

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **SACV 22-461-KK-ADSx**

Date: January 12, 2024

Title: ***Zhongtie Dacheng (Zhuhai) Investment Management Co Ltd v. Yan***Present: The Honorable **KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE**

Noe Ponce

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: (In Chambers) (1) Order GRANTING Petitioner's Petition to Enforce
Arbitral Award and Entry of Judgment [dkt. 96]**

**I.
INTRODUCTION**

On October 12, 2022, Petitioner Zhongtie Dacheng (Zhuhai) Investment Management Co., Ltd. ("Petitioner") filed a First Amended Petition ("Petition") against Respondents Jinggang Yan and Xiuhong Liang ("Respondents"). ECF Docket Nos. ("Dkts.") 28, 29. The Petition seeks to confirm a March 24, 2020 award decision ("the Award") by the Beijing Arbitration Commission ("the Commission") against Respondents in a lending agreement dispute. See id. On November 28, 2023, Respondents filed an Opposition to the Petition. Dkt. 94. On December 18, 2023, Petitioner filed a Reply and a Petition to Enforce Arbitral Award and Entry of Judgment. Dkts. 96, 97. The matter thus stands submitted.

The Court finds this matter appropriate for resolution without oral argument. See FED. R. CIV. P. 78(b); L.R. 7-15. For the reasons stated below, Petitioner's Petition to Enforce Arbitral Award and Entry of Judgment is **GRANTED**.

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II. DISCUSSION

A. **RELEVANT FACTS**

The instant action arises out of a lending agreement dispute. Petition ¶ 11. Petitioner is “an investment management company, in the business of, among other things, equity investments, debt investments, mezzanine investments, and private equity investments[.]” Id. ¶ 4. Respondent Yan is the “sole director and shareholder” of two corporations, Shanghai Fukong Interactive Entertainment Co. Ltd. (“the Borrower”) and Zhongji Enterprise Group Co., Ltd., (collectively “the Corporate Parties”). Id. ¶ 5. Petitioner entered into a lending agreement (“the Loan”) with the Borrower which provided “[a]ny dispute arising from performance of the Loan are to be dealt with through good-faith negotiation between the parties, and if such negotiation fails, either party would be entitled to initiate arbitration before the Commission.” Id. ¶ 12. All arbitrations would be governed by “the ordinary procedures contained within the ‘Arbitration Rules of the Beijing Arbitration Commission’ (‘the ‘Rules’), as implemented by the Commission since April 1, 2015.” Id. ¶ 24.

In addition to the Loan, Petitioner also executed separate Performance Joint Liability Guarantee Letters (“Personal Guarantees”) with Respondents and the Corporate Parties (collectively, the “Guarantors”) to further secure its rights as the lender under the Loan. Id. ¶ 11. The Personal Guarantees between Petitioner and Respondents “provided that the Guarantors assumed joint and several liability for the Borrower, which included loan principle, interest, damages, expenses, and other costs payable by the Borrower under the Loan.” Id. ¶ 13. The Personal Guarantees also provided “the Guarantors agree to settle all disputes arising from this [Personal Guarantee] in the same way as agreed under [the Loan][,],” namely, through good-faith negotiation or arbitration. Dkt. 29-1 Declaration of Rongping Wu, in Support of Petition to Confirm Arbitration Award (“Wu Petition Decl.”), ¶ 7, Ex. B at 28. “Respondents affixed their personal seals and signatures to the respective Personal Guarantees.” Petition ¶ 13; see also Wu Petition Decl., ¶ 7, Ex. B.

In December 2017, Petitioner transferred the Loan principal to the Borrower, in accordance with the terms of the Loan contract and the instructions of the Borrower. Petition ¶ 15. Following the transfer of the Loan principal, a dispute arose between Petitioner and the Guarantors “concerning the failure of the Borrower to repay the loan principal according to the terms within the Loan contract.” Id. ¶ 17. In May 2018, Petitioner requested to initiate arbitration proceedings against the Borrower and Guarantors, but ultimately withdrew the request in November 2018 upon entering into an agreement with a third-party in which Petitioner transferred half of its interest in the Loan principal to the third-party. Id. ¶¶ 19, 20.

In November 2018, Petitioner initiated a second arbitration proceeding against the “Borrower, the Respondents, and the other corporate Guarantor” to recover the remaining half of the Loan principal. Id. ¶ 22. In January 2019, the Borrower filed an objection with the Commission regarding jurisdiction. Id. ¶ 25. In June 2019, the Commission issued a decision authorizing a tribunal to make a decision regarding the jurisdictional issue presented by the Borrower. Id. Since the parties did not select a panel in accordance with the schedule required by the “Arbitration Rules of the Beijing Arbitration Commission” (“the Rules”), the Commission chose a three-person tribunal (the “Tribunal”) and assigned them to this arbitration matter. Id. The Commission then

served notice of the formation of the Tribunal and the notice of the hearing date set for July 11, 2019 to “Petitioner, Borrower, Respondents, and the corporate Guarantor.” Id. ¶ 25. Regarding the Respondents specifically, the Commission mailed notice of the July 2019 arbitration hearing to Respondents’ last known address. Dkt, 97-1 Declaration of Rongping Wu, in Support of Petition to Enforce Arbitral Award and Entry of Judgment (“Wu Judgment Decl.”), ¶ 7, Ex. B-C. Respondents’ last known address was listed on a publicly available document from the Shanghai Stock Exchange (“SSE”), as well as Respondents’ official Chinese-government issued IDs. Id.; see also Wu Judgment Decl, ¶ 8, Ex. D. No objections were raised prior to the hearing date by any party. Petition ¶ 25.

