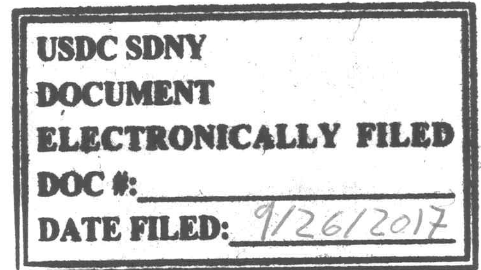

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x
GAS NATURAL APROVISIONAMIENTOS SDG, S.A.,

Petitioner,

-against- 17-cv-0110 (LAK)

ATLANTIC LNG COMPANY OF TRINIDAD AND TOBAGO,

Respondent.
- x

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge.*

This action is before the Court on Gas Natural Aprovisionamientos SDG, S.A.'s ("Gas Natural") petition to vacate an arbitration award and Atlantic LNG Company of Trinidad and Tobago's ("Atlantic") motion to confirm that and another award issued by the same arbitral tribunal. For the following reasons, Atlantic's motion is granted and Gas Natural's motion is denied.

Background[1]

On July 27, 1995, Gas Natural and Atlantic entered into a liquified natural gas ("LNG") sales contract, pursuant to which Atlantic agreed to supply Gas Natural with an annual contractual quantity of LNG at a price set forth in the contract.[2] The contract has an initial term of twenty years.[3] It allows for extension if, as of the fifteenth year of the initial term, there (1) remained LNG reserves sufficient for Atlantic to "economically" produce and sell, and (2) shipping

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1 The Court assumes the parties' familiarity with the underlying facts and the procedural history and thus provides the minimal background necessary to decide the motions.

2 DI 26 at ¶ 7.

3 DI 31, at ECF p. 21.

to Gas Natural was available.[4]

The contract required Atlantic to "use reasonable endeavors" to enter into a separate contract to purchase from a gas supplier a quantity of natural gas – enough gas, in Atlantic's opinion, to allow it to satisfy its obligations to Gas Natural during the initial contractual term.[5] Atlantic fulfilled this obligation shortly thereafter by executing a Gas Supply Contract with the predecessor of British Petroleum Trinidad and Tobago LLC.[6]

In 2013, fifteen years into the initial term of the contract, BP Trinidad and Tobago gave to Atlantic an independent report showing the quantity of remaining "Proved Reserves" in the contractually dedicated gas reservoirs.[7] Based on that report, Atlantic decided it could not produce and sell the gas economically, and so declined to extend the contract past its initial term.[8]

On January 30, 2015, Gas Natural commenced an arbitration claiming that Atlantic was in breach of contract.[9] After a hearing, the arbitral tribunal issued its findings, which the parties now dispute.

Discussion

Gas Natural argues that the arbitral tribunal acted in manifest disregard of law, and so the award should be vacated. Specifically, it takes issue with the tribunal's interpretation of the word "economically" and, in addition, with the tribunal's findings on Atlantic's obligations – or lack thereof – under Article 3.2 of the contract and its allocation of burdens of proof.

Gas Natural's arguments must fail. Manifest disregard of the law rarely is appropriate and requires a showing that there was clearly applicable law, the arbitrators actually

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4 *Id.*

5 *Id.* at ECF p. 16.

6 DI 29 at ¶ 33. British Petroleum Trinidad and Tobago was Atlantic's gas supplier for all relevant time periods.

7 *Id.* at ¶ 36.

8 *Id.* at ¶ 37.

9 *Id.* at ¶ 9.

knew of that law, and that they nevertheless improperly applied it.[10] And when an arbitral tribunal interprets a contract, a court must affirm the tribunal's interpretation of the contract "despite serious reservations about the soundness of the arbitrator's reading."[11] "Whether the arbitrators misconstrued a contract is not open to judicial review."[12] "[S]imple misinterpretations of contracts" are not the sort of mistake that a court may correct.[13]

Yet nearly all of the petitioner's arguments for vacatur are disputes with the tribunal's interpretation of the contract. Petitioner claims that the tribunal acted "in complete disregard for the law of contracts" when it interpreted the word "economically" to mean something other than "profitable."[14] But the law that the petitioner claims the tribunal disregarded is the principle that words are to be given their plain meaning.[15] The tribunal did not disregard this principle. Rather, it considered the evidence presented and interpreted the term in a manner with which the petitioner disagrees.[16] The petitioner is attempting to relitigate the issue, and its argument must fail.

The petitioner makes a similar argument regarding Article 2.2 of the contract, which required Atlantic to contract with a gas supplier for a quantity of gas to be liquified and sold. Gas Natural argues that Article 2.2 required Atlantic at all times to have in its reserves enough gas to supply Gas Natural. The tribunal thought otherwise. It found that Article 2.2 imposed a one-time obligation on Atlantic to buy a sufficient quantity of gas at the start of the contract, but no ongoing obligation to manage the reserves.[17] Gas Natural, although it disagrees with the tribunal's decision,

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10 *Stolt-Nielson SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 93 (2d Cir. 2008), *rev'd on other grounds*, 559 U.S. 662 (2010).

11 *Id.* at 92 (quoting *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 216 n.10 (2d Cir. 2002)).

12 *Id. (*quoting *Bernhardt v. Polygraphic Company of America*, 350 U.S. 198, 203 n.4 (1956)).

13 *Id.* (quoting *I/S Stavborg v. Nat'l Metal Converters, Inc.*, 500 F.2d 424, 432 (2d. Cir. 1974)).

14 DI 27, at ECF p. 24.

15 *Id.* at ECF p. 19.

16 DI 30 at ¶¶ 100-104.

17 *Id.* at ¶ 54.

cites no law in support of its position.[18] So this argument fails also.

Finally, the petitioner takes issue with the tribunal's allocation of the burden of proof. It argues that the tribunal gave it the impossible task of proving that Atlantic economically could have produced and sold LNG past the twentieth year. It then cites one case and one article to demonstrate that the tribunal manifestly disregarded the law on burdens of proof. But these offerings fail to demonstrate manifest disregard. The case, *Pesa v. Yoma Development Group, Inc.*,[19] is unhelpful to Gas Natural for two reasons. First, it was not brought to the attention of the tribunal. Second, the case is about a buyer's obligation to prove readiness and ability to close in a motion for summary judgment on a breach of contract claim.[20] Because this case is factually distinguishable it cannot support a manifest disregard claim; nor can an article alone.[21]

Conclusion

In the absence of reasons for vacating the award, a court must confirm it.[22] For the foregoing reasons, and because the Court finds all other arguments for vacatur to be meritless, Gas Natural's petition to vacate [DI 26] is denied. Atlantic's motion to confirm the Partial Final Award and Final Award and for attorney's fees [DI 42] is granted insofar as it seeks confirmation of Partial Final Award and the Final Award and otherwise denied, as it has withdrawn the attorney's fee aspect of the motion.

SO ORDERED.

Dated: September 26, 2017

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18 Petitioner does cite to *Meyers v. Parex*, 689 F.2d 17 (2d Cir. 1982), in its brief, but only to a portion of the dissenting opinion to provide language on the manifest disregard standard.

19 18 N.Y.3d 527 (2012).

20 *Id.* at 531.

21 *Westerbeke Corp.*, 304 F.3d at 216 ("[I]f the cases that establish a particular legal principle are factually distinguishable in a material respect from the case at bar, then the principle is not 'well defined, explicit, and clearly applicable.'").

22 9 U.S.C. § 9.

/s/ Lewis A. Kaplan

Lewis A. Kaplan
United States District Judge