UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ORIENTAL REPUBLIC OF URUGUAY Petitioner, v. ITALBA CORPORATION Respondent.	Case No. 21-cv-24264-MGC

PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Federal Rule of Civil Procedure 12(c), Petitioner the Oriental Republic of Uruguay ("Uruguay") moves for judgment on the pleadings and in support thereof states as follows:

INTRODUCTION

This action is to confirm and enforce a final arbitration award issued by the World Bank's International Centre for Settlement of Investment Disputes ("ICSID") ordering Respondent Italba Corporation ("Italba") to pay costs. Under the law, ICSID awards are treated as equivalent to state court judgments and thus entitled to full faith and credit. This Court should rule on the pleadings to enforce the award at issue, just as other courts have done for ICSID award confirmations.

FACTS

1. On March 22, 2019, ICSID issued a final arbitration award in the Government of Uruguay's favor and against Italba (the "Award")[1]. The Award was rendered in *Italba Corporation v. Oriental Republic of Uruguay*, ICSID Case No. ARB/16/9 (the "Arbitration"). Italba commenced the arbitration by submitting a request for arbitration to ICSID on the basis of the Treaty Between the United States of America and the Oriental Republic of Uruguay Concerning the Encouragement and Reciprocal Protection of Investment, signed on November 4, 2005 and entered into force on November 1, 2006, and the Convention on the

[1] A certified copy of the Award is attached as Exhibit 1(A) to Uruguay's Petition to Recognize and Enforce ICSID Arbitration Award [DE 1] (the "Petition").

Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 (the "ICSID Convention").

2. The Award dismissed all claims against Uruguay due to lack of jurisdiction. Award ¶ 300 (a)-(b). Among other things, the Award ordered Italba to pay to Uruguay "the entirety of the costs of this arbitration, including the fees and expenses of the Tribunal, ICSID's administrative fees and direct expenses, as well as Uruguay's legal and expert fees and expenses incurred in connection with this arbitration, assessed in the amount of USD 5,885,344.17." Id. ¶ 300(d).

3. On July 2, 2019, Italba submitted to ICSID an Application for Annulment of the Award ("Annulment Application"), which is the only avenue for challenging an ICSID award.[2] The Annulment Application provisionally stayed enforcement of the Award pursuant to Rule 54(2) of the ICSID Rules of Procedure for Arbitration Proceedings. Petition ¶¶ 28-42. However, the Annulment Application was discontinued on June 16, 2020 due to Italba's failure to pay the requisite advance, and the provisional stay on the enforcement of the Award was expressly and automatically terminated.[3] Id. ¶ 43.

4. On December 6, 2021, Uruguay filed its Petition to Recognize and Enforce the Award [DE 1] (the "Petition") pursuant to Chapter 21A, 22 U.S.C. on the Settlement of Investment Disputes, which implements the ICSID Convention.

5. On January 10, 2022, Italba filed its Answer to the Petition [DE 10] ("Answer").

6. Italba has not raised any affirmative defenses or any objections to the confirmation or enforcement of the Award.

7. The pleadings are now closed.

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[2] Article 53 of the ICSID Convention provides that a party dissatisfied with an award may challenge it only through the remedies provided for in the ICSID Convention. Those remedies include annulment of the award on the limited grounds provided in Article 52 of the ICSID Convention.

[3] A certified copy of the order discontinuing the annulment proceeding, the Order of the Ad Hoc Committee Taking Note of the Discontinuance of the Proceeding ("Discontinuance Order"), is attached as Exhibit 1(D) to the Petition.

MEMORANDUM OF LAW

I. ARGUMENT

A. Legal Standard.

After the pleadings are closed "but early enough not to delay trial," an ICSID award-creditor may move for judgment on the pleadings seeking entry of a federal court judgment to enforce an ICSID award. Fed. R. Civ. P.12(c); Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela, 863 F.3d 96, 100, 117-18 (2d Cir. 2017); see also Micula v. Gov't of Romania, 404 F. Supp. 3d 265, 285 (D.D.C. 2019), aff'd, 805 Fed. Appx. 1 (D.C. Cir. 2020) (granting petitioners' motion for judgment on the pleadings to confirm ICSID arbitration award and enter judgment in favor of petitioners).

"Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law." Cannon v. City of West Palm Beach, 250 F.3d 1299, 1301 (11th Cir. 2001); see also Centennial Bank v. M/Y KARACOL, et al., Case No. 1:21-CV-21986, 2022 WL 393365, *2 (S.D. Fla. Feb. 9, 2022). A court must accept all facts alleged in the complaint as true and view such facts in the light most favorable to the nonmoving party. Cannon, 250 F.3d at 1301.

B. Uruguay is Entitled to Judgment as a Matter of Law.

The ICSID Convention imposes obligations on its Contracting States, including the United States, with respect to the recognition and enforcement of arbitration awards issued thereunder. Specifically, Article 54(1) provides that "[e]ach Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State."

The United States implements Article 54(1) of the ICSID Convention through 22 U.S.C. § 1650a, which requires U.S. courts to give "the same full faith and credit" to an ICSID award "as if the award were a final judgment of a court of general jurisdiction of one of the several States." 22 U.S.C. § 1650a(a); see also TECO Guatemala Holdings, LLC v. Republic of Guatemala, 414 F. Supp. 3d 94, 101-02 (D.D.C. 2019) ("[T]he appropriate course of action for a district court petitioned to enforce an authenticated ICSID award is to treat it in the same manner as a state court judgment.").

