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SDNY REAFFIRMS STRONG DEFERENCE OWED TO ARBITRATORS

Ryan Katz

On November 16, 2021, the United States District Court for the Southern District of New York affirmed an arbitration tribunal’s decision that International Engineering and Construction (“IEC”) pay over \$8 million plus interest to GE Oil and Gas, as a result of their dispute with Baker Hughes (formerly GE Oil and Gas)¹ over construction delays while building a gas plant in Nigeria.² Notably, the court stated that IEC’s arguments “might have traction”³ if the court were the first to hear the dispute, but given the strong deference owed to arbitrators, IEC’s arguments were insufficient to overturn the order.⁴

The Federal Arbitration Act dictates limited circumstances in which federal courts may vacate an arbitration award, such as when the award was procured by fraud,⁵ when there was corruption by an arbitrator,⁶ when a hearing postponement was denied upon a party showing valid cause,⁷ and in situations where arbitrators exceeded their power.⁸ The deference given to arbitrators is further demonstrated by some of the cases the court cited⁹ in its opinion. For instance, when rejecting IEC’s argument that the arbitrator manifestly disregarded New York law on gross negligence,¹⁰ the court stated that “New York law is not ‘clear’ that the trier of fact must consider the cumulative effect of all conduct in determining whether a party was grossly negligent (as IEC asserted).”¹¹ The court further explained, quoting *Hoefl v. MVL Grp., Inc.*,¹² “As long as there is more than one reasonable interpretation of the governing law, the law is not well-defined, explicit, and clearly applicable, and an arbitrator cannot be said to have manifestly disregarded the law.”¹³ Additionally, the court quoted *Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S*,¹⁴ stating, “[M]isapplication of an ambiguous law does not constitute manifest disregard.”¹⁵ Given that there is often more than one reasonable interpretation of a statute—and even a misapplication of a statute law cannot constitute a manifest disregard of the law—arbitrators are left with substantial deference in how they interpret the governing law to resolve disputes.

The court’s reaffirmance of the great deference owed to arbitrators raises questions of whether such deference is good public policy. On the one hand, arbitration can save parties in

¹ Carlton Fields, *SDNY Recognizes Strong Deference Owed to Arbitrators, Confirms Arbitration Award*, JD SUPRA (Jan. 19, 2022), <https://www.jdsupra.com/legalnews/sdny-recognizes-strong-deference-owed-2729210/> [<https://perma.cc/7RKE-2NH8>].

² *Baker Hughes Energy Servs. LLC v. Int’l Eng’g & Constr. S.A.*, No. 21-CV-1961 (JMF), 2021 WL 5331450, at *1 (S.D.N.Y. Nov. 16, 2021).

³ Fields, *supra* note 1.

⁴ *Id.*

⁵ 9 U.S.C. § 10(a)(1).

⁶ *Id.* at § 10(a)(2).

⁷ *Id.* at § 10(a)(3).

⁸ *Id.* at § 10(a)(4).

⁹ *Baker Hughes Energy Servs. LLC v. Int’l Eng’g & Constr. S.A.*, No. 21-CV-1961 (JMF), 2021 WL 5331450, at *11 (S.D.N.Y. Nov. 16, 2021).

¹⁰ *Id.* at 10.

¹¹ *Baker Hughes Energy Servs. LLC*, 2021 WL 5331450, at *11.

¹² *Hoefl v. MVL Grp., Inc.*, 343 F.3d 57, 71 (2d Cir. 2003).

¹³ *Baker Hughes Energy Servs. LLC*, 2021 WL 5331450, at *11; *Hoefl*, 343 F.3d at 71.

¹⁴ *Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003).

¹⁵ *Baker Hughes Energy Servs. LLC*, 2021 WL 5331450, at *11; *Duferco Int’l Steel Trading*, 333 F.3d at 389.

commercial disputes a substantial amount of time and money,¹⁶ and deference given to arbitrators can preserve these savings and get parties out of court faster—something that may be particularly valuable today, as federal judicial resources are already strained.¹⁷ Yet, a reasonable argument can be made that arbitrators should not be given such deference and that parties should not be bound by their decisions. This is because arbitrators spend less time on each matter than judges do in federal courts, and arbitrators sometimes do not even have a legal education.¹⁸ Regardless, while arbitration can be an effective tool for parties to efficiently resolve disputes, it remains a question as to what level of deference *should* be given to arbitral decisions to preserve that efficiency.

¹⁶ See *Benefits of Arbitration for Commercial Disputes*, AM. BAR ASS'N, at 3, https://www.americanbar.org/content/dam/aba/administrative/dispute_resolution/materials/aba-dr-arbitration-guide.pdf [<https://perma.cc/EBM8-7A6C>] (last visited May 22, 2022).

¹⁷ See Kristina Davis, *Overwhelmed Federal Courts Ask Congress for More Judges*, SAN DIEGO UNION-TRIBUNE (Feb. 25, 2021, 4:41 PM), <https://www.sandiegouniontribune.com/news/courts/story/2021-02-25/federal-courts-congress-relief> [<https://perma.cc/HP94-ML8Q>]; see also TRAC Reports, *As Workloads Rise in Federal Courts, Judge Counts Remain Flat*, SYR.EDU (Oct. 14, 2014), <https://trac.syr.edu/tracreports/judge/364/> [<https://perma.cc/P532-T6C3>].

¹⁸ *Arbitrators, Mediators, and Conciliators*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/ooh/legal/arbitrators-mediators-and-conciliators.htm#:~:text=Arbitrators%20mediators%20and%20conciliators%20typically,%20training%20and%20work%20experience.&text=The%20median%20annual%20wage%20for,was%20%2466%2C130%20in%20May%202020> [<https://perma.cc/ND8X-R2HT>] (last visited May 22, 2022).