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New York and Madrid

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Commentary

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I. Application for exequatur of foreign award in Spain

This month's article deals with an application by DORIS MARITIME SERVICES, S.A. to the Regional High Court in Valencia (the "Court")¹ for the recognition of an arbitration award handed down in London on 30 September 2011, in a maritime arbitration between the Applicant, a broker (Plaintiff), and MALTESE SUN MARITIME COMPANY LTD (Defendant), a company incorporated and domiciled in Malta Island.

Defendant raised the exception of jurisdiction to hear the application on the grounds that Defendant was incorporated and domiciled in Malta.

The Court therefore had to resolve the jurisdictional issue prior to dealing with the matter of the exequatur.

II. Spanish Competition Court to rule about the exequatur requested

In its application for recognition of the award, the Plaintiff expressly stated that it was aware that Defendant was domiciled in Malta. However, Plaintiff pointed out that the company's directors and

shareholders were domiciled in Valencia and in particular, that they had been, jointly with Defendant, found guilty by the commercial court in Valencia of using interrelated and under capitalised corporations to avoid liability. Additionally, assets belonging to the Defendant were present in Valencia, Spain, including a vessel named Mareike, attached at the Port of Sagunto, and security deposits with the Commercial Court No. 3 of Valencia.

The Court dismissed the application and confirmed its jurisdiction to decide the recognition of the award based on the fact that there was sufficient evidence to support that the Defendant had its centre of activities and assets located in Valencia, without prejudice to the competent court to decide those issues relating to the execution of the award. The Court reasoned that there was no logic in leaving the recognition of the award to the courts of Malta since there were no commercial activities nor assets located there.

The Court's ruling made it abundantly clear that under Spanish arbitration law, the competent court to grant recognition of foreign arbitral awards is that of the place of domicile or place of residence of the person or company against whom recognition is sought, or the domicile or residence of the person against whom the award has effect, and alternatively the place of enforcement or the place where the award can have effect; the latter requirement and the evidence obtained, formed the basis for the Court's dismissal of the application.

Consequently, the place of enforcement or where the award could have effect was determined to be Valencia, Spain, not Malta which was merely the registered

domicile of the company but not where the activity and goods were located. Thus under Spanish law, the Court was competent to deal with the recognition of the award.

III. Court's reasoning for recognition of award

Having pronounced in favor of its jurisdiction, the Court turned to the issue of the recognition of the award. The first determination that the Court realized was to consider that the exequatur process was merely a declaratory judgment by a Spanish court recognizing the effectiveness in Spanish territory of a foreign decision, without involvement with the merits, or modifications, other than those necessary to protect public policy. The Court also considered that once the exequatur was granted, all matters relating to the enforcement of the award, to be the domain of the court of competent jurisdiction.

Moreover, the Court noted that a condition sine qua non for the recognition of foreign awards is compliance with the requirements of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which mandate the recognition and enforcement of arbitral awards that meet the requirements established in articles II and IV, i.e., that the applicant has provided the original or authenticated copy of the arbitral agreement, as well as the authenticated original of the award, or a copy thereof which fulfils the conditions required for authenticity. The Court found that these requirements were met as evidenced by the case file.

Subsequent to the Court's ruling in favor of jurisdiction, the Defendant failed to file a timely opposition to the application for recognition of the award. Consequently, the Court ruled that consistent with Article V of the New York Convention, there was no reason to deny recognition of the award sought by Plaintiff.

IV. Exequatur

The Court resolved to grant full faith and credit to the award handed down in London. The effect was to allow for the enforcement of the award before the competent courts.

V. Conclusions

The Court's decision is important in that it sets the parameters for the involvement of the courts in matters referred to arbitration. The Court established a clear distinction between the recognition of the foreign award and its enforcement. It also confirmed that the court's role in the exequatur process is confined to verification of compliance with the requirements of the New York Convention without going into the merits of the dispute, save where there are issues which affect public policy.

Additionally, the Court acknowledged the direct effect of the exequatur on the execution of the award, and as a consequence the decision handed down by the arbitrators, to be in consonance with the intent of the parties to the arbitration agreement to have their award recognized and executed in the place of residence or domicile of the person against whom recognition is sought, or would have effect; or against debtor's assets where ever located.

This case is a reflection of the Spanish courts command of the issues surrounding matters arising at the exequatur phase and their strong disposition to adhere to international arbitration practice concerning recognition and enforcement of awards consistent with the New York Convention.

Endnote

1. Regional High Court of Valencia, sec. 1st. June 8, 2012. Rec. 5/2012. ■

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