Further, actions to enforce ICSID awards are "plenary" proceedings, such that an award-creditor may file a motion for judgment on the pleadings after the complaint is filed and service effected. The Second Circuit has stated that:

> Used in this context, the word "plenary" signals merely the need for commencing an action under Federal Rule of Civil Procedure 3, service of the complaint in compliance with Rule 4 (as modified by the FSIA), and the opportunity for the defendant sovereign to appear and file responsive pleadings. To initiate such an action, an ICSID award-creditor may file a complaint in district court, detailing the terms of the award, establishing proper venue, and furnishing a certified copy of the award. **After the complaint is filed and service effected, the award-creditor may file a motion for judgment on the pleadings, for instance, or a motion for summary judgment**.

Mobil Cerro Negro, 863 F.3d at 117-18 (emphasis added).

A U.S. court's role in enforcing an ICSID award is limited to examining the award's authenticity and enforcing the obligations the award imposes. Mobil Cerro Negro, 863 F.3d at 102. Such a limited role "reflects an expectation that the courts of a member nation will treat the award as final." Id. An ICSID award-debtor cannot make substantive challenges to the award. Id. at 118.

Here, the Award was issued pursuant to the ICSID Convention, and, therefore, 22 U.S.C. § 1650a requires this Court to give the Award the same full faith and credit as if it were a state court judgment. The Award is final, and Italba admits that it has not satisfied its obligations under the Award. Answer ¶ 5. Accordingly, entry of a final judgment confirming and enforcing the Award is required. See Centennial Bank, 2022 WL 393365 at *2 (motion for judgment on the pleadings requesting entry of final judgment granted where debtor conceded in his answer that he was aware of the debt owed to the plaintiff and failed to pay that debt).

C. There Are No Material Facts in Dispute.

Italba does not contest the facts stated by Uruguay in the Petition. Italba's Answer acknowledges the existence of the Award; does not contest its authenticity, validity, or finality; and concedes that Italba has not paid the Award (Answer ¶ 5). The Award sets forth Italba's obligations to "bear its legal fees and expenses in full, as well as the costs of the arbitration" and "reimburse [Uruguay's] legal and expert fees and expenses in the amounts requested." Award ¶ 297. The Award also orders Italba to pay Uruguay "the amount of USD 332,507.42

for the expended portion of [Uruguay's] advances to ICSID and USD 5,552,836.75 to cover [Uruguay's] legal and expert fees and administrative expenses." Id. ¶¶ 298, 300(d).

Italba concedes that the Annulment Application was terminated and does not dispute the validity of the Discontinuance Order. Italba also does not dispute that the Discontinuance Order expressly and automatically terminated the provisional stay on enforcement of the Award.

To the extent that Italba attempts to inject new facts into this proceeding, particularly through two extraneous allegations in paragraphs 22 and 23 of its Answer, such statements concern procedural issues in the Arbitration and are not properly before this Court for consideration. Italba cannot make any substantive challenges to the Award in this enforcement action, and therefore its allegations cannot form the basis for refusing enforcement. Mobil Cerro Negro, 863 F.3d at 118 ("The ICSID award-debtor would be a party to the action and would be able to challenge the United States court's jurisdiction to enforce the award—for instance, on venue grounds—but would not be permitted to make substantive challenges to the award."). The statement in paragraph 22 about a potential witness who Italba did not present during the Arbitration amounts to nothing more than a side note about the proceeding. Italba's allegation in paragraph 23 about a criminal proceeding in Uruguay is similarly anecdotal. The Award reflects that the arbitral tribunal had considered and was well aware of that proceeding when it issued its decision. See Award ¶¶ 18-37 (discussing Italba's Application for Provisional Measures seeking, *inter alia*, to enjoin the criminal proceeding referenced in paragraph 23 of the Answer and the tribunal's denial of Italba's application). At best, Italba's statements are inappropriate attempts to have this Court examine the underlying merits of the Award, which is impermissible under the law for the reasons stated. In any event, Italba's statements are not material facts and do not dispute any of the material facts in the Petition.

Finally, Italba's Answer does not raise any affirmative defenses, and its window to raise them has expired. See Fed. R. Civ. P. 8(c) (stating that a party must affirmatively state any avoidance or affirmative defense in response to a pleading); Fed. R. Civ. P. 12(b) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required.").

Accordingly, there are no material facts in dispute, and this Court should enter a judgment confirming and enforcing the Award.

CONCLUSION

For the reasons stated herein, Uruguay respectfully asks that this Court grant this motion for judgment on the pleadings and enter a final judgment in favor of Uruguay and against Italba in the amount of USD 5,885,344.17, plus pre-judgment interest and interest pursuant to 28 U.S.C. § 1961, and the costs of this proceeding.

Dated: February 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2022 a true and correct copy of the foregoing was filed via electronic filing using the CM/ECF system with the Clerk of the Court which sent e-mail notification of such filing to all CM/ECF participants in this case.

By: */s/ Gregory S. Grossman*
Gregory S. Grossman