U.S. Insight: U.S. Supreme Court Holds that Non-Signatories May Invoke Domestic Legal Doctrines to Enforce Arbitration Agreements under the New York Convention

On June 1, 2020, the U.S. Supreme Court held, in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC*,[1] that non-signatories may invoke domestic equitable estoppel doctrines to enforce non-domestic arbitration agreements under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").[2] The Court's decision resolves a conflict among the courts of appeals and makes clear that non-signatories may invoke state law doctrines to enforce arbitration agreements even if the agreements are governed by the New York Convention.

Overview of the Case

The arbitration agreements at issue were contained in three contracts between ThyssenKrupp Stainless USA, LLC ("ThyssenKrupp") and F. L. Industries, Inc. ("FLI") providing for the construction of cold rolling mills at ThyssenKrupp's steel manufacturing plant in Alabama. All three contracts contained the identical arbitration clause: "All disputes arising between both parties in connection with or in the performance of the Contract ... shall be submitted to arbitration for settlement."[3]

FLI entered into a subcontractor agreement with the defendant, GE Energy Power Conversion France SAS ("GE"), pursuant to which GE agreed to design, manufacture and supply motors for the cold rolling mills. After GE supplied the motors, ThyssenKrupp sold the steel plant to the plaintiff Outokumpu Stainless USA, LLC ("Outokumpu"). A few year later, Outokumpu sued GE in Alabama, alleging that the motors supplied by GE had failed. GE moved to dismiss and compel arbitration pursuant to the arbitration clauses in the ThyssenKrupp-FLI contracts.[4]

The District Court granted GE's motion to compel arbitration on the grounds that GE was a party to the arbitration clauses in the ThyssenKrupp-FLI contracts because those contracts broadly defined the terms "Seller" and "Parties" to include subcontractors. Because it found that GE was a party to the arbitration agreements, the District Court

[1] *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC*, 590 U.S. ___ (June 1, 2020).
[2] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997.
[3] *GE Power*, *supra* note 1, at 1.
[4] *Id.* at 1-2.

did not address GE's alternative argument that it could enforce the arbitration agreement on an equitable estoppel theory.[5]

The Eleventh Circuit reversed. It construed the New York Convention to include a "requirement that the parties *actually sign* an agreement to arbitrate their disputes in order to compel arbitration."[6] It concluded that this requirement was not satisfied because GE was "undeniably" not a signatory to the underlying contracts between ThyssenKrupp and FLI.[7] The Eleventh Circuit then held that GE could not invoke state-law equitable estoppel doctrines to enforce the arbitration agreements because, in its view, the application of such domestic law doctrines would conflict with the New York Convention's signature requirement.[8] The Supreme Court reversed.

The Supreme Court's Decision

The Supreme Court's unanimous decision in *GE Energy* begins with the observation that traditional state-law contract principles apply in actions to compel arbitration under Chapter 1 of the Federal Arbitration Act ("FAA"), which governs actions to enforce domestic arbitration agreements and arbitral awards. The Court reaffirmed its decision, in *Arthur Andersen LLP v. Carlisle*, "that Chapter 1 of the FAA permits a nonsignatory to rely on state-law equitable estoppel doctrines to enforce an arbitration agreement."[9] The Court then held that nothing in the New York Convention compels a different conclusion in actions to enforce non-domestic arbitration agreements.

While Article II of the New York Convention generally requires an arbitration agreement to be "in writing" and "signed by the parties,"[10] the Court held that Article II concerns the existence of a valid arbitration agreement, "not who is bound by a recognized agreement."[11] On that critical question, the Court found that the New York Convention was silent. Because the New York Convention does not address the enforcement of arbitration agreements by non-signatories, the Court held that permitting a non-signatory to invoke domestic equitable estoppel doctrines to enforce an arbitration agreement would not conflict with New York Convention.[12]

The Court's decision in *GE Energy* harmonizes the law with respect to the enforcement of domestic and non-domestic arbitration agreements by non-signatories. Indeed, the

[5] *Outokumpu Stainless USA, LLC v. Converteam SAS*, 2017 WL 401951 (S.D. Ala. Jan. 30, 2017).
[6] *Outokumpu Stainless USA, LLC v. Converteam SAS*, 902 F.3d 1316, 1326 (11th Cir. 2018) (emphasis in original).
[7] *Id.*
[8] *Id.* at 1326-27.
[9] *GE Energy*, *supra* note 1, at 3-4.
[10] New York Convention, art. II(1)-(2).
[11] *GE Energy*, *supra* note 1, at 11.
[12] *Id.* at 6.

Court stated that its decision in *Arthur Andersen* "recognized that arbitration agreement may be enforced by nonsignatories through 'assumption, piercing the veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.'"[13] Thus, it appears that those recognized state-law doctrines permitting non-signatories to enforce arbitration agreements apply even where the New York Convention governs.

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[13] *Id*. at 4.