



Neutral Citation Number: [2021] EWHC 2802 (Comm)

Case No: CL-2020-000695

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

In an arbitration claim

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: Friday 22 October 2021

Before :

Mr Justice Butcher

Between :

SELEVISION SAUDI COMPANY
(A company incorporated in Saudi Arabia)

Claimant

-and-

BEIN MEDIA GROUP LLC
(A company incorporated in Qatar)

Defendant

Jeremy Richmond QC and Koye Akoni (instructed by **Trowers & Hamlins LLP**) for the
Claimant
Stephen Nathan QC and Daniel Cashman (instructed by **Carter-Ruck Solicitors**) for the
Defendant

Hearing dates: 5, 6 October 2021

JUDGMENT

1. This is an application by the Defendant ('BMG') for permission to bring a counterclaim in an arbitration claim begun by the Claimant ('Selelevision Saudi'), to bring Part 20 proceedings against another person, Mr Raed Khusheim ('Mr Khusheim'), and to serve him out of the jurisdiction, and for a stay of enforcement of a foreign arbitration award in favour of Selelevision Saudi pending final determination of the proceedings.

Factual Background

2. BMG is an entertainment media company incorporated in Qatar, and the parent company of the beIN Media Group. It is a broadcasting organisation which operates satellite television channels in some forty countries, and broadcasts, amongst other things, coverage of major sporting competitions such as the English Premier League, La Liga in Spain, and the US Open Tennis championships. Through its subsidiary, beIN Sports MENA LLC ('BSM'), it holds the exclusive right to broadcast such coverage in the Middle East and North Africa ('MENA') region, and broadcasts there on ten sports channels.
3. At the material times, Selelevision Saudi provided broadcasting-related services in the Kingdom of Saudi Arabia ('KSA').
4. BMG and Selelevision Saudi were parties to a Distributor Agreement dated 6 May 2014 pursuant to which BMG, as broadcaster, retained Selelevision Saudi as a non-exclusive distributor of set top boxes ('STBs') that allowed both residential and commercial customers to watch BMG media channels.
5. Certain disputes arose under the Distributor Agreement, which were referred to arbitration on 16 June 2016 pursuant to the arbitration agreement at clause 29.2 of the Distributor Agreement. The disputes concerned claims by Selelevision Saudi (i) that BMG had breached the Distributor Agreement by suspending or barring Selelevision Saudi's access to BMG's customer relationship management system between 4 and 6 November 2015 and from 4 April 2016 onwards, (ii) that BMG had wrongfully terminated the Distributor Agreement, (iii) for unpaid commissions, and (iv) for the payment of certain other sums. BMG counterclaimed on the basis that Selelevision Saudi had been in breach of the Distributor Agreement from 16 April 2016, as a result of which BMG contended that it had suffered a loss of some US\$30 million.
6. The arbitration clause in the Distributor Agreement provided for arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, and that the seat or legal place of the arbitration should be the DIFC, Dubai. By a Final Arbitration Award ('the Award') signed and issued on 5 June 2018 at the DIFC, Dubai, the arbitral tribunal, which consisted of Nassif BouMalhab, Pierre Heitzmann and Tim Taylor QC, concluded that BMG had been in breach of the Distributor Agreement in certain respects and that BMG had wrongfully suspended the Distributor

Agreement in April 2016, thereby entitling Selelevision Saudi to terminate the Distributor Agreement in June 2016. The tribunal dismissed BMG's counterclaim. The Award ordered BMG to pay Selelevision Saudi sums totalling US\$8,048,018.88, with interest accruing in respect of unpaid sums at an annual rate of 8% from the date of the Award.

7. On 11 October 2018 BMG applied to the DIFC Court seeking to set aside the Award on the basis that it was in conflict with UAE public policy because of Selelevision Saudi's fee arrangements with the lawyers who represented it in the arbitration. Selelevision Saudi cross-applied seeking recognition and enforcement of the Award in the same manner as a judgment of the DIFC Court. On 20 June 2019 the DIFC Court gave judgment which dismissed BMG's application to set aside the Award, and granted Selelevision Saudi's application for an order that the Award be recognised and enforced in the same manner as a judgment of the DIFC Court.
8. In the absence of the Award's having been honoured, Selelevision Saudi commenced proceedings in this court for leave to enforce the Award in the same manner as an English court judgment.

The Arbitration Claim Form and Application to Enforce

9. The arbitration Claim Form was issued on 22 October 2020. Paragraph 1 of the Claim Form was in these terms:

‘Application for permission to enforce pursuant to section 101 Arbitration Act 1996

1 The Claimant seeks to enforce the final arbitral award made on 5 June 2018 in favour of the Claimant against the Defendant in DIFC-LCIA Arbitration Case No. D-L 16069 ... as a New York Convention award and, accordingly, seeks permission, pursuant to section 101 of the Arbitration Act 1996 to enforce the Award in the same manner as a judgment, in accordance with Rule 62.18 of CPR 62. The Defendant in the instant proceedings was the Respondent in the aforesaid arbitral proceedings. The Claimant also seeks the costs of this arbitration claim from the Defendant. The Claimant proposes to serve the Defendant with these arbitral proceedings.’