On July 11, 2019, Respondents failed to appear at the arbitration hearing. Id. ¶ 26. Additionally, the Borrower sought the recusal of one of the chosen arbitrators at the hearing, resulting in the suspension of the Tribunal. Id. ¶ 27. In November 2019, the Commission rejected the Borrower’s arguments for recusal, retained the chosen arbitrator, and set the matter for another hearing on December 17, 2019. Id. The Commission subsequently mailed notice of the December 2019 arbitration hearing to Respondents at Respondents’ last known address at least one time. Wu Judgment Decl., ¶ 9, Ex. E; Wu Petition Decl., ¶ 23, Ex. C.

On December 17, 2019, Respondents yet again failed to appear at the arbitration hearing. Petition ¶ 28. On March 24, 2020, the Tribunal delivered a final award in favor of Petitioner holding Respondents liable in the amount of Renminbi (“RMB”) 20,475,883.50 plus any accrued per diem interest of RMB 8,219.19 beginning on November 21, 2018. Id. ¶ 33. As of March 2022, Respondents owe Petitioner RMB 30,396,431.45 under the Award. Id. ¶¶ 30-33; see also Wu Petition Decl., ¶ 23, Ex. C.

B. PETITIONER’S PETITION TO ENFORCE ARBITRAL AWARD AND ENTRY OF JUDGMENT IS GRANTED

1. Applicable Law

Sections 203 and 207 of the United States Code provide jurisdiction in federal district courts for cases arising under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (“the Convention”). 9 U.S.C. §§ 203, 207; see also 9 U.S.C. § 201 (codifying the Convention). Additionally, 9 U.S.C. § 207 states “[w]ithin three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court . . . for an order confirming the award as against any other party to the arbitration.”

“A court must confirm a foreign arbitral award unless the party resisting enforcement meets its ‘substantial’ burden of proving one of seven narrowly interpreted defenses.” Castro v. Tri Marine Fish Company LLC, 921 F.3d 766, 773 (9th Cir. 2019) (quoting Polimaster Ltd. V. RAE Sys., Inc., 623 F.3d 832, 836 (9th Cir. 2010)). The party opposing recognition or enforcement bears the burden of establishing that a defense applies. See Polimaster Ltd., 623 F.3d at 836. If a party fails to meet this burden, the court must confirm the petition. See Castro, 921 F.3d at 773.

Article V of the Convention provides the following seven defenses to the confirmation of a foreign award:

- (1) the party against whom the award is invoked was not given proper notice of the appointment or the arbitration proceedings or was otherwise unable to present his case;
- (2) the parties to the agreement were under some incapacity or the agreement was invalid under law;
- (3) 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;
- (4) 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
- (5) 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.
- (6) the subject matter of the difference is not capable of settlement by arbitration under the law of that country, or
- (7) the recognition or enforcement of the award would be contrary to the public policy of that country.

See 21 U.S.T. 2517 Art. V, §§ 1(a)-(e), 2(a), (b); see also Ministry of Def. and Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Systems, Inc., 665 F.3d 1091, 1096, n.2 (9th Cir. 2011).

“Confirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmation or grounds for refusal to confirm.” Castro, 921 F.3d at 773 (quoting Zeiler v. Deitsch, 500 F.3d 157, 169 (2d Cir. 2007)). Moreover, the Court’s review of a foreign arbitration award “is quite circumscribed.” China Nat’l Metal Prods. Import/Export Co. v. Apex Digital, Inc., 379 F.3d 796, 799 (9th Cir. 2004). The Court does not review the merits of the underlying arbitration, but merely whether the party established a defense under the Convention. Id.

2. Analysis

The Award in favor of Petitioner was issued on March 24, 2020. Wu Petition Decl., ¶ 23, Ex. C. Petitioner filed the operative complaint on October 12, 2022, dkt. 28, 29, i.e. within three years after the Award was issued, and thus, the action is timely. Therefore, pursuant to 9 U.S.C. §§ 203 and 207, the Court has jurisdiction to confirm the Award.

In addition, the Court independently finds Respondent has failed to meet its burden of establishing one of the seven defenses apply.

