THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BEFORE JUSTICE SIR DAVID STEEL

BETWEEN

Eava

Claimant

and

Egan

Defendant

REDACTED AMENDED REASONS FOR THE ORDER OF JUSTICE SIR DAVID STEEL DATED 11 MAY 2015

FURTHER TO the Defendant's Application Notice ARB-005-2014/1 and supporting documents dated 28 January 2015 seeking to set aside the Order of Justice Sir David Steel dated 8 January 2015 (the "Application");

AND FURTHER TO hearing Counsel for the Claimant and Counsel for the Defendant on 11 May 2015;

AND FURTHER TO the Order of Justice Sir David Steel dated 11 May 2015, dismissing the Application with reasons to follow;

1.By an order dated 8 January 2015, the Court acceded to an ex parte application by way of Part 8 Claim Form by the Claimant for an order recognising and enforcing an ICC arbitration award issued in Paris on 6 May 2014 whereby the Claimant was awarded US$724,394.05 against the Defendant.

2. The Defendant applied by way of Application Notice ARB-005-2014/1 dated 28 January 2015 to set aside that order or, in the alternative, sought an adjournment pending the outcome to a challenge to the award brought by them in France.

3. The hearing of the Application took place on 11 May 2015 following which I made an order dismissing the Application with costs with reasons to follow. What follows are my reasons.

4. The Claimant is Eava U.S company engaged in the business of sale and lease of commercial aircraft engines.The Defendant is a Dubai company (outside the DIFC) conducting commercial air cargo carriage. In February 2011 the Defendant agreed to buy three aircraft engines from the Claimant. When a dispute arose as to the quality of one of the engines, the Defendant withheld part payment for all three engines.

5. The dispute was referred to arbitration in January 2012. An arbitrator was appointed in August 2012. There was a hearing in May 2013 and proceedings were eventually closed in July 2013. As already noted the arbitrator issued his award in May 2014. By his award the arbitrator dismissed the Defendant's contentions and awarded the Claimant US$600,000 plus costs of US$124,394.05.

6. On 24 October 2014, the Defendant applied to the Cour d'appel in Paris challenging the award.

7. Following the issuance of the order of this Court which the Defendant now seeks to set aside, the Defendant submitted its grounds for challenging the award to the French court on 14 April 2015. On 16 April 2015 the Defendant applied to the French court to suspend enforcement of the award pending the determination of their challenge to it.

8. What then of the Defendant's alternative case that these proceedings should be adjourned pursuant to Article 44(2) of the DIFC Arbitration Law pending resolution of the challenge to the award in France? The threshold question has to be whether as a matter of first impression the award is valid or invalid: ***Soleh Boneh v. Uganda Government*** [1993] 2 Lloyd's Rep. 208. The challenge before the French court focuses on the contention that delays in the arbitration render its enforcement contrary to public policy. In my judgment there is no realistic prospect of making good that contention and the award should be treated as manifestly valid.

(a) Mere delay on the part of the arbitrator is not encompassed by the international concept of public policy: see ***Coal & Oil Co. Ltd. v. GHCL Ltd***. [2015] SGHC 65. In any event the delay was substantially less than one year. It was about 8 months from receipt of final submission to the award.

(b) The ICC duly extended the time limit for the award pursuant to Article 30 of the ICC Rules as recorded in paragraph 3 of the award. No objection was raised by the Defendants.

9. There is a secondary challenge to the award in regard to the dismissal by the arbitrator of the claim by the Defendant for US$40,000 in respect of attempted repairs to the defective engine. But the claim failed on the grounds that it was not satisfactorily explained or documented. The task of the arbitrator was to determine the validity of the claim. He formed the view that it was not adequately particularised or proved. It is difficult to see how that view was mistaken. But even if he may have been wrong, no legal principles are involved let alone justifying a challenge to a validity of the award.

10. Against that background the option facing the Court is either:

(a) To make an order for immediate enforcement; or

(b) To adjourn, but make an order for substantial security.

11. Having regard to the factors identified in ***IPLO (Nigeria) Ltd. v. Nigerian National Petroleum Corporation***[2005] 2 Lloyd's Rep.326 I have no hesitation in making an order for immediate enforcement:

(a) The application in France as a matter of first impression has no realistic prospect of success.

(b) This in turn supports the clear impression derived from the late emergence of the grounds of challenge that it is not pursued bona fide but simply as a delaying tactic.

(c) Quite how long the proceedings in France will take is a matter of controversy but it could well be up to a year or more in regard to a claim which is already four years old.

12. It is a pity that this modest claim which cost $125,000 to arbitrate has now incurred yet further expense in Paris, Dubai and Sharjah. That process should now be terminated by payment. The application to set aside the order of the Court is refused.

Issued by:

Amna Al Owais

Deputy Registrar

Date of issue: 26 July 2015

At: 12pm