10. In paragraph 2, the basis on which Selelevision Saudi made its claim was summarised. It referred to the fact that BMG apparently had assets within England and Wales, not least shares in an associated company incorporated in England and Wales. It concluded ‘The Claimant may seek such further or other relief as may be necessary.’ The detailed grounds of the application were set out in a witness statement of Mr Burton of Trowers & Hamblins LLP, which was also dated 22 October 2020.
11. The application to enforce the Award pursuant to s. 101 of the Arbitration Act 1996 and for permission to serve the Claim Form out of the jurisdiction was made without notice, as permitted under CPR 62.18(1).

The order which was sought, and which was granted without a hearing by Cockerill J on 31 October 2020, was in the following terms:

‘It is ordered that:

1 Pursuant to section 101 of the Arbitration Act 1996, the Claimant be at liberty to enforce in the same manner as a judgment or order to the same effect the Final Arbitral Award made on 5 June 2018 ...

2 The Claimant shall serve the Arbitration Claim Form, this Order and the Application on the Defendant. The Claimant has permission to serve the Arbitration Claim Form and the Application (and related documents) on the Defendant at beIN Sports Building, TV and Radio Complex, TV Roundabout, BIN Omran, PO Box 23231, Doha, Qatar or elsewhere in Qatar.

3 The Defendant must file its Acknowledgment of Service 23 days after service on it of the Claim Form.

a If the Defendant files an Acknowledgment of Service indicating that (a) it intends to contest the claim or (b) it objects to the claimant issuing its claim under this procedure, the Defendant must file and serve the written evidence on which it wishes to rely within 21 days after the date by which it was required to acknowledge service.

b If the Defendant files an Acknowledgment of Service indicating that it intends to dispute the court’s jurisdiction the Defendant must apply to dispute the court’s jurisdiction within 21 days after the date by which it was required to acknowledge service.

4 The Defendant do pay the costs of this arbitration claim and of any judgment which may be entered under this Order provided that within 23 days after service of this Order on it, the Defendant may apply to set aside this Order, and the Award shall not be enforced until the expiration of that period or if the Defendant applies within that period to set aside this Order, until after the application is finally disposed of.

5 The Defendant has the right to apply to set aside this Order within 23 days after service of this Order on it.’

12. By order of Andrew Baker J dated 26 November 2020 the time for Selevision Saudi to serve the Claim Form was extended and it was given permission to serve by alternative means, and it was declared that service of the Claim Form on BMG had been duly effected.

The Security Letter

13. Selevision Saudi had identified that BMG held certain shares in an English company, Beinih Limited (‘beIN IH’). On 20 November 2020 Selevision Saudi’s lawyers wrote to the directors of both BMG and beIN IH informing them of Selevision Saudi’s intention to enforce against the shares and requesting undertakings from them that they would not transfer the ownership of the shares from BMG for the duration of the moratorium on enforcement.

14. As a result of this, the parties negotiated a Security Letter dated 11 December 2020, whereby BMG agreed that US\$11 million should be held

by its solicitors to the order of the court pending the determination of ‘the Claim’ in the Commercial Court or any appeal in ‘the Claim’. ‘The Claim’ was defined simply by reference to the folio number of the arbitration Claim Form. The Security Letter also provided that BMG should have until 21 December 2020 to file its Acknowledgment of Service.

BMG’s Application

15. On 21 December 2020 BMG filed an Acknowledgment of Service which indicated that it intended to contest the claim, and stated that BMG had a counterclaim which exceeded the value of the claim.
16. On 11 January 2021, BMG issued the application which is currently before me. As I have said, it sought permission under CPR 8.7 to bring a counterclaim, and to serve a Part 20 claim on an additional defendant, together with a stay of enforcement of the Award pending the final determination of the dispute. The counterclaim which BMG sought permission to bring was set out in a draft pleading supplied with the application notice.
17. The nature of that proposed counterclaim is as follows. BMG seeks to make a claim that Selelevision Saudi orchestrated and was responsible for a very large piracy of BMG’s broadcasting rights in KSA and elsewhere, particularly in the MENA region. More particularly BMG alleges that:
 - (1) In summer 2017 pirated versions of broadcasts taken from BMG’s channels began to be supplied to customers, principally in KSA, by a service operating under the name of ‘beoutQ’, and that these broadcasts were simply lifted from BMG’s channels and retransmitted with ‘beoutQ’ branding superimposed over BMG’s own branding.
 - (2) This piracy continued until August 2019. During that period beoutQ operated in a number of ways including (i) via the online streaming of broadcasts taken from BMG’s channels and (ii) via beoutQ-branded STBs sold in KSA and elsewhere which allowed customers to receive such broadcasts by satellite without paying for BMG’s channels.
 - (3) Although the operators of the beoutQ service operated covertly and went to great lengths to obscure their identity (including by pretending that the service was operated from Cuba or Colombia), it was operated by, or in any event orchestrated by, Selelevision Saudi, together with Mr Khusheim, the CEO of Selelevision Saudi.
 - (4) Such operation / orchestration is apparent from:
 - (a) A technical analysis of beoutQ’s pirate transmissions in August 2017 which showed that at least some of the BMG broadcasts which formed the basis for those transmissions had been accessed

