Cayman) II LP and Others [2022] UKPC 21 stated at paragraph 23 [AB/10] (per Lord Hamblen and Lord Legatt):

'It is well established that the grounds for refusing recognition and enforcement set out in article V should be construed narrowly in the light of the New York Convention's object and purpose of facilitating the recognition and enforcement of foreign arbitral awards: see eg Cukurova Holdings AS v Sonera Holdings BV [2014] UKPC 15; [2015] 2 All ER 1061, para 34.'

23. It is respectfully submitted that none of the circumstances mentioned in subsections (2) and (3) of section 7 of the FAAEA could properly be said to apply, and the Defendant must shoulder the burden of proof at any future inter partes hearing to establish that one or more grounds for the Court to refuse enforcement are made out. Accordingly, it is submitted that the Court should not refuse enforcement of the Award."

Evidence in support of application

10. The First Affirmation of Myung-Ahn Kim explained the arbitration proceedings in outline, summarised the findings reached and exhibited a copy of the Award. The affiant also disclosed that the Defendant has applied to set aside the Award in Hong Kong, an application which is scheduled to be heard on 21 March 2023. The Award had not been stayed.
11. The Award ran to 90 pages. The defendant was the First Claimant, each party nominated one arbitrator and the HKIAC nominated the Presiding Arbitrator. On the face of the Award, the hearing was seemingly prepared for on all sides in an orderly fashion with pleadings, agreed facts and written evidence being filed. The substantive hearing took place between 11-15 October 2021 and 18-19 October 2021 by videoconference, with each side represented by counsel and adducing fact and expert testimony. The Tribunal ordered and received post-hearing submissions on the merits and costs before declaring the proceedings closed on 9 March 2022. The unanimous decision of the

Tribunal was given three months later on 9 June 2022. On 5 July 2022, four clerical corrections were made to the Final Award. The Award recorded coherent findings on the issues in dispute which were clearly defined.

Merits of application

12. Bearing in mind that the Defendant referred the dispute to arbitration, it was difficult to see how most of the grounds for refusing enforcement (e.g. incapacity, insufficient notice of the appointment of an arbitrator, invalidity of the arbitration agreement, the Award dealing with impermissible matters and/or an improperly constituted tribunal) could plausibly be raised.
13. As regards the procedural requirements for granting leave, the following submissions were soundly made:

“The requirements for enforcement under sections 5 and 6 of the FAAEA, and GCR O.73 Part II are, in summary, as follows:

a. Applications to enforce foreign arbitral awards ‘shall be made by ex parte originating summons’ supported by evidence. In Arcelormittal USA LLC v Essar Steel Limited et al, this Honourable Court commented at paragraph 34: ‘The structure of Order 73 is such as to permit an applicant to obtain leave to enforce an award without prior notice. This is the reason why an application may be commenced by an ex parte originating summons (Order 73, rule 21(1))’;

b. The applicant must produce an original of the award or a duly certified copy, together with a duly certified translation if applicable. This has been delivered to Court;

c. The applicant must produce an original or a duly certified copy of the arbitration agreement. This has been delivered to Court;

d. The applicant must confirm the usual places of abode or business of the Defendant. The registered office address for the Defendant is described at paragraph 9 of the First Affirmation of Myung-Ahn Kim;

e. Where an applicant seeks to enforce an award of interest, the whole or any part of which relates to a period after the date of the award, evidence of the rate of interest, and whether it is simple or compound etc. The interest component is described at pages 88 and 89 of exhibit "MAK-1"; and

f. The applicant must confirm if the arbitral award has been satisfied. This is dealt with at paragraphs 50 to 52 of the First Affirmation of Myung-Ahn Kim."

14. It was accordingly ultimately straightforward to conclude that the Plaintiffs were entitled to be granted leave to enforce the Award in the Cayman Islands.

Summary

15. For these reasons on 2 December 2022 I granted the Plaintiffs leave to enforce the Award.



THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT