IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 304 OF 2023 (IKJ)

IN THE MATTER OF THE FOREIGN ARBITRAL AWARDS ENFORCEMENT ACT (1997 REVISION)

AND IN THE MATTER OF THE ARBITRATION ACT, 2012

AND IN THE MATTER OF AN ARBITRATION BETWEEN CARREFOUR NEDERLAND B.V. (Claimant) AND SUNING INTERNATIONAL GROUP CO., LIMITED (First Respondent) AND SUNING.COM CO., LTD (Second Respondent)

BETWEEN:

CARREFOUR NEDERLAND B.V.

Plaintiff

v

(1) SUNING INTERNATIONAL GROUP CO., LIMITED

(2) SUNING.COM CO., LTD

Defendants

IN CHAMBERS

Before: The Hon. Justice Kawaley

Appearances: Mr Liam Faulkner of Campbells LLP on behalf of the Plaintiff

Mr Alex Potts KC of Counsel and Mr Jonathon Milne and Ms Sean-Anna Thompson of Conyers Dill & Pearman LLP, on behalf of the Defendants

Heard: 21 February 2024

Draft Judgment circulated: 3 April 2024

Judgment delivered: 15 April 2024

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Application to set aside ex parte order granting leave to enforce arbitration award- validity of service-ex parte applicant's fair presentation duties-application to stay further enforcement of award-governing principles-Foreign Arbitral Awards Enforcement Act (1997 Revision), sections 6-7- Grand Court Rules Order 18 rule 19 (d), Order 45 rule 11, Order 45 rule 11, Order 65 rule 4, Order 73 rules 21-22

JUDGMENT

Introductory

1. By Summons dated 24 November 2023, the Defendants applied for:

(a) a declaration that the *Ex Parte* Order obtained by the Plaintiff on 2 November 2023 (the "***Ex Parte* Order**") and the Ex Parte Originating Summons and First Affirmation of Jonathan David Wong dated 10 October 2023 (the "**Originating Summons**" and "**Wong 1**", respectively) were not validly served on either Defendant;

(b) an Order setting aside the purported service of the said documents on the grounds that the Plaintiff had failed make full and frank disclosure or make a fair presentation when applying for the *Ex Parte* Order and/or on the grounds that paragraphs 2 and/or 4 of

the *Ex Parte* Order were irregular for non-compliance with GCR Order 65 and/or Order 73 rule 31 (6), and/or GCR Order 73 rule 32 (1) (d); and/or

(c) an Order staying the *Ex Parte* Order under the Court's inherent jurisdiction and/or pursuant to the Court's case management powers and/or pursuant to GCR Orders 18 rule 19 (d) and/or Order 45 rule 11 and/or pursuant to sections 7 (2) (f) and 7 (5) of the Foreign Arbitral Awards Enforcement Act (1997 Revision) (the "**FAAEA**").

2. By the end of the hearing of an application which adopted a "kitchen sink" approach, it seemed clear that there were no sufficient grounds for setting aside the *Ex Parte* Order altogether. However, it was possible to discern, amongst the forensic debris, a glimmer of merit in the application for a stay. Having granted the *Ex Parte* Order on the papers, in at least one respect somewhat haplessly, I thought it prudent to reserve judgment to carefully evaluate:

(a) the gravity of what appeared to be two valid but minor complaints of procedural irregularities; and

(b) the merits of a stay and/or adjournment application which was advanced in such a persuasive manner that it was difficult to dismiss out of hand.

The *Ex Parte* Order

3. The Originating Summons was supported by Wong 1 which provided *prima facie* evidence that a Final Award dated 30 April 2023, made by a Hong Kong seated tribunal administered by the Hong Kong International Arbitration Centre under case number HKIAC/A22298 had been made in favour of the Plaintiff against the Defendants (the "**Final Award**"). Wong 1 also averred that the Final Award had not been set aside or suspended and exhibited what were deposed were copies of the relevant arbitration agreement and the Final Award.

4. The evidence supporting the Originating Summons described a contested arbitration hearing in the course of which the Defendants attempted to advance a counterclaim which the Tribunal found it had no jurisdiction to determine. After the Final Award in favour of the Plaintiff was obtained and served, it was deposed that on 25 July 2023 the High Court of the Hong Kong Special Administrative Region (the "**Hong Kong Court**") granted leave to the Plaintiff to enforce the Award. Mr Wong, a Hong Kong attorney, deposed based on his own review of FAAEA:

> "*31…I confirm that to the best of my knowledge and belief none of the grounds for refusal of enforcement of the Final Award under section 7 of the Enforcement Act are engaged.*"

5. Under the heading "*Full and Frank Disclosure*", Wong 1 discloses that BCC Sunning Investments Limited presented a winding-up petition against the 1st Defendant in Hong Kong and that the Defendants contended in the arbitration that the contracts containing the arbitration agreement (the Settlement Agreement and Guarantee) were void and unenforceable.

6. The Plaintiff's Skeleton Argument addressed the relevant law, emphasising the pro-enforcement policy embedded in the New York Convention: *Gol Linhas Aereas AS* [2022] UKPC 21. It also identified one ground for refusing enforcement which was potentially relevant: invalidity of the arbitration agreement (FAAEA, section 7(2)(b)). It was submitted that this point had been considered and rejected by the Tribunal, and that in any event the burden lay on the party resisting enforcement to establish the validity of any refusal ground.

7. Against this background, having agreed (consistently with my recent practice in similar cases) to deal with the application on the papers, I granted an Order in the following principal terms:

> "*1. Pursuant to section 5 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) leave be granted to enforce the Final Award in the Cayman Islands in the same manner as a judgment or order of this Court to the same effect.*
>
> *2 The Plaintiff shall serve the Originating Summons, Wong 1 and this Order out of the jurisdiction on the Defendants by service on their counsel in the arbitration proceedings, Nixon Peabody CWL of 5/F Standard Chartered Bank Building, 4-4A Des Voeux Road Central, Hong Kong.*
>
> *3 The Defendants shall have 21 days from the date that the Order is served on them in accordance with paragraph 2 above to apply to the Court to set aside the Order. The Order must not be enforced until after the end of that period, or until final disposal of any application made by the Defendants within that period to set aside the Order.*
>
> *4 After the conclusion of the period referred to in paragraph 3 above, judgment be entered against the Defendants in the terms of the Final Award as follows:*
>
> *a. the First Defendant and the Second Defendant do make payment to the Plaintiff forthwith, on a joint and several basis, without any withholding, setoff, counterclaim, retention or deduction, of:*

i. the remaining Initial Put Price (as defined in the Final Award) in the amount of RMB 1,000,000,000.00;
ii. simple interest over the remaining Initial Put Price at 5.7% per annum as from 22 February 2022 until the date of the Final Award (i.e. 30 April 2023) and thereafter at the Hong Kong judgment rate (currently at 8.583% per annum) until the date of payment in full of the Initial Put Price;

iii. the sums of EUR 875,725.00 and HKD 803,206.00, being the assessed costs of the arbitration within the meaning of Article 34 of the Hong Kong International Arbitration Centre Administered Arbitration Rules (the 'Arbitration Costs'); and

iv. simple interest over the Arbitration Costs at the Hong Kong judgment rate (currently at 8.583% per annum) from the date of the Final Award until the date of payment in full, pursuant to section 80 of the Arbitration Ordinance.

5 The Plaintiff shall have liberty to apply.

6 The Plaintiff's costs of and incidental to the Summons, including the costs of entering judgment, to be paid by the Defendants, to be taxed if not agreed."

The Defendants' service complaints

8. I readily accepted in the course of argument that Mr Potts KC had advanced a valid complaint about that part of paragraph 2 of the Order that purported to grant leave to serve the Originating Summons on the Defendants (a) out of the jurisdiction, and (b) by email sent to the Defendants' attorneys. There are two procedural routes which applicants for leave to enforce a foreign arbitral award can pursue in relation to service of the ex parte order they have obtained.

9. The most simple, and in my experience most well-trodden route, is to simply serve the order without leave, which potentially engages the Court's jurisdiction to order electronic service at the outset. Personal service of the order is not required. The most cumbersome is to seek leave to serve the originating application itself out of the jurisdiction, which engages a more traditional service abroad regime. This is clearly because serving originating process entails one 'sovereign' issuing a command within the territory of another 'sovereign'. Some orders, such as mandatory injunctions, would admittedly have a similarly intrusive effect. Other orders would not.

10. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965 (the "**Hague Service Convention**") was adopted to resolve these difficulties. The Convention "*shall apply in all cases, in civil or commercial*

matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad" (Article 1). It requires State Parties to create a Central Authority for service of documents through official channels but provides that such form of service does not exclude other forms permitted by the law of the service jurisdiction. Common law jurisdictions generally permit foreign judicial documents to be served privately, and distinguish between documents which require personal service and those which do not.