by a particular subscriber who had subscribed to BMG's services using a Selelevision corporate email address;

- (b) Until early June 2018, beoutQ was broadcast on an Arabsat satellite frequency that was otherwise used exclusively by Selelevision Saudi and which, BMG says should be inferred, was rented by Selelevision Saudi from Arabsat;
 - (c) Aspects of the code comprising the software used in the beoutQ STBs refer expressly to Selelevision in a manner that suggests that that software was developed by or for Selelevision;
 - (d) Credit card transaction details show that online content delivery services for the beoutQ service were purchased from a US company (BelugaCDN LLC) by Mr Khusheim;
 - (e) Further web hosting services were purchased from and were provided by, a UK company (Real Hosts Limited), the purchase being made by another individual apparently connected with Selelevision Saudi;
 - (f) A statement from a former employee of Selelevision Saudi which confirmed that he was involved in the creation and operation of the beoutQ service from a site in KSA, under the direction of the management of Selelevision Saudi and in particular of Mr Khusheim.
- (5) This piracy constituted an infringement of BMG's rights as a broadcasting organisation under Saudi law. It also contravened rights of other companies in the beIN Media Group, and in particular of BSM as the exclusive licensee of the right to broadcast or authorise the broadcasting in the MENA region of various major sporting competitions, and the owner of copyright, protected by Saudi law, in works relating to various audiovisual works or events. BSM had assigned to BMG its accrued rights in respect of its coverage of the relevant competitions in relation to the period between June 2017 and 31 December 2020, including any claims or causes of action in respect of any infringement of its rights in that period.
- (6) The beoutQ piracy had caused BMG very substantial economic harm, in particular by undermining the value of the exclusive broadcasting rights for which companies in the beIN Media Group had paid substantial sums of money, and by necessitating the expenditure by BMG of very substantial sums to prevent the infringements and / or to identify and pursue the perpetrators.
18. The application to make a counterclaim was supported by witness evidence, including a witness statement dated 11 January 2021 of Mr Yousef al-Obaidly, the CEO of BMG. Mr al-Obaidly stated that BMG did not dispute the validity of the Award, but wished to pursue its

counterclaim relating to ‘a very extensive campaign of broadcast piracy’, the losses from which ‘far exceed the amounts awarded in the Arbitration’.

19. As part of his evidence, Mr al-Obaidly exhibited the statement given by the former employee, to whom I have already referred, whose name was redacted, and who was referred to in the statement, and who has been referred to in the hearing before me, as ‘the whistleblower’. That statement included the following aspects:
- (1) That from about January 2016 he had worked in the television broadcasting industry in a broadcasting facility known as ‘Saudi Media City’ on the outskirts of Riyadh;
 - (2) In late August 2017 he worked with a number of engineers employed by Selelevision Saudi to set up a new broadcasting operation at Saudi Media City, and was introduced to Mr Khusheim and told to follow his instructions;
 - (3) Mr Khusheim had assumed control of the new beoutQ service within a few weeks;
 - (4) The claim that beoutQ was based in Cuba or Colombia was adopted by Mr Khusheim;
 - (5) beoutQ commenced satellite broadcasting in October 2017, using facilities provided by Saudi Media City, and the number of Selelevision Saudi employees at the site increased over time to about thirty;
 - (6) In addition, Selelevision Saudi operated a call centre on behalf of beoutQ from its office in Dammam, KSA;
 - (7) The beoutQ operation at Saudi Media City involved: (i) receiving the BMG satellite input signal at several satellite dishes, at least two of which were provided by Selelevision Saudi, (ii) transmitting it into the broadcasting building and splitting it into a number of BMG STBs to decode the signal, (iii) retransmitting it into Saudi Media City’s Master Control Room for processing, and (iv) sending it to a satellite uplink facility located outside the main Saudi Media City broadcasting building for transmission to the Arabsat satellite;
 - (8) Employees of Selelevision Saudi were responsible for (i) programming the beoutQ STBs and (ii) arranging their distribution to local retailers across KSA.
20. Mr al-Obaidly also referred to and exhibited the report of a World Trade Organisation Panel appointed in December 2018 pursuant to Article 64.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (‘TRIPS’) to consider issues relating to the beoutQ service. That report is dated 16 June 2020. It records that the complaint which the Panel had considered had been made by Qatar against KSA; and that KSA’s stance,

during the proceedings, was that ‘consistent with its severance of all relations with Qatar (including diplomatic and consular relations), and the essential security interests that motivated it to take that action, it would not interact, or have any direct or indirect engagement, with Qatar in any way in this dispute’. The Panel’s overall conclusions included:

