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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIANJIN PORT FREE TRADE ZONE
INTERNATIONAL TRADE SERVICE
CO., LTD.,

Petitioner,

v.

TIANCHENG INTERNATIONAL, INC.
USA,

Respondent.

No. ED CV 17-2127 PA (SHKx)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Petitioner Tianjin Port Free Trade Zone International Trade Service Co., Ltd. (“Tianjin Port Free”) filed its Petition to Confirm Arbitration Award on October 17, 2017. Respondent Tiancheng International, Inc. USA (“Tiancheng”) responded to the Petition by filing a Motion to Dismiss, which the Court denied. Following the denial of Tiancheng’s Motion to Dismiss, the Court ordered the parties to meet and confer prior to proposing a method for resolving their dispute concerning Tiancheng’s proffered defenses to the confirmation of the arbitration award. After receiving the parties’ proposals, the Court set the matter for a Court Trial and established procedures for the filing of pre-trial documents.

Consistent with the Court’s procedures, the parties have filed their Opening and Responsive Trial Briefs, their respective Proposed Findings of Fact and Conclusions of Law,

1 their objections to each other's Proposed Findings of Fact and Conclusions of Law, and the
2 declarations of the direct testimony of their proffered witnesses. The Court conducted a
3 Court trial on September 18, 2018, and now makes the following findings of fact and
4 conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). Any finding of fact
5 that constitutes a conclusion of law is hereby adopted as a conclusion of law, and any
6 conclusion of law that constitutes a finding of fact is hereby adopted as a finding of fact.

7 **I. Findings of Fact**

8 1. This matter involves a petition to confirm a foreign arbitration award issued by
9 the China International Economic and Arbitration Commission ("CIETAC") pursuant to the
10 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New
11 York Convention") and federal law implementing the New York Convention. See 9 U.S.C.
12 §§ 201-208.

13 2. Tianjin Port Free is a company incorporated under the laws of China, with a
14 principal place of business in the Tianjin Airport Economic Area, in Tianjin, China.

15 3. Tiancheng is organized under the laws of the State of California, with a
16 principal place of business located at 2851 E. Philadelphia Street, Ontario, California,
17 91761.

18 4. CIETAC issued its Arbitral Award ("Arbitral Award") on October 9, 2015.
19 Tianjin has provided the Court with a copy of the Arbitral Award that complies with the
20 certification requirements for self-authentication of Foreign Public Documents pursuant to
21 Federal Rule of Evidence 902(3). A copy of the Arbitral Award was admitted as Trial
22 Exhibit 1 without objection. The Arbitral Award correctly lists Tiancheng's address as 2851
23 E. Philadelphia Street, Ontario, California.

24 5. According to the Arbitral Award, Tianjin Port Free submitted an application
25 for arbitration to CIETAC on March 19, 2015.

26 6. According to the Arbitral Award, CIETAC sent an arbitration notice, a copy of
27 the Arbitration Rules, and a list of the arbitrators to both Tianjin Port Free and Tiancheng by
28 express mail service on May 13, 2015. CIETAC also sent an arbitration application and the

1 evidence submitted by Tianjin Port Free to Tiancheng. The Arbitral Award states that it
2 “was verified that the aforesaid notice and materials sent to the Respondent were duly served
3 on May 18, 2015.”

4 7. According to the Arbitral Award, CIETAC sent a notice of fee payment to the
5 parties via express mail service on June 17, 2015, and it was verified that Tiancheng was
6 served with those materials on June 22, 2015.

7 8. According to the Arbitral Award, CIETAC appointed an arbitrator and
8 scheduled the arbitration for August 26, 2015, in Beijing, China. CIETAC sent notice of the
9 arbitration to Tiancheng on July 14, 2015, via express mail service, and confirmed that the
10 notice had been duly served on July 17, 2015.

