

**JS-6**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. 2:20-cv-08412-RGK-JC Date March 29, 2021

Title *Xi'an Television Copyright Exchange Center Co., Ltd. v. Dong*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) Order Re: Motion to Confirm Foreign Arbitration Award [DE 11]**

**I. INTRODUCTION**

Xi'an Television Copyright Exchange Center Co., Ltd. ("Petitioner") moved to confirm a Chinese arbitration award against Xiaodi Dong ("Respondent"). Respondent opposed, asserting that he did not have notice of the foreign arbitration proceeding and that the document used to obtain the award contained his forged signature.

Based on Respondent's statements, the Court permitted Petitioner to depose Respondent and for each side to submit supplemental briefing. Although Respondent submitted another brief, Petitioner did not. Nor did Petitioner depose Respondent.

Presently before the Court is Petitioner's Motion to Confirm a Foreign Arbitration Award. For the following reasons, the Court **DENIES** Petitioner's Motion.

**II. FACTUAL BACKGROUND**

Petitioner alleges the following facts:

Petitioner executed an agreement with Shanghai Borui Film and Television Culture Co. ("SBF") to produce the television show Tai Yang Liao Li Che. Under their agreement, Petitioner would pay SBF 31,400,000 yuan (about \$4.8 million) to produce the show. In exchange, over 12 months, SBF would pay Petitioner 36,11,000 yuan (about \$5.5 million) for the show's earnings.

If SBF failed to pay Petitioner, Respondent agreed to assume SBF's contractual responsibilities. A few months later, another party, Beijing SFFS Culture & Media Co., agreed to be liable if either Petitioner or Respondent defaulted on their payments. Despite Petitioner completing its contractual obligations, none of SBF, Respondent, or Beijing SFFS paid Petitioner.

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Around December 2019, the parties settled. (Exhibit E, ECF No. 11-6). The Settlement Agreement required SBF to pay Petitioner on a set schedule over the next year. If SBF failed to adhere to this payment schedule, Respondent and Beijing SFFS would become liable for SBF's debts. The Settlement Agreement also required that a Chinese arbitration tribunal issue an award based on its terms. So a Chinese arbitration tribunal entered the award. Petitioner then moved to confirm the foreign arbitration in this Court.

Respondent opposed the motion on several grounds. First, he asserts that Petitioner fraudulently obtained the arbitration award by forging his signature on the Settlement Agreement. Second, he maintains that he never knew of the arbitration proceedings until he received notice of this motion. Finally, he asserts that he is now seeking to set aside the arbitration award.

### **III. JUDICIAL STANDARD**

"The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards governs the 'recognition and enforcement' of all foreign arbitral awards in United States courts." *BU8 Sdn. Bhd. V. CreAgri, Inc.*, 2015 WL 1010090, at \*2 (citing 9 U.S.C. § 201).

"Under the Convention, a district court 'shall' confirm a foreign arbitration award unless the party opposing confirmation can establish one of the defenses enumerated in Article V of the Convention." *BU8*, 2015 WL 1010090, at \*3 (citing 9 U.S.C. § 207).

These enumerated defenses are:

- (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

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

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

...

[f] The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

[g] The recognition or enforcement of the award would be contrary to the public policy of that country.

*Admart AG v. Stephen & Mart Birch Found., Inc.*, 457 F.3d 302, 307–08 (3d Cir. 2006) (citing Convention art. V).

#### IV. DISCUSSION

To begin, the party seeking recognition of an award must, at the time of application, supply: (1) an authenticated (or certified) copy of the original arbitration award; and (2) the original (or certified copy) of the agreement that contained the arbitration clause through which the arbitration award was made. Convention art. II(1)–(2).

Petitioner has failed to meet this threshold requirement. The Settlement Agreement attached to his motion is neither the original, authenticated, or certified copy. Petitioner conceded as much when Respondent pointed out that the award would not have included English translations beneath each of its paragraphs. (Phou Decl. ¶ 5, ECF No. 23-1). Although Petitioner emailed Respondent the original version, it has yet to correct this error before the Court.

When comparing the submitted version of the Settlement Agreement and the original, Respondent also noticed that the signatures appeared in different locations. Respondent now believes that Petitioner cut and pasted the signatures and seals from other documents to create the signature page on the submitted version to the Court. (*See id.* ¶ 6). As added evidence of forgery, Respondent further observed that the seals and signatures on the Settlement Agreement lacked notarial seals. (Dong Decl. ¶ 13, ECF No. 16-1).

Respondent also states that it would have been impossible for him to sign the Settlement Agreement since he has been in the United States for the last three years. (*Id.* ¶ 10). When he hired a

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Chinese attorney to investigate how his forged signature had been obtained, he discovered that Petitioner claimed to have notified him, SFF, and Beijing SFFS of the Settlement Agreement by serving another individual, Dongbing Zhang. (Opp'n at 3, ECF No. 16). But at no time did Respondent or any of these entities ever authorize Zhang to represent them. They are all currently appealing the arbitration award.

In sum, Petitioner's failure to submit an original or certified copy of the Settlement Agreement is enough to deny Petitioner's motion. Still, the Court analyzes whether Respondent has established any of the Convention's enumerated defenses. He has.

**A. Lack of Proper Notice**

A party who "was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case" has a defense to the enforcement of a foreign arbitration award. Convention art. V(b).

Respondent offers several declarations as evidence that he did not know of the foreign arbitration. He asserts it would have been impossible for him to sign the Settlement Agreement in 2019 because he has been in the United States for the past three years. And at no time was he notified of the Settlement Agreement's existence. And since he did not know about the Settlement Agreement, he also did not know about the foreign arbitration. In fact, he only learned of the arbitration proceeding when he received notice of this motion.

Petitioner has offered no other evidence to refute Respondent's contentions. Despite being allowed to both depose Respondent and submit more briefing, Petitioner has done neither.

With no other evidence from Petitioner, the Court has no reason to doubt Respondent's declarations. Since he was "not given proper notice . . . of the arbitration proceeding," he has established a defense to the award's enforcement.

**B. The Award Is on Appeal**

Respondent is now appealing the arbitration award in China. He believes this proves another enumerated defense because "the award has not yet become binding on the parties." Convention art. V(e). The Court need not address this, however, because Respondent has already established an enumerated defense to the foreign award's enforcement.

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V. CONCLUSION

For the foregoing reasons, the Court **DENIES** Petitioner's Motion for Confirmation of a Foreign Arbitration Award. This case is therefore dismissed.

**IT IS SO ORDERED.**

Initials of Preparer

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