- (1) That it had no discretion to decline to make any findings or recommendations in the case which had been brought before it;
- (2) That, in relation to Qatar’s claims under Parts I, II and III of the TRIPS Agreement:
 - (i) Qatar had established that KSA had taken measures that, directly or indirectly, had had the result of preventing beIN from obtaining Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi courts and tribunals, and thus that KSA had acted in a manner inconsistent with Article 42 and Article 41.1 of the TRIPS Agreement;
 - (ii) Qatar had established that KSA had not provided for criminal procedures and penalties to be applied to beoutQ despite evidence establishing prima facie that beoutQ was operated by individuals or entities under the jurisdiction of KSA, and thus had acted inconsistently with Article 61 of the TRIPS Agreement.

21. In the course of reaching these overall conclusions, the Panel had considered the role of ‘the Saudi Selelevision Company LLC, ... a Saudi-based entity and beIN’s former content distributor in Saudi Arabia’ (paragraph 7.150). At paragraph 7.155 the Panel said this:

‘The Panel considers that the evidence which was provided to Saudi authorities by beIN and other third-party rights holders, and which has now been corroborated and supplemented by further evidence submitted to the Panel, supports Qatar’s assertions that: (a) beoutQ’s piracy was promoted by prominent Saudi nationals, (b) beoutQ targets the Saudi market, (c) beoutQ’s pirate broadcasts are transmitted via Arabsat satellite frequencies, and (d) beoutQ has received assistance from a Saudi content distributor in delivering its pirated broadcasts to Saudi consumers. Taking these conclusions together, and recalling the applicable standard of proof and evidentiary principles in WTO dispute settlement, the Panel considers that Qatar has established a prima facie case that beoutQ is operated by individuals or entities subject to the criminal jurisdiction of Saudi Arabia.’

The Issues Arising

22. Selelevision Saudi resists BMG’s applications. It contends that the issues which arise are four-fold, and are as follows:

- (1) Whether the Court has any jurisdiction to allow a defence and counterclaim in the context of an application for leave to enforce a New York Convention Award pursuant to s. 101(2) of the Arbitration Act 1996 and CPR 62.18(1)(b). Selevision Saudi contends that the answer to this is no; BMG says the answer is yes.
- (2) If the Court does have such jurisdiction, should it exercise any discretion which it has in favour of granting such permission in this case? Selevision Saudi contends that the answer is no; BMG says the answer is yes.
- (3) If the Court is minded to exercise a discretion in favour of permitting the counterclaim, does it have jurisdiction to grant a stay of the enforcement of the sum claimed by BMG pending the final determination of the counterclaim? Selevision Saudi contends that the answer to this is no; BMG says that the answer is yes.
- (4) If the Court does have such jurisdiction to order a stay, should it exercise such a discretion in favour of a stay in this case? Selevision Saudi contends that the answer to this is no; BMG says that the answer is yes.

I will take these issues in turn.

Does the Court have jurisdiction to permit a counterclaim?

23. BMG's case is that the Court has jurisdiction to permit a counterclaim because in relevant respects, Selevision Saudi's claim is a claim under the Part 8 procedure, and that CPR 8.7 thus applies.

24. In more detail, BMG's argument is this:

(1) CPR 62.18(3) provides as follows:

'The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Part I of this Part'.

(2) In this case there has indeed been service of the arbitration Claim Form on BMG, and BMG has acknowledged service. The enforcement proceedings must accordingly proceed as if they were an arbitration claim under Part I, ie CPR 62.2-62.10. That involves that they must continue in accordance with CPR 62.3, which provides, in part:

'(1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure'.

- (3) Sub-paragraph (2) of CPR 62.3 is of no relevance. Accordingly, the claim must continue in accordance with the Part 8 procedure. The Part 8 procedure includes CPR 8.7, which provides:

‘Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court’s permission.’