With respect to the first factor, actual or constructive notice satisfies proper notice. See Guarino v. Productos Roche S.A., 839 F. App’x 334, 340 (11th Cir. 2020) (unpublished). Additionally, “[s]uccessful notice is not required; the adverse party need only prove an attempt to provide actual notice.” Id. Here, while Respondents argue they were not provided actual notice, see dkt. 94 at 4, the Commission mailed notice of both hearings to Respondents’ last known address. Wu Petition Decl., ¶ 7, Ex. B. The address was both listed on a publicly available document from the SSE, as well as Respondents’ official Chinese government-issued IDs. Wu Petition Decl., ¶ 8, Ex. D. Under these circumstances, the notice requirement was satisfied. See Guarino, 839 F. App’x

334 at 340 (finding an arbitration commission's repeated attempts to notify petitioner of arbitration by way of petitioner's business address and last known email address on file satisfied proper notice). Moreover, while Respondents claim they had moved to the United States in 2018, see dkt. 94 at 2, Respondents do not assert they notified the Chinese government prior to the alleged move, hence, the Commission reasonably believed it was sending notice to the correct entity. Yukos Capital S.A.R.L. v. OAO Samaraneftegaz, 963 F. Supp. 2d 289, 297-98 (S.D.N.Y. 2013) (finding an arbitration commission's repeated attempts to notify Respondent satisfied proper notice because the arbitration commission had reasonably believed it was sending notices to the correct entity); C.f. Ma v. Fang, No. SACV 21-441-PSG-ADSx, 2022 WL 1078867, *4 (C.D. Cal. Mar. 2, 2022) (finding it improper to provide notice at respondent's address in China where respondent proffered credible evidence indicating she cancelled her local address with the Chinese government prior to moving abroad). Therefore, the Court finds Respondents were given proper notice. Thus, the first factor does not apply.

With respect to the second factor, when a party has received proper notice, they must raise any challenges regarding the validity of the contract at the arbitration hearing. See Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-46 (2006) (holding "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance").¹ Here, as set forth above, Respondents were provided proper notice, but nonetheless failed to attend the July 2019 and December 2019 arbitration hearings. See Petition ¶ 26, 28. Therefore, any challenges related to the validity of the contract – namely, forgery – fails as it was not raised in arbitration.

Respondents have failed to raise the third, fourth, fifth, sixth, and seventh factors as a defense to the confirmation of the Award, nor does the Court find these factors applicable. The third factor is an inapplicable defense because the Commission based its decision on the parties' Personal Guarantee which provided "the Guarantors agree to settle all disputes arising from this [Personal Guarantee] in the same way as agreed under [the Loan][,]" namely, through good-faith negotiation or arbitration. Wu Petition Decl., ¶ 7, Ex. B at 28. The fourth factor is an inapplicable defense because the arbitration was governed by the ordinary procedures contained within the Rules as implemented by the Commission since April 2015. Petition ¶ 24. The fifth factor is an inapplicable defense because the Award was issued and finalized on March 24, 2020, and thus, is binding. See Wu Petition Decl., ¶ 23, Ex. C. The sixth factor is an inapplicable defense because this action involves a lending agreement, or underlying contract dispute, and courts have held contract disputes are capable of settlement by arbitration. See, e.g., TMC Ltd. V. Green Light Energy Solutions R&D Corp., No. 4:17-cv-00997-KAW, 2017 WL 5450762 (N.D. Cal. Nov. 14, 2017) (confirming an arbitral award made in London arising from a contract dispute); BU8 Sdn. Bhd. V. CreAgri, Inc., No. C-14-4503-EMC, 2015 WL 1010090 (N.D. Cal. March 6, 2015) (confirming an arbitral award made in Singapore arising from a contract dispute). The seventh factor is an inapplicable because no evidence exists to support a finding that confirming the Award would be contrary to public policy. See Consim Info Pvt. Ltd. V. Burning Glass International, Inc., No. 11-1053-IEG-MDDx, 2011 WL 13356183 at *3 (S.D. Cal. Nov. 8, 2011 (finding enforcement of a foreign arbitral award related to a standard commercial contract dispute would not be contrary to

¹ On January 8, 2024, Respondents filed a Request For Leave to File Sur-Reply, seeking to rebut Petitioner's reply. Dkt. 103. The Court need not rely on any of the issues raised in Respondents' proposed Sur-Reply. Hence, Respondents Request For Leave to File Sur-Reply is **DENIED**.

public policy). Thus, confirming the Award will not run afoul of the seven defenses provided by Article V of the Convention.

The Court, therefore, having jurisdiction and Respondents having failed to meet their burden of establishing a defense under Article V of the Convention applies, **GRANTS** Petitioner's Petition to Enforce Arbitral Award and Entry of Judgment.

III. CONCLUSION

The Court finds the seven defenses considered in confirming a foreign arbitral award do not apply. As such, the court hereby **GRANTS** Petitioner's Petition to Enforce Arbitral Award and Entry of Judgment.

IT IS SO ORDERED.