



## UNITED STATES SUPREME COURT HOLDS THAT NON- SIGNATORIES TO AN AGREEMENT CAN COMPEL ARBITRATION UNDER THE NEW YORK CONVENTION

In a unanimous decision, the United States Supreme Court in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 18-1048, 2020 WL 2814297 (2020), resolved a circuit court split, holding that the equitable estoppel doctrine applies to claims arising under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention or Convention).

The Supreme Court rendered it clear that equitable estoppel,<sup>1</sup> a common law doctrine, may be used by a non-signatory to an agreement to compel arbitration. The Supreme Court's decision resolved a split in the U.S. Circuit Court of Appeals as to whether international arbitration agreements should be treated as domestic arbitration agreements, which are subject to the Federal Arbitration Act (FAA).

The Convention was adopted by the United Nations in 1958, and requires the United States and about 160 other signatory nations to recognize private arbitration agreements and enforce awards made in other contracting member states jurisdictions.<sup>2</sup> It typically applies in actions to enforce what would be considered a foreign arbitration award in a domestic court of a contracting country.

In *GE Energy, Outokumpu Stainless Steel USA, LLC* (Outokumpu) sued GE Energy in Alabama state court alleging the failure of nine motors for cold rolling mills provided for in a subcontracting agreement.<sup>3</sup> ThyssenKrupp Stainless USA, LLC (Thyssen) chose Calvert, Alabama, as the site of its new \$4.65 billion carbon and stainless steel factory (Outokumpu later acquired ownership of the plant from Thyssen). Thyssen entered into three contracts with F.L. Industries, Inc., (F.L.) for the construction of three cold rolling mills in the plant. All three contracts contained a broad arbitration clause which required all disputes be resolved via arbitration in Germany under the Rules of Arbitration of the International Chamber of Commerce (ICC). It also provided that F.L., and all of its subcontractors, would be treated as one and the same under the contracts. F.L. sub-contracted the work to GE Energy to build and install motors for these mills. When the motors failed, Outokumpu sued GE Energy.

GE Energy removed the case to federal court, and moved to compel arbitration and dismiss the lawsuit. The U.S. District Court for the Southern District of Alabama granted GE Energy's motion and dismissed the lawsuit. One of GE Energy's arguments was that the arbitration agreement was enforceable under state law equitable estoppel doctrine. Outokumpu appealed, and the Eleventh Circuit Court of Appeals reversed the order compelling arbitration. The Circuit Court of Appeals held that under the New York Convention only signatories to an arbitration agreement were allowed to compel arbitration. Due to the fact that GE Energy did not sign the arbitration agreement with Outokumpu, the Eleventh Circuit held that arbitration could not be compelled based on the doctrine of equitable estoppel. The Court of Appeals reasoned that allowing GE Energy to rely on the state-law equitable estoppel doctrine to enforce the arbitration agreement would conflict with the Convention's signatory requirement.

The Supreme Court reversed the lower court's decision that would have required non-signatories to decide all their issues in domestic courts where the New York Convention might not be taken into consideration. The Supreme Court concluded that the Convention does not conflict with domestic contract law allowing non-signatories to compel arbitration based on equitable estoppel. The Court reasoned that nothing within the Convention prohibited non-parties from compelling arbitration under local law. The Court interpreted this silence to mean there is no conflict with utilizing common law doctrines to enforce arbitration agreements.

This *GE Energy* decision encourages the use of arbitration and falls in line with the FAA which also allows common law contract doctrines such as equitable estoppel to enforce

arbitration for non-signatories.<sup>4</sup> Courts in the United States have recognized that arbitration agreements may be enforced by non-signatories through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.<sup>5</sup> This new decision by the Supreme Court reinforces the strong federal policy in favor of arbitration. Finally, other contracting states have ruled in the same manner which makes arbitration in the United States more predictable for international parties choosing to select US law and arbitration in their contracts.<sup>6</sup>

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<sup>1</sup> Under common law, equitable estoppel is a common law doctrine that prevents a party from asserting a claim or defense that is inconsistent with its own prior act or omission. In the arbitration context, the doctrine of equitable estoppel allows a non-signatory 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.

<sup>2</sup> 9 U.S.C.A. § 201.

<sup>3</sup> 18-1048, 2020 WL 2814297 (2020).

<sup>4</sup> 9 U.S.C. § 1-16.

<sup>5</sup> *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 18-1048, 2020 WL 2814297 at \*4 (2020).

<sup>6</sup> See *Bundesgericht [BGer]*, Case No. 4A\_646/2018 (Apr. 17, 2019), ¶ 2.4.

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