25. For Selelevision Saudi the argument was as follows:

- (1) This is not a case in which Part 8 applies, or is used.
- (2) Selelevision Saudi’s application was made under CPR Part 62, Section III, and in particular under CPR 62.18.
- (3) The reference in CPR 62.18(3) to the claim continuing as if it were an arbitration claim under Section I does not import CPR 8.7. There is no reason why the fact of service of the Claim Form should mean that all the features of Part 8 become applicable to an application to enforce an award. Furthermore, the reference to proceedings ‘continuing’ as if an arbitration claim under Section I does not refer back to CPR 62.3(1) which is concerned only with starting an arbitration claim. The enforcement proceedings will already have been started pursuant to Section III, and the effect of CPR 62.18(3) is to look back to Section I for the procedure for the conduct of the proceedings post commencement. That procedure is to be found, not in Part 8, but in CPR 62.7.

26. The relevant Rules are not expressed with the clarity which would be desirable. This has allowed the argument as to whether proceedings for enforcement under CPR 62.18 are to proceed, if there has been service of the claim form, under the Part 8 procedure. CPR 62.18(3) does not state, for example, that the enforcement proceedings ‘will continue in accordance with the Part 8 procedure’, or even that they ‘will continue as if the claim had been commenced under Part 8’. The reference to the enforcement proceedings continuing ‘as if they were an arbitration claim under Section I of this Part’ lacks clarity, given that Section I only includes a requirement that an arbitration claim must be started by the issue of an arbitration claim form in accordance with Part 8, and contains no reference to the Part 8 procedure post-issue.

27. Furthermore, and even if the reference to Section I in CPR 62.18(3) should be interpreted as providing for the application of some aspects of Part 8, there are further grounds for doubting that it was intended to import all the provisions of Part 8, and in particular CPR 8.7. Even the express provision in CPR 62.21(3) that an application to have an ICSID award registered in the High Court under s.1 Arbitration (International Investment Disputes) Act 1966 ‘must be made in accordance with the Part 8 procedure’ does not operate to subject such an application to all the provisions of Part 8: Union Fenosa Gas SA v Egypt [2020] EWHC 1723 (Comm), [2020] 1 WLR

4732 at [70]-[72]. In that context, the reference to Part 8 serves only as a procedural device to generate a claim number, and to make clear that the determination of the application will be on the basis of written evidence.

28. Care thus has to be taken to identify which if any aspects of Part 8 (including CPR 8.7) are intended to be applicable to the arbitration proceedings in question. It has recently been doubted that it is contemplated by the Rules that any arbitration claims should give rise to Part 20 proceedings. Thus in VTB Commodities Trading DAC v JSC Antipinsky Refinery [2021] EWHC 1758 (Comm), Cockerill J said:

‘I doubt that it is contemplated that arbitration claims should give rise to Part 20 proceedings at all. ...’ (para. 161)

... I do however have considerable doubts as to whether there is jurisdiction to add defendants or permit Part 20 proceedings in respect of a Part 8 arbitration claim; and I think it right to flag this issue as one which may arise for determination in another case. (para. 166)’

29. In my judgment, there are particular reasons for considering that Part 20 proceedings are not contemplated as available for applications for permission to enforce awards in the same manner as a judgment or order of the court under CPR 62.18. Such applications are intended to be a simple method to permit the enforcement of an award already made. There would appear to be no need for a power to allow into that process of obtaining permission either counterclaims, which, almost by definition, would have to relate to a matter outside the scope of the arbitration agreement for otherwise they should have been part of the arbitration, or claims against parties who are neither the person(s) seeking enforcement of the award nor the person(s) against whom the award is invoked. Equally, there appears no good reason why any power to allow Part 20 proceedings within a CPR 62.18 application should depend simply on whether the claim form, as opposed to the order giving permission to enforce the award, is served on the defendant. Yet that would appear to be the position if, as BMG contends, it is the reference to Section I in CPR 62.18(3) that imports CPR 8.7. There is no equivalent assimilation to Section I in relation to a case in which there is no order to serve the arbitration Claim Form pursuant to CPR 62.18(2) but where it is the order which is served under CPR 62.18(7) and (8), even where the defendant applies to set the order aside under CPR 62.18(9).

30. I conclude that the correct reading of the relevant Rules is that CPR 8.7 is not part of the procedure for applications for enforcement of awards under CPR 62.18, and Part 20 claims may not be brought within them.

Should the court permit a counterclaim if there is jurisdiction to do so?

31. I turn to the second issue, which is whether, if I am wrong in my conclusion in relation to the first issue and the court has power to do so, it

should permit BMG to bring the counterclaim which it seeks to make in this case.