11. Nonetheless, care must be taken to ensure that this Court does not unwittingly authorise a form of service which may be prohibited in the relevant foreign jurisdiction. The Hague Service Convention must indeed generally be borne in mind, as Mr Potts KC contended, whenever the Court gives direction for service of judicial documents abroad.

12. Properly understood, this Court's rules confer a discretion on the Court to require service of the application itself in cases where the starting assumption of an *ex parte* without notice application is, for good cause, displaced. GCR Order 73 rule 31 provides:

> " *(1) An application for leave under Section 52 or 72 of the 2012 Law or under Section 5 of the 1975 Law to enforce an arbitral award, shall be made by ex-parte originating summons.*
>
> *(2) The Court hearing an application under paragraph (1) may direct that the application is to be served on such parties to the arbitration as it may specify and service of the application out of the jurisdiction is permissible with the leave of the Court irrespective of where the award is, or is treated as, made.*
>
> *(3) Where a direction is given under paragraph (2), rules 11 and 13 to 17 shall apply with the necessary modifications as they apply to applications under Part I of this Order….*
>
> *(6) An order giving leave must be drawn up by or on behalf of the applicant and must be served on the respondent by delivering a copy to the respondent personally or by sending a copy to the respondent at the respondent's usual or last known place of residence or business or in such other manner as the Court may direct, including electronically.*
>
> *(7) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5 to 8, shall apply in relation to such an order as they apply in relation to a writ…*"

13. GCR Order 73 rule 31 (11) provides for acknowledgement of service of an application while sub-paragraphs (13)-(17) deal with automatic direction in terms which are only consistent with a process taking place before the Court had decided to grant leave to enforce the relevant award. These rules are engaged where the Court exercises its discretion to require service of the application, by necessary implication, before an order has been made. On reflection, originating process is in legal terms only really being served if it requires the party served to signify their desire to participate in proceedings before the relief sought has been granted. Where an *ex parte* summons is heard without notice and determined on its merits, subject to any application to set aside, provision of a copy of the originating application to a respondent is essentially an information providing exercise. It is not formal service as contemplated by the rule at all.

14. GCR Order 73 rule 31 (7) applies GCR Order 11 rules 5-8 to service of the order without leave. Those rules provide, *inter alia*:

(a) a writ served abroad need not be served personally as long as it is not served in a manner inconsistent with local law (Order 11 rule 5);

(b) Orders 11 rules 6-8 deal with service through official channels, service on foreign Governments and the costs of using official channels.

15. Accordingly, provided non-personal service is permissible in the overseas service jurisdiction, an order granting leave to enforce a foreign arbitral award can be served in such manner as the Court directs under Order 73 rule 31 (6). It is obviously incumbent on applicants to ensure that the mode of service they ask the Court to approve is or is believed to be compliant with the local law of the place where service is proposed to be effected. This framing of the service framework has only emerged as a result of the Defendants' service complaints.

16. The Plaintiff in my judgment opened the door to this attack by failing to effectively grapple with the procedural regime in their *ex parte* Skeleton Argument. Mr Potts KC fairly complained that in the absence of reasons for my decision on the papers, the legal basis on which paragraph 2 of the *Ex Parte* Order could not be discerned. I sought to remediate this position by explaining the legal basis on which service occurred, in paragraph 4 of a 19 December 2023 Case Management Ruling emailed to counsel:

"*CASE MANAGEMENT RULING*

1. *On 2 November I granted an Ex Parte Order in the following material terms:*

   '

   1. *Pursuant to section 5 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) leave be granted to enforce the Final Award in the Cayman Islands in the same manner as a judgment or order of this Court to the same effect.*

   2. *The Plaintiff shall serve the Originating Summons, Wong 1 and this Order out of the jurisdiction on the Defendants by service on their counsel in the arbitration proceedings, Nixon Peabody CWL of 5/F Standard Chartered Bank Building, 4-4A Des Voeux Road Central, Hong Kong.'*

2. *GCR Order 73 rule 31 provides that leave to enforce an arbitration award may be granted on an ex parte basis, leave to serve out of the jurisdiction is not required and that the order 'must be served on the respondent by delivering a copy to the respondent personally or by sending a copy to the respondent at the respondent's usual or last known place of residence or business or in such other manner as the Court may direct, including electronically' (rule 31(6)).*