11 9. According to the Arbitral Award, the arbitrator held an arbitration session on
12 August 26, 2015. Tiancheng did not appear at the session, and pursuant to CIETAC’s
13 arbitration rules, the arbitration proceeded by default, with Tianjin Port Free submitting
14 evidence in support of its claim. Following the arbitration session, Tianjin Port Free
15 submitted additional evidence and explanations in support of its position.

16 10. According to the Arbitral Award, CIETAC sent to Tiancheng, on September 1,
17 2015, the additional evidence and materials submitted by Tianjin Port Free by express mail
18 service. CIETAC informed Tiancheng that it had an opportunity to object to any of the
19 procedural or substantive issues raised in the arbitration in writing. CIETAC verified that
20 the materials were duly served on Tiancheng on September 4, 2015.

21 11. The Arbitral Award contains detailed findings as to the facts underlying the
22 dispute between Tianjin Port Free and Tiancheng. Among the findings are:

- 23 (a) Tianjin Port Free and Tiancheng signed the March 5, 2014 contract (the
24 “Contract”), in which Tianjin Port Free agreed to sell to Tiancheng
25 quantities of goods, including Creatine Monohydrate, Betaine HCL,
26 and Betaine Nitrate, for \$547,000.00.
- 27 (b) Tianjin Port Free sent a bill of lading to Tiancheng via DHL express
28 mail service on March 13, 2014.

1 (c) Tiancheng received the goods.

2 (d) Tiancheng did not pay Tianjin Port Free for the goods despite demands
3 for payment.

4 12. The copy of the Contract provided by Tianjin Port Free includes an arbitration
5 provision requiring “[a]ll disputes in connection with this contract” to be arbitrated by
6 CIETAC if the parties are unable to amicably settle the dispute through negotiation. The
7 Contract is signed by “Lance” on behalf of Tiancheng.

8 13. According to the Arbitral Award, prior to instituting the arbitration, Tianjin
9 Port Free contacted Tiancheng to seek payment for the goods, but Tiancheng’s
10 representatives avoided meeting Tianjin Port Free’s representatives.

11 14. The arbitrator found in favor of Tianjin Port Free. The Arbitral Award
12 requires Tiancheng to pay to Tianjin Port Free the sum of \$547,000.00, plus attorneys’ fees,
13 arbitration fees, and interest.

14 15. Tiancheng opposes confirmation of the Arbitral Award based on its
15 contentions that there was never a contract between the parties, any such contract is a
16 forgery or otherwise unenforceable due to fraud, and Tiancheng never received notice of the
17 arbitration from CIETAC. Specifically, Tiancheng asserts that although it has an employee,
18 Xiaoling Ding, who uses the nickname “Lance,” the signature on the Contract by “Lance” is
19 not Xiaoling Ding’s signature. Tiancheng also contends that the prices for some of the
20 goods identified in the contract are as much as 12 times higher than Tiancheng normally
21 pays for such goods. Tiancheng argues that this price disparity is evidence that the Contract
22 is fraudulent. Finally, Tiancheng has proffered evidence from its employees and officers
23 claiming to have never received any of the arbitration documents sent by CIETAC to
24 Tiancheng.

25 **II. Conclusions of Law**

26 1. The statute implementing the New York Convention provides:
27 Within three years after an arbitral award falling under the
28 Convention is made, any party to the arbitration may apply to

1 any court having jurisdiction under this chapter for an order
2 confirming the award as against any other party to the
3 arbitration. The court shall confirm the award unless it finds one
4 of the grounds for refusal or deferral of recognition or
5 enforcement of the award specified in the said Convention.

6 9 U.S.C. § 207.

7 2. “The seven grounds for refusing to confirm an award are set out in Article V
8 of the Convention.” Ministry of Defense and Support for the Armed Forces of the Islamic
9 Republic of Iran v. Cubic Defense Systems, Inc. (“Cubic”), 665 F.3d 1091, 1096 (9th Cir.
10 2011).