32. It is convenient, in this regard, first to consider two points which Selelevision Saudi contends are, of themselves, sufficient to determine that BMG should not be permitted to bring the counterclaim.
33. The first of these points is a contention that the counterclaim should not (or even cannot) be permitted because ‘there is no longer any extant “claim” for [BMG] to defend and counterclaim against’. In this context Selelevision Saudi argued that its application had only been for leave to enforce the Award in the same manner as a judgment, and had not been an attempt to enforce the Award. Selelevision Saudi contended that it had not sought any of the means of enforcement available in English law, and in particular had not sought a judgment in the terms of the Award pursuant to s. 101(3) of the 1996 Act. In the circumstances, once the Court had given *leave* to enforce the Award, and in the absence of any attempt to set aside that leave, that was the end of the ‘claim’, and there was nothing to counterclaim against.
34. I do not accept this submission. The Claim Form itself referred to the possibility that Selelevision Saudi would claim further or other relief in addition to leave to enforce the Award. Furthermore, I consider it clear that, should Selelevision Saudi wish to seek, pursuant to s. 101(3) of the 1996 Act, that judgment should be entered in the terms of the Award, that would be a step which would be taken in the action commenced by the Claim Form. Equally, if issues arose as to the ambit and effect of the leave which has been granted, they would be matters which would arise in the action commenced by the Claim Form. Thus I do not consider that it can be said that that action is, for all purposes, ‘over’, with the result that for that reason alone no counterclaim is possible.
35. The other argument of Selelevision Saudi which was put forward as of itself a complete answer to permission being given to BMG to bring a counterclaim was that the proposed counterclaim did not raise a serious issue to be tried. It contended that there was no prima facie case that it (Selelevision Saudi, as opposed to any other entity, including any other Selelevision companies) was responsible for any of the alleged piracy. In particular it contended that the evidence pointed, if anywhere, at ‘a separate company and legal entity, Selelevision Free Zone, a company registered in Dubai, United Arab Emirates’.
36. I do not accept this. I consider that the evidence which BMG has put in shows that there are grounds to believe that there have been strenuous attempts to cover up the identity of the perpetrators of the piracy. Notwithstanding this, there does appear to me to be evidence raising a serious issue as to the involvement of Selelevision Saudi. In particular:
 - (1) I accept that much of the whistleblower’s account can be relied on by BMG as hearsay evidence for the purposes of the present application.

In this regard, I should mention that, while the whistleblower's name is redacted, Mr Nathan QC indicated that BMG was willing to give the court (and Mr Richmond QC) the name, and I did not consider that the fact that the name had been redacted, or the other redactions, was a reason for refusing to admit the evidence in the whistleblower's statement. I should add that, given the detail which the whistleblower includes as to his role in Selelevision Saudi and his departure from the company, I considered it improbable that Selelevision Saudi had not formed a very good idea of his identity, even if, as Mr Richmond told me on instructions, it did not 'know' it.

(2) The evidence on which BMG relies, including the whistleblower's account, points to the involvement in the piracy of employees or representatives of a Selelevision entity or entities in KSA, including in the provision of specially-designed STBs to access the allegedly pirated broadcasts. The suggestion that any such activities were, insofar as involving a Selelevision entity at all, done by Selelevision Free Zone to the exclusion of Selelevision Saudi is on its face an implausible one, especially given that there is no doubt that part of Selelevision Saudi's business was the provision of STBs in KSA.

(3) I accept BMG's submission that Selelevision Saudi has not provided a full and clear account of its relationship with Selelevision Free Zone. Nor has it put in evidence from its CEO, Mr Khusheim, dealing with the various matters which BMG has pointed to as indicating his, and through him, Selelevision Saudi's, involvement. As such the inferences which BMG contends can be drawn have not been convincingly or authoritatively rebutted on this application.

37. I therefore approach the issue of whether BMG should be permitted to bring a counterclaim, pursuant to any discretion the court has, on the basis that its proposed counterclaim raises a serious issue to be tried.

38. In considering how such a discretion should be exercised, the following general points appear to me to be of importance.

39. In the first place, even in the ordinary run of Part 8 proceedings, the CPR envisage that Part 20 proceedings will be the exception rather than the norm, as recognised by Cockerill J at paragraph 165(i) of VTB. Arbitration claims under the 1996 Act are a subset of Part 8 claims which generally do not easily admit of Part 20 proceedings. In relation to arbitration claims, if Part 20 proceedings are permissible at all, it would be highly exceptional for them to be permitted.

40. Secondly, within the class of arbitration claims, there are particular reasons why Part 20 proceedings must be considered generally inappropriate for applications under CPR 62.18. CPR 62.18 is in large part intended to be a mechanism by which effect is given to the New York Convention. That Convention comprises an overall scheme for the facilitation of the enforcement of an award, which 'reflects a pro-enforcement bias' (Diag

Human Se v The Czech Republic [2014] 2 Lloyd's Rep 283, 287RHC-288LHC at [10]-[11] per Eder J). Enforcement proceedings are 'clearly intended to be, in the absence of a challenge by the award debtor, highly summary and essentially quasi-administrative proceedings' (Gater Assets Ltd v NAK Naftogaz Ukrainy [2007] 2 Lloyd's Rep 588, 591 at [72] per Rix LJ). To permit counterclaims or other additional claims is likely to thwart or complicate enforcement.

