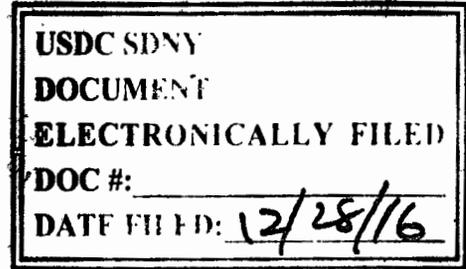


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X
ALSTOM BRASIL ENERGIA E TRANSPORTE :
LTDA., ALSTOM POWER, INC., :
 :
 Petitioners, :
 :
 -against- :
 :
 MITSUI SUMITOMO SEGUROS S.A., :
 :
 Respondent. :
----- X

**ORDER DENYING MOTION
FOR CONTEMPT AND
SANCTIONS**

15 Civ. 8221 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Petitioners, Alstom Power, Inc. and Alstom Brasil Energia e Transporte Ltda. (collectively “Alstom”) are corporations incorporated in Delaware and Brazil, respectively, that provide power generation equipment and services. Respondent Mitsui Sumitoma Seguros S.A. (“Mitsui”) is an insurance company incorporated in Brazil. The parties appeared before the International Chamber of Commerce (“ICC”) on May 19, 2015 to resolve a dispute over an indemnity payment. The ICC returned an award (the “Award”) in favor of petitioners, including a declaration that respondent could not sue petitioners in Brazil on an overlapping claim. On June 20, 2016, I confirmed the Award. Order and Opinion Confirming Arbitration Award, ECF 32 (“June 20 Order”). One month later, respondent declined to discontinue the litigation between the parties in the Brazilian courts. Petitioners now move the Court to hold respondent in contempt and to issue monetary sanctions against it. Because noncompliance with declaratory relief does not constitute contempt, petitioners’ motion is DENIED and this case is again closed.

I. FACTS

My June 20 Order states at length the facts that underlay this case, which I briefly reiterate here:

“[Alumina do Norte do Brasil S.A. (“Alunorte”)]’s facility in Barcarena, Brazil, is an aluminum refiner. Pursuant to a supply contract with Alunorte, Alstom sold and delivered two steam generation units to be installed in that facility. In August of 2007, Alunorte had to shut down the facility because of ruptures in the specialized aluminum tubing [] that was a component part of the steam generation units supplied by Alstom. In September of 2007, as Alunorte restarted the facility, a fire began because of debris in the steam generation system. Both incidents caused substantial property damage and lost profits . . . Alunorte made claim against Mitsui to recover its property and profit losses under the insurance and indemnity contract granted by Mitsui. Mitsui settled the claim by paying Alunorte \$ 24,558,073.11.

On April 15, 2014, Mitsui sued Alstom in the Brazilian courts, in Rio de Janeiro, to recover its indemnity payment to Alunorte. Alstom served a Demand for Arbitration with Mitsui, on December 9, 2014, before the International Chamber of Commerce [] in New York City, thus invoking the arbitration clause of the Alstom-Alunorte supply contract, clause 24.1. . .

The arbitrators issued their Award on July 10, 2015, holding that the tribunal had jurisdiction over the parties and to hear and to decide the dispute, that under both Brazilian law and under federal common law or New York law, Mitsui was bound by the arbitration agreements set out in clause 24.1 of the contract between Alunorte and Alstom, and bound also by Alunorte to Alstom; and that Mitsui could not sue Alstom in the courts of Brazil. It dismissed Mitsui’s claim against Alstom, and the counterclaim of Alstom for damages, and held that each party was to bear its own costs.”

June 20 Order, ECF 32 at 1–5 (citations omitted).

Petitioners subsequently filed an action with this Court to confirm the Award in its favor. *Id.* at 15. In my June 20 Order, I granted their request and recognized, *inter alia*, that “[t]he arbitrators found that Alstom was entitled to a declaration that Mitsui could not bring a warranty claim against Alstom in the Brazilian court proceeding.” *Id.* However, respondent declined to terminate its proceedings in Brazil because “the [A]ward expressly contemplates that the Brazilian proceedings will continue and nowhere does it direct Mitsui to terminate the Brazilian proceedings.” Petitioners’ Exh. 3, Email from Betsy A. Hellmann to Peter Hirst, July

29, 2016. Petitioners, under the belief that respondent is purposefully evading the June 20 Order, filed the instant motion asking this Court to hold respondent in contempt and to issue monetary sanctions against it.