11 3. Under the New York Convention, a court can refuse recognition or
12 enforcement of an arbitration award in limited circumstances. Specifically, Article V of the
13 New York Convention states:

- 14 1. Recognition and enforcement of the award may be refused, at the
15 request of the party against whom it is invoked, only if that party
16 furnishes to the competent authority where the recognition and
17 enforcement is sought, proof that:
 - 18 (a) The parties to the agreement referred to in [A]rticle II were,
19 under the law applicable to them, under some incapacity, or the
20 said agreement is not valid under the law to which the parties
21 have subjected it or, failing any indication thereon, under the law
22 of the country where the award was made; or
 - 23 (b) The party against whom the award is invoked was not given
24 proper notice of the appointment of the arbitrator or of the
25 arbitration proceedings or was otherwise unable to present his
26 case; or
 - 27 (c) The award deals with a difference not contemplated by or not
28 falling within the terms of the submission to arbitration, or it

1 contains decisions on matters beyond the scope of the
2 submission to arbitration, provided that, if the decisions on
3 matters submitted to arbitration can be separated from those not
4 so submitted, that part of the award which contains decisions on
5 matters submitted to arbitration may be recognized and enforced;
6 or

7 (d) The composition of the arbitral authority or the arbitral
8 procedure was not in accordance with the agreement of the
9 parties, or, failing such agreement, was not in accordance with
10 the law of the country where the arbitration took place; or

11 (e) The award has not yet become binding on the parties, or has
12 been set aside or suspended by a competent authority of the
13 country in which, or under the law of which, that award was
14 made.

15 2. Recognition and enforcement of an arbitral award may also be refused
16 if the competent authority in the country where recognition and
17 enforcement is sought finds that:

18 (a) The subject matter of the difference is not capable of settlement
19 by arbitration under the law of that country; or

20 (b) The recognition or enforcement of the award would be contrary
21 to the public policy of that country.

22 Cubic, 665 F.3d at 1096 n.2.

23 4. “[R]eview of a foreign arbitration award is quite circumscribed.’ Rather than
24 review the merits of the underlying arbitration, we review de novo only whether the party
25 established a defense under the Convention.” China Nat’l Metal Prods. Import/Export Co.
26 v. Apex Digital, Inc., 379 F.3d 796, 799 (9th Cir. 2004) (quoting Ministry of Defense of the
27 Islamic Republic of Iran v. Gould, Inc., 969 F.2d 764, 770 (9th Cir. 1992)).

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1 5. “The party seeking to avoid enforcement of the award . . . has the burden of
2 showing the existence of a New York Convention defense” and that “burden is substantial
3 because the public policy in favor of international arbitration is so strong, and the New York
4 Convention defenses are interpreted narrowly.” Polimaster Ltd. v. RAE Systems, Inc., 623
5 F.3d 832, 836 (9th Cir. 2010) (citations omitted).

6 6. In seeking to avoid confirmation of the Arbitral Award because the Contract
7 was forged or otherwise fraudulently procured, Tiancheng “has apparently confused the
8 issue of a fraudulently obtained arbitration agreement or award, which might violate public
9 policy and therefore preclude enforcement, with the issue of whether the underlying contract
10 that is the subject of the arbitrated dispute was forged or fraudulently induced — a matter to
11 be determined exclusively by the arbitrators.” Europcar Italia, S.p.A. v. Maiellano Tours,
12 Inc., 156 F.3d 310, 315 (2d Cir. 1998) (citations omitted).

13 7. The Court concludes that the issue of the alleged forgery of the signature of
14 “Lance,” and the other arguments concerning the fraudulent procurement of the Contract,
15 including the asserted disparities in the prices Tiancheng claims to normally pay for similar
16 goods and those charged by Tianjin Port Free, are matters to be determined exclusively by
17 the arbitrator, and are not grounds under the New York Convention to deny confirmation of
18 the Arbitral Award issued by CIETAC.

19 8. Even if the Court were to accept as true the facts stated in the evidence
20 submitted by Tiancheng during the Court Trial concerning the alleged forgery and other
21 indicia of fraud, the Court would nevertheless conclude that this evidence falls short of
22 satisfying the substantial burden Tiancheng must meet to establish a successful defense
23 under the New York Convention.