41. Thirdly, in exercising any discretion whether to permit a counterclaim, or to add parties to a case such as this, there needs to be a consideration of (1) the degree of connexion between the proposed counterclaim or other additional claim and the existing claim, which is a consideration expressly identified in CPR 20.9(2)(a), (2) the effect of the admission of the counterclaim/other additional claim on the proceedings, and (3) the appropriateness of this court as the forum for the proposed counterclaim/additional claim.
42. In my judgment, looking at the present application in the context of those considerations, the balance comes down clearly against permitting the making of the proposed counterclaim. In this regard, the following matters are of importance:
 - (1) The counterclaim is proposed in a 'claim' for enforcement of a New York Convention Award. To permit it risks the practical inhibition on the enforcement of such an award.
 - (2) The counterclaim is essentially unrelated to the subject matter of the Award which Selelevision Saudi has sought leave to enforce. It relates to a different time period, and is of a very different juridical and factual nature.
 - (3) The admission of the counterclaim would entirely transform the action. What is currently the very streamlined procedure of CPR 62.18 would be replaced by an action which would require the full procedures appropriate for a significantly contested Part 7 claim, including statements of case, disclosure, witness statements and probably expert evidence. The counterclaim is also, according to BMG, for an amount greatly exceeding the Award.
 - (4) There is no basis on which, apart from as a counterclaim, if permitted, BMG could bring its proposed claim in this jurisdiction. None of the gateways in CPR 6BPD.3 is applicable which would have permitted service of a claim form raising the claim proposed to be made by BMG out of the jurisdiction.
 - (5) Furthermore, and more generally, the subject matter of the proposed counterclaim has almost no connexions with this jurisdiction. It would be between parties, one domiciled in Qatar, the other in KSA. It relates to matters which occurred, essentially, in KSA; and which are actionable, if at all, under Saudi law. Almost all of the physical

evidence would be in KSA, and most of the witnesses there or in Qatar and in any event not here.

43. I have given careful consideration to a particular point urged by BMG, which is that, though KSA might be said to be the ‘natural’ forum for the claim which it seeks to bring, nevertheless there is a real risk that it would not receive justice if that claim were brought in KSA, and that, for that reason, it is appropriate that this court should permit the counterclaim to allow it to be resolved here. In support of this case, BMG has put forward evidence from Professor Haider Ali Hamoudi, Vice Dean and Professor of Law at the University of Pittsburgh School of Law. Professor Hamoudi opines that there is a real risk that there would not be a fair trial of BMG’s claim in KSA because it involves factual allegations relating to the Saudi government or persons very close to it, including in particular Saud al-Qahtani, who is, Professor Hamoudi says, the very close, and now informal, adviser to Crown Prince Mohammed Bin Salman. Professor Hamoudi opines that the Saudi judiciary does not have independence, at least to the extent that individuals like Mohammad Bin Salman or Saud al-Qahtani have any substantial interest in the outcome, as illustrated by what have been characterised as ‘whitewashes’ in relation to the investigation of those responsible for the killing of Jamal al-Khashoggi and the trials of Sheikh Salman al-Odah and Loujain al-Hathloul. The present case involves allegations by a Qatari entity closely associated with the state of Qatar, which has been the target of ‘vitriol’ from leading Saudi governmental officials, including al-Qahtani, and so is of the type where Saudi judges would lack independence. Furthermore, BMG contends that it will not be able to obtain representation by Saudi lawyers, and Professor Hamoudi says that he is unsurprised by this.
44. Selelevision Saudi contended that BMG had failed to show on the basis of cogent evidence that there was a real risk that BMG would be unable to obtain substantial justice in KSA. It contended that the matter would be resolved by the Saudi Commercial Court and that there is no cogent evidence that this would lack independence. Furthermore, it was not necessary, and indeed would be inappropriate, for BMG to make allegations against Saud al-Qahtani or the Saudi Arabian government to make good its claim for breach of copyright. It adduced evidence from the late Sheikh al-Hejailan and Sultan Salah al-Hejailan, as Saudi Arabian practitioners, who opine that there would not be a risk of injustice to BMG as a result of political interference or influence in the Saudi courts, and that BMG would be able to obtain representation, if not from a Saudi law firm, from lawyers authorised in another Gulf Cooperation Council country.
45. Allegations that a party will or may not receive substantial justice in another forum often present the courts with a difficult and sometimes invidious task. In the present case, I have concluded that I do not need to decide whether there is in fact a substantial risk that BMG will not obtain justice on its proposed claim in KSA. That is because, even assuming that there is such a risk, I do not consider that that would dictate that the making of the proposed counterclaim should be permitted. Or, to put it

another way, I do not consider that that consideration would outweigh the other significant factors militating against permitting the proposed counterclaim, to which I have already referred.

