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Client Alert

Supreme Court Unanimously Holds that Nonsignatories to an International Arbitration Agreement May Compel Arbitration

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This week, in a decision that bolsters existing precedent favoring arbitration, the Supreme Court unanimously held that the New York Convention does not conflict with domestic equitable estoppel doctrines that permit the enforcement of international arbitration agreements by nonsignatories. While seemingly narrow in scope, this is a seminal decision for international arbitration practitioners and their clients. Importantly, it clarifies that US domestic procedural rules may apply when seeking to enforce international arbitration agreements. Moreover, the decision confirms that nonsignatories to international arbitration agreements may, in fact, compel arbitration by relying on the equitable estoppel doctrine. By rejecting an unnecessary limitation on the enforceability of international arbitration clauses, this decision extends the reach of international arbitration in the US and ensures that international arbitration agreements remain on an equal footing with domestic US arbitration agreements.

In *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC*, 590 U.S. ___ (2020), the owner of an Alabama manufacturing plant entered into three construction contracts with its contractor. These three contracts contained a broad arbitration clause: "[a]ll disputes arising between both parties in connection with or in the performances of the Contract . . . shall be submitted to arbitration for settlement." Op. at 1. The contractor then entered into a subcontractor agreement with petitioner GE Energy to supply motors for the project. When these motors failed, Outokumpu—which had later acquired the Alabama plant—and its insurers filed suit against GE Energy. GE Energy subsequently moved to dismiss and compel arbitration, relying on the arbitration clauses in the construction contracts and the doctrine of equitable estoppel.

The doctrine of equitable estoppel allows a nonsignatory to an agreement containing an arbitration clause to compel arbitration if "a signatory to the written agreement must rely on the terms of that agreement in asserting its claims against the non-signatory." Op. at 4. The district court granted GE Energy's motion, but the Eleventh Circuit reversed, finding that the New York Convention required "that the parties *actually sign* an agreement to arbitrate their disputes in order to compel arbitration." Op. at 3 (emphasis in original). The Circuit Court held that the doctrine of equitable estoppel was in conflict with the New York Convention's signatory requirement and, because GE Energy did not sign the construction contracts, it could not rely on the arbitration clauses therein.

The Supreme Court disagreed. In an opinion drafted by Justice Thomas, the Court held that there is no conflict between the New York Convention and the equitable estoppel doctrine. The New York Convention "is simply silent on the issue of nonsignatory enforcement," and there is no language in the text that indicates a conflict. Op. at 6-7. Thus, nonsignatories may rely on this doctrine to compel arbitration. In a concurring opinion, Justice Sotomayor emphasized that consent to arbitrate is a "basic precept" of the Federal Arbitration Act, and must be

considered on a case-by-case basis, particularly when a party relies on the doctrine of equitable estoppel to enforce international arbitration agreements.

This decision will certainly be viewed as a continuation of the longstanding pro-arbitration jurisprudence in the United States. Parties negotiating international arbitration agreements should keep in mind that, by broadening the reach of international arbitration, the United States may be a more appealing arbitration seat. Moreover, when applicable, parties in litigation should consider the potential benefits of relying on the doctrine of equitable estoppel to compel arbitration as part of their overall case strategy.

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