3. *The Defendants have applied to set aside the Ex Parte Order on grounds of (1) invalid service, (2) material non-disclosure and (3) alternatively seek to stay the present proceedings. They seek a preliminary hearing on service. The Plaintiff seeks a single hearing.*

4. *The service objections presently raised appear to be based on the misconception that the normal rules for serving originating process apply to the order which was formally served under GCR Order 73 rule 31, which was admittedly not set out in the Order. They clearly do not. Order 73 rule 31 (6) is specifically designed to sidestep attempt to delay enforcement by evading service and empowers the Court to direct service in whatever way is likely to bring the order to the respondent's notice, as clearly occurred in the present case. I reject the request for a preliminary hearing on service alone as that point appears hopeless and, it seems to me, ought sensibly be abandoned by the Defendants to save costs unless some firmer basis for advancing it can be found.*

5. *I make the following directions for the further conduct of the Defendant's Summons:*

   (a) The Defendants should file any evidence in reply to the Plaintiff's evidence by 19 January 2024;
   (b) The parties should by 5 January 2024 submit agreed dates (or dates to avoid) for a 1 day hearing after 22 January 2024

   Kawaley J, 19 December 2023" [Emphasis added]

17. Against this background, the service complaints can briefly be addressed. As regards the governing rules:

(a) I find that paragraph 2 of the *Ex Parte* Order was irregular in that it referred to service of the Originating Summons and Wong 1 at all. Had the application taken place at an oral hearing, I would likely have queried the need to include those documents in the Order. Dealing with the application on the papers while on overseas leave and keen to dispose of the application, I granted the Order in terms of the draft favouring expedition over legal precision;

(b) any suggestion that the inclusion of the Originating Summons in paragraph 2 was an exercise of the Court's jurisdiction to require service of the application before hearing the application for leave under GCR Order 73, rule 31(2) is wholly misconceived;

(c) the only operative directions given in relation to service related to the Order and were made under GCR Order 73, rules 31(6) and (7), authorising service on the Defendants' arbitration attorneys (who are based in Hong Kong) by email.

18. The Defendants' counsel submitted that GCR Order 73, rule 31(6) properly construed required service on bodies corporate at their "*principal or registered address*", which paragraph 5(b) required to be set out in the supporting affidavit. Alternative service ("*in such other manner as the Court may direct*") was only available on exceptional discretionary grounds:

> "*19. The Defendants note, of course, Mr Justice Kawaley's provisional view that 'Order 73 rule 31 (6) is specifically designed to sidestep attempt [s] to delay enforcement by evading service and empowers the Court to direct service in whatever way is likely to bring the order to the respondent's notice.*
>
> *20. The Defendants are also aware of similar views having been expressed by Mr Justice Kawaley, at first instance, in unreported cases such as Arcelormittal USA LLC v Essar Steel Limited et al, judgment dated 2 July 2019, and LAM Global Management v AGPL, judgment dated 13 December 2022.*
>
> *21. With the greatest of respect to this Honourable Court, however, the Defendants submit that these views (which are not binding as a matter of law) are very likely to be wrong…*"

19. It was further argued that a "*broad, casual, and/or generous approach to the issue of service would be completely at odds with*":

(a) the primary importance placed by rule 31(1), (5) (b) and (6) on service on respondents themselves;

(b) the provisions of Order 65 rule 4 on substituted service (reference was made to English case law on alternative service under an entirely different rule);

(c) the provisions of the Hague Service Convention, which apply in the Cayman Islands, Hong Kong and the PRC.

20. I accept entirely that the way in which I have previously construed Order 73 rule 31(6) is "broad" and "generous", but reject the suggestion that it is "casual". I further reject the suggestion that the structure of the rules prioritises service on the respondents themselves, acknowledging entirely that in domestic litigation service on parties is the general rule unless attorneys agree to accept service or special service methods have been contractually agreed. I take into account (1) the pro-enforcement policy of the FAAEA, (2) the fact that Order 73 rule 31 is a bespoke rule for the enforcement of foreign awards and (3) the fact that paragraph (6) is only concerned with giving notice of an *ex parte* order which has already been made. In my judgment, taking these considerations into account, the words "*by delivering a copy to the respondent personally or by sending a copy to the respondent at the respondent's usual or last known place of residence or business or in such other manner as the Court may direct, including electronically*" cannot fairly be read as meaning what they do not say.