46. In this regard, as I have said, the proposed counterclaim has very little connexion to this jurisdiction. The fact that it might not be capable of being tried fairly in its 'natural' forum, KSA, does not of itself mean that it should be tried here. This is not least because there may well be other fora in which the claim could be fairly tried, and which have more connexion with the dispute than this jurisdiction has. The only basis on which this jurisdiction has been involved is that Selelevision Saudi has sought to enforce the Award here. That is in my judgment an inadequate justification for this court to permit the counterclaim and thus assume jurisdiction over the proposed claim for piracy, even if there is a risk that BMG would not obtain justice for that claim in the natural forum.
47. Thus, if there is jurisdiction to permit a counterclaim in the present case, I would, as a matter of discretion, refuse to permit it.

Does the court have jurisdiction to grant a stay of enforcement of the Award?

48. BMG applies for a stay 'pending the determination of the Counterclaim'. As, for the reasons I have given, there will be no counterclaim, the application for a stay falls away.
49. While, accordingly, it is not necessary for me to deal with the issue of whether there would be jurisdiction to grant a stay in any detail, I should however say that I was unpersuaded by Selelevision Saudi's case as to the limits on the Court's jurisdiction.
50. Selelevision Saudi's case was that the Court had no jurisdiction to grant a stay of enforcement of a New York Convention award, other than in the circumstances referred to in s. 103(5). It contended that the Supreme Court in IPCO (Nigeria) Ltd v Nigerian National Petroleum Corp [2017] 1 WLR 970 had recognised that Articles V and VI of the New York Convention were a complete code for the areas they covered, and as they did not provide for a stay or adjournment other than in the situation covered by s. 103(5) there was no jurisdiction in the court to grant such a stay. It submitted that that decision had impliedly overruled the decision of Potter J in Far Eastern Shipping v AKP Sovcomflot [1995] 1 Lloyd's Rep 520, in which the court had considered that it did have jurisdiction to grant a stay of execution where the award had been converted into a judgment; alternatively that that situation was distinguishable from a case where, as here, no such judgment had been obtained.
51. I have considerable doubts as to whether IPCO is to the effect contended, and as to whether Far Eastern Shipping has been impliedly overruled. The treatment in Far Eastern Shipping of the issue of jurisdiction to grant a stay of a judgment in the terms of an award has not been criticised in any subsequent case which was referred to me, and has been followed in

Continental Transfer Technique Limited v The Federal Government of Nigeria [2010] EWHC 780 (Comm) and H & CS Holdings Pte Limited v RBRG Trading (UK) Ltd [2015] EWHC 1665 (Comm). Nor was I persuaded by the alternative submission that the court has no jurisdiction to grant a stay of enforcement of an award before a judgment is entered in terms of the award, but has jurisdiction to stay enforcement of such a judgment. That is, in my judgment an artificial distinction, and it is one which appears to me to be inconsistent with the decision of Moulder J in BSG Resources Ltd v Vale SA [2019] EWHC 2456 (Comm), para. 54.

Should the court grant a stay of execution?

52. The further question of whether, if the Court has jurisdiction to stay enforcement of the Award pending the determination of the Counterclaim it should do so, again does not arise, because there will be no Counterclaim. I should however say that, had there been the power to permit a Counterclaim and had I permitted it to be brought, I would in any event have refused a stay of enforcement. As Potter J stated in Far Eastern Shipping, the Court ‘will rarely, if ever, regard it as appropriate to make such an order in respect of a Convention award, when, by definition, under the Convention, the time for enforcement has arrived’ (524 RHC). I do not consider that this is a case in which such a stay should be granted. In addition to the strong consideration that the present is a case of a New York Convention Award, which is now unchallenged, I consider that the following matters are of importance:

- (1) There is no significant connexion between the proposed counterclaim and the Award;
- (2) It appears from the material before me that Selelevision Saudi would be prejudiced by the grant of a stay. It is apparently a relatively small company which is suffering hardship by reason of the non-payment of the Award, and would find it difficult to defend the proposed counterclaim if the Award is not paid;
- (3) There is no application, and insufficient evidential basis, for a free-standing preservation order.

The application relating to Mr Khusheim

53. For the reasons I have given, there will be no Counterclaim. The only basis on which it is said that Mr Khusheim should be joined as a party and that there should be permission to serve him out of the jurisdiction is that he is a necessary or proper party to the dispute which BMG seeks to raise by way of counterclaim. In the absence of a counterclaim, the applications regarding Mr Khusheim must fail.

Overall conclusion

54. BMG's applications fail and are dismissed.