24 9. This conclusion is supported by the fact that Tiancheng does not dispute that it
25 received the goods described in the Contract. Tiancheng has provided no credible evidence
26 or explanation for why it did not contact Tianjin Port Free upon its receipt of \$547,000.00
27 worth of goods it claims not to have ordered. At trial, Mr. Zhang testified that he believed
28 the shipment had come from the supplier from which Tiancheng normally purchases such

1 goods. The Court concludes that this testimony does not explain why Tiancheng did not
2 contact its regular supplier or the party listed on the bill of lading when it received a large
3 shipment that Tiancheng claims not to have ordered. Moreover, the fact that Tiancheng
4 apparently was willing to accept the goods without question seriously undermines its
5 contention that it would not have agreed to the Contract because of what it claims are the
6 excessive prices of the goods. Nor does Tiancheng explain why it refused to communicate
7 with Tianjin Port Free when it informally attempted to resolve the dispute and obtain
8 payment. In the absence of such evidence or explanation, the Court concludes that
9 Tiancheng's denials of the existence of an agreement between the parties is not credible and
10 fails to satisfy the substantial burden Tiancheng must meet to qualify for a New York
11 Convention defense.

12 10. In seeking to avoid confirmation of the Arbitral Award because it did not
13 receive notice of the arbitration proceeding, Tiancheng seeks to transform the New York
14 Convention's requirement that a party receive "proper notice" of an arbitration proceeding
15 into a requirement that the party receive "actual notice." However, "[i]n this context,
16 'proper notice' means notice that is reasonably calculated to apprise a litigant of arbitration
17 proceedings." Linley Investments v. Jamgotchian, 670 F. App'x 627, 628 (9th Cir. 2016).
18 Here, the Arbitral Award details CIETAC's efforts to provide proper notice to Tiancheng.
19 The Arbitral Award includes Tiancheng's correct address, and describes the dates, manner,
20 and verification of CIETAC's sending, by express mail service, at least four notices of the
21 arbitration proceeding to Tiancheng. Like the Ninth Circuit in Linley, this Court has "no
22 doubt that the notices . . . the arbitrator sent by mail . . . on numerous occasions over a six-
23 month period were reasonably calculated to apprise [respondent] of the overseas arbitration
24 instituted against [it]. [Respondent's] claim that [it] never received those notices is both
25 incredible and unpersuasive." Id. Additionally, for the same reasons that the Court found
26 Mr. Zhang's testimony to be insufficiently compelling to support Tiancheng's defense to the
27 existence of the Contract, the Court was similarly not persuaded by the testimony of
28 Tiancheng's professed lack of receipt of the notices sent by CIETAC. The Court therefore

1 concludes that Tiancheng has failed to satisfy its substantial burden to establish its New
2 York Convention defense based on lack of proper notice.

3 11. Because the appropriate requirement is “proper notice,” rather than “actual
4 notice,” Tiancheng’s witness testimony concerning Tiancheng’s purported lack of receipt of
5 materials from CIETAC, even if accepted as true, is not relevant to whether CIETAC
6 complied with the New York Convention’s “proper notice” standard. The Court therefore
7 sustains Tianjin Port Free’s objections to that testimony pursuant to Federal Rules of
8 Evidence 401 and 402.

9 **Conclusion**

10 For all of the foregoing reasons, the Court concludes that Tiancheng has failed to
11 satisfy its burden to establish any defense to confirmation of the Arbitral Award under the
12 New York Convention. The Court therefore grants Tianjin Port Free’s Petition to Confirm
13 Foreign Arbitration Award. Tianjin Port Free shall file a proposed Judgment by no later
14 than October 1, 2018. Tiancheng shall file any objections to the proposed Judgment by no
15 later than October 9, 2018. After that date, the Court will issue a Judgment Confirming the
16 Arbitral Award.

17 IT IS SO ORDERED.

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19 DATED: September 18, 2018

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Percy Anderson
21 UNITED STATES DISTRICT JUDGE
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