21. The existence of GCR Order 65, rule 4 fortifies rather than undermines the view that the Court under GCR Order 73, rule 31(6) is given a suite of equal options, rather than a suite of options sequentially ranked. GCR Order 65, rule 4 provides as follows:

> "***Substituted service (O.65, r.4)***
>
> *4. (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.*
>
> *(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.*
>
> *(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.*"

22. Substituted service is an alternative means of service applicable to documents which ordinarily must be personally served but which it is impracticable to serve personally. GCR Order 73, rule

31(6) according to its express terms confers an unfettered discretion on the Court to authorise "such other manner" of service as the Court thinks fit. It does not require personal service in the first instance at all; nor does it in terms require proof of impracticability of any other means of service. The beguiling substituted service analogy is an inapposite one. No specific contravention of the Hague Service Convention was alleged. I have nevertheless reviewed the Convention and considered the following provisions of Article 10 to be instructive:

> "*Provided the State of destination does not object, the present Convention shall not interfere with –*
>
> *a) the freedom to send judicial documents, by postal channels, directly to persons abroad…*"

23. In my judgment, this provision drafted nearly 50 years ago, applying an updating construction, arguably permits service of judicial documents by any means not prohibited by the law of the service forum, using the traditional post or modern electronic means. The Defendants did not suggest that emailing the *Ex Parte* Order to the Defendants' arbitration attorneys was contrary to Hong Kong law.

24. The elaborately articulated service complaints were, as Mr Faulkner pointed out, merely designed to impede the Plaintiff's enforcement efforts. The only valid complaint was entirely non-substantial, because no formal service of the leave application itself occurred despite the unfortunate but superfluous mention of these documents in the *Ex Parte* Order. I accordingly refuse the Defendants' application for an Order declaring that they were not validly served with the *Ex Parte* Order in the manner authorised by paragraph 2.

Material non-disclosure/unfair presentation

25. The parties were agreed on the general principles applicable to the duties to make a fair presentation and give full and frank disclosure when making an *ex parte* application. The critical controversy turned on whether the matters which undoubtedly were not disclosed were material to the application which resulted in the making of the *Ex Parte* Order. Mr Potts KC complained that the following matters ought to have been disclosed:

(a) the fact that the Defendants had applied on 28 August 2023 to set aside the Hong Kong Court's *ex parte* Order granting leave to enforce the Final Award in Hong Kong;

(b) there were pending arbitration proceedings between the 1st Defendant and the Plaintiff and Carrefour SA which could give rise to a "*complete or partial defence, set-off, or counterclaim by the Defendants against the Plaintiff*"; and

(c) the Plaintiff would be applying to be substituted as Petitioner in the winding-up proceedings it did disclose had been commenced against the 1st Defendant in Hong Kong.

26. In his Skeleton Argument, Mr Faulkner made the following pivotal submission:

> "*62. The Plaintiff has addressed the accusations of failure to give full and frank disclosure in paragraphs 30 to 38 of Wong 2. In summary…none of the facts and matters that the Defendants claim the Plaintiff failed to disclose have any relevance to the enforcement of the Final Award (which is only to be refused in the circumstances set out in section 7 of the Enforcement Act, none of which are present here)*."

27. I accept that submission. In my judgment, the only matters which it would have been material for the Plaintiff to disclose would have been a matter potentially supporting a ground for refusing enforcement under section 7 of FAAEA. It must be borne in mind that since the burden is on a respondent to establish a qualifying refusal ground, the ambit of materiality will generally be further narrowed by that consideration. This *ex parte* context is markedly different from the *ex parte* injunction application context where the applicant is required to show that there is a serious issue to be tried.

28. I accordingly find that no grounds for setting aside the *Ex Parte* Order on non-disclosure or similar grounds have been established by the Defendants.

The GCR Order 73 rule 32 complaint

29. Order 73 rule 32 provides as follows:

> "*(1) 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, the applicant shall file an affidavit giving the following particulars —*
>
> *(a) whether simple or compound interest was awarded;*

(b) the date from which interest was awarded;

(c) the rate of interest awarded; and

(d) a calculation showing the total amount claimed up to the date of the affidavit and any sum which will become due thereafter on a per diem basis." [Emphasis added]

30. It was accepted that Wong 1 did not comply with sub-paragraph (1) (d) of this rule. An attempt was made to cure this defect in the Second Affirmation of Jonathan Wong affirmed on 14 December 2023 ("**Wong 2**"), but Mr Potts KC plausibly argued that the relevant rule had still not been complied with. The lack of clarity on the face of the *Ex Parte* Order as to the interest element of the amounts due was not advanced as a freestanding ground for setting the *Ex Parte* Order. It can be remedied by way of an amendment, as contemplated by GCR Order 2 rule 1 (2), and has caused no prejudice to the Defendants who are not impatiently waiting to write a cheque in settlement of the Final Award.