II. LEGAL STANDARD

Holding a party in contempt is a “potent weapon, to which courts should not resort where there is a fair ground of doubt as to the wrongfulness of the defendant’s conduct.” *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995) (quotations and citations omitted). A district court’s power to do so is therefore “significantly circumscribed.” *United States v. Local 1804-1, Int’l Longshoremen’s Ass’n, AFL-CIO*, 44 F.3d 1091, 1096 (2d Cir. 1995). Accordingly, contempt is not available to enforce a declaratory judgment because such relief lacks the coercive effect of an injunction. *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) (describing a declaratory judgment as “a much milder form of relief than an injunction.”). Noncompliance with a declaratory judgment may therefore “be inappropriate, but is not contempt.” *Id.*; *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1120 (9th Cir. 2009) (“Unlike injunctions, declaratory judgments do not impose affirmative obligations that are backed by a contempt sanction.”).

III. DISCUSSION

Petitioners’ motion to hold respondent in contempt is denied. In its Request for Arbitration, petitioners specifically sought declaratory relief and money damages, but not an injunction neither from the arbitrators nor from this Court. *See* Hirst Decl. Ex. 6 (Request for Arbitration), ECF 20 at ¶ 75 (pleading for a declaration, *inter alia*, that “Mitsui has no claim against the Claimants in respect of any loss arising from and/or relating to the Freeboard tube incident on 8 August 2007.”). Petitioners cannot now enlarge the scope of the arbitration, even

though, as it appears, respondent Mitsui's actions in the courts of Brazil may contradict the declaratory portions of the ICC Award confirmed by this Court.

Furthermore, the basis for petitioners' motion—that respondent “refus[ed] to terminate its Brazilian proceedings despite the clear requirement that it do so,” Petitioners' Memorandum of Law, ECF 35 at 2—is expressly contradicted by the Award, which states:

261. *For a start, this arbitration does not adjudicate Mitsui's claim in the Brazilian courts.* This arbitration and this Arbitral Tribunal adjudicates, inter alia, the Claimants' request for declaratory relief that the Claimants are not liable to the Respondent for any breach of the Supply Contract. Contrary to what the Respondent contends, the Claimants are expressly seeking a declaration concerning the merits of the dispute in this arbitration . . .
262. *The dispute before this Arbitral Tribunal may indeed overlap with the proceedings before Brazilian courts . . .* Whether this Award will have any res judicata effect on the Brazilian Proceedings is not for this Arbitral Tribunal to decide.

Notice of Removal Ex. I (Award), ECF 6 at ¶ 261–2 (emphasis added).

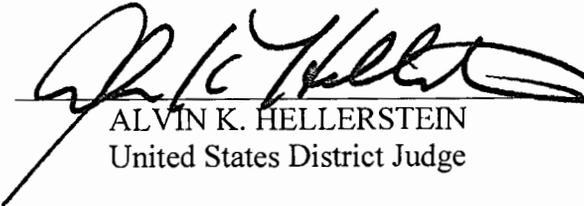
I therefore cannot order Mitsui to discontinue its proceedings in Brazil because such an order would impermissibly alter the terms of the Award and, by necessity, require me to reach an issue—the effect of the Award on the proceedings—that the ICC declined to resolve. *See Nat'l Football League Players Ass'n v. Nat'l Football League Mgmt. Council*, 523 F. App'x 756, 760 (2d Cir. 2013) (A court's enforcement of an arbitration “does not extend beyond the scope of the [] award.”). And because I do not hold respondent in contempt, petitioners' request for monetary sanctions and costs are rendered moot. *See, e.g., King*, 65 F.3d at 1063 (holding that “the district court had to find that [respondent's] contempt was willful” to reimburse petitioner's costs).

IV. CONCLUSION

For the foregoing reasons, petitioners' motion to hold respondent in contempt and to issue monetary sanctions against it is DENIED. The Clerk shall terminate this motion (ECF 34) and mark this case closed.

SO ORDERED.

Dated: New York, New York
Dec. 28, 2016



ALVIN K. HELLERSTEIN
United States District Judge