Stay application

31. The Defendants' arguments in support of their stay application (and a subsidiary adjournment application) were addressed first in their Skeleton Argument. This was consistent with the fact that this was, at first blush, the most arguable limb of their Set-Aside Summons. Mr Potts KC highlighted an unusual feature of the present case: the Defendants had sought to raise by way of counterclaim their case on misrepresentation before the Tribunal which granted the Final Award, but was required to commence separate arbitral proceedings on jurisdictional grounds.

32. My tentative provisional view by the end of the hearing was that the application was premature, being advanced at a stage where:

(a) the Plaintiff had not yet entered a judgment based on the Final Award and taken any positive steps by way of execution;

(b) the effect of seeking an order staying further enforcement of the Final Award appeared to be an impermissible way of inviting the Court to refuse to enforce the Final Award under a statutory framework which conferred no such power. In contrast, once a local

judgment had been entered in terms of the Final Award, the Court's common law and/or statutory jurisdiction to stay execution could not be doubted;

(c) the question of whether the pending arbitration proceedings constitute grounds for staying enforcement of the Final Award in Hong Kong has been fully argued before Madam Justice Mimmie Chan, who reserved judgment on 30 January 2024 for an estimated period of six months; and

(d) one of the issues the Hong Kong Court will possibly decide is whether the Plaintiff is entitled to rely on an anti-set off clause in the Settlement Agreement as a matter of Hong Kong law. The Plaintiff contends that the Defendants are bound by the contrary findings already made by the Tribunal in the First Arbitration.

33. However, there seemed to be pragmatic force to the argument that it made no sense to permit the Plaintiff to fully enforce the Final Award when the Defendants might obtain commensurate financial relief through the Second Arbitration. Should this Court 'duck', and let the Hong Kong Court decide?

34. Mr Faulkner advanced one submission which in my view is ultimately dispositive of the stay application, after summarising the stay/adjournment grounds relied upon:

> "*27. Accordingly:*
>
> *(a) no application for setting aside or suspension of the Final Award has been made. Therefore, the Court has no basis for adjourning the proceedings under section 7 (5) of the Enforcement Act;*
>
> *(b) no order has been made for the setting aside or suspension of the Final Award. Therefore the exception in section 7 (2) (f) of the Enforcement Act does not apply, no application has been made under this section and there are no grounds upon which this Court can refuse enforcement.*"

35. Mr Potts KC, Pied Piper like, almost succeeded in leading me off the well-trodden path of FAAEA orthodoxy with his powerful advocacy. It was tempting to consider that the Court could, with a view to achieving a practical form of justice, grant a short stay now, merely to let the Hong Kong Court decide the merits of a similar stay application which had already been fully argued. Such an unprecedented approach would potentially undermine the foundations of foreign arbitral award enforcement under Cayman Islands law. Arbitral award enforcement is a streamlined process

designed to allow an award to be converted into a domestic judgment. It merely serves as a gateway to substantive enforcement remedies and in many cases justice delayed will be justice denied.

36. Section 7 of FAAEA means what it says when it provides:

> "*(1) Enforcement of a Convention Award shall not be refused except in the cases mentioned in subsections (2) and (3).*"

37. The Defendants advanced no or no arguable grounds for refusing to enforce the Final Award. The adjournment and/or stay application must accordingly be refused. Whatever residual inherent jurisdiction the Court may have to adjourn enforcement proceedings on case management grounds, such jurisdiction does not extend so far as to granting relief which is a thinly veiled form of refusing to enforce an unimpeached foreign award on grounds which contravene the express terms of an Act of Parliament. The relief sought under this limb of the Defendants' Summons is also refused.

38. The Plaintiff's ability to complete the enforcement process cannot validly be delayed any further. This decision is obviously without prejudice to any application the Defendants may wish to make to stay any specific execution steps the Plaintiff may elect to pursue once a judgment has been entered in terms of the Final Award.

Summary

39. For the above reasons, the Defendants' Set Aside Summons must be dismissed. Unless either party applies to be heard as to costs by letter to the Court within 21 days of delivery of the present Judgment, the costs of the present application shall be awarded to the Plaintiff to be taxed (if not agreed) on the standard basis.

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