



SINGAPORE INTERNATIONAL COMMERCIAL COURT REFUSES ARBITRAL AWARD DUE TO “COLLATERAL ESTOPPEL”

*(SANUM AND ANOTHER V LAO
PEOPLE’S DEMOCRATIC
REPUBLIC AND OTHERS)*

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The Singapore International Commercial Court (SICC) has refused an attempt to set aside an arbitral award for a breach of natural justice¹. It was the applicants’ case that the tribunal improperly and unfairly denied them a right to be heard on an issue that the tribunal considered it was prevented from raising because the issue had been considered previously. The court held that even if the tribunal had been wrong to conclude that “collateral estoppel” applied to prevent the issue from being reopened, this would amount to no more than an error on the merits of the claim, and would not ground any challenge to the award.

¹ *Sanum Investments Limited and Lao Holdings NV v The Government of the Lao People’s Republic, San Marco Capital Partners LLC and Kelly Cass* [2022] SGHC(1) 9

What are the practical implications of this case?

- Whilst a party to arbitration who is denied a right to be heard on a particular issue might in some instances be able to set aside the award for breach of natural justice (since everyone must have a full opportunity to present their case);
- the party is unlikely to succeed in setting aside the award on that basis if the tribunal has given reasons as to why the party was denied the right to be heard on the issue and such reasons are merits-based determinations of fact or law; and
- this is so even if the reasons given by the tribunal for denying the party a right to be heard are errors of fact or law.

What was the background?

The decision is the latest in long-running dispute between the Laos Government and two investors, a Chinese company called Sanum Investments Limited and a Dutch company called Lao Holdings N.V. The investors had planned to operate a casino under a joint venture with the Laos Government. However, the plan failed and the investors commenced arbitration against the Laos Government claiming there had been an infringement of their rights under certain Bilateral Investment Treaties between Laos and China and the Netherlands (**Arbitration No.1**).

In an effort to resolve the dispute, the parties entered into a settlement deed under which it was agreed that Arbitration No.1 would be stayed and the investors would attempt to sell the casino within 10 months, failing which a third party would be appointed to manage and operate the casino and complete the sale.

The investors failed to sell the casino in the time allowed and therefore appointed San Marco Capital Partners LLC (**SM**) and Kelly Gass (**Gass**) to manage and operate the casino and complete the sale. However, the Laos Government was unhappy with the decision and commenced arbitration against the investors pursuant to the arbitration clause in the settlement agreement (**Arbitration No.2**). The investors counterclaimed and argued that the Laos Government had breached the settlement

agreement when it issued a decree transferring the gaming assets to a new entity solely owned by the Laos Government, which then sold the casino to a third party. However, the investors lost their counterclaim in Arbitration No.2 and the Laos Government was awarded damages for breach of contract.

The investors subsequently commenced an arbitration against SM and Gass pursuant to an arbitration clause in the contract appointing SM and Gass to manage the casino (**Arbitration No.3**). The investors claimed SM and Gass had breached their fiduciary duties to the investors. The investors joined the Laos Government to Arbitration No.3 in an attempt to reopen some of the issues that it had raised in its failed counterclaim in Arbitration No.2 (the **relevant issues**).

However, the tribunal issued an award declining to determine the relevant issues in Arbitration No.3 on the basis that the investors were prevented from reopening these issues owing to a New York law principle known as “collateral estoppel”. (New York law was the governing law of the contract appointing SM and Gass to manage the casino.)

Whilst SM and Gass were not parties to Arbitration No.2, the tribunal found that they were in privity with the Laos Government for the purpose of the “collateral estoppel” and therefore the investors were also barred from raising the relevant issues against SM and Gass.

The investors applied to the SICC to set aside the tribunal’s award in Arbitration No.3 on the grounds that the effect of the award was to deny them a right to be heard on the relevant issues in breach of natural justice. They also argued the award was in conflict with Singapore’s public policy of access to justice.

What did the court decide?

The SICC refused to set aside the award. Whilst the court agreed that each party must have a full opportunity to present its case, the judges rejected the investors’ argument that the tribunal’s decision to deny them the right to be heard in relation to the relevant issues was a breach of natural justice.

The court pointed out that the tribunal had given reasons for its decision, namely that the doctrine of “collateral estoppel” applied. The judges accepted the respondents’ argument that the application was a thinly veiled attempt to appeal the tribunal’s decision on whether “collateral estoppel” applied to the relevant issues.

The court said the tribunal’s determination as to the application of the doctrine of “collateral estoppel” was not a determination as to the scope of the tribunal’s procedural powers. It was a merits-based determination of fact and law, which was final and binding on the parties. It was not open to the court to examine the correctness of that determination. Accordingly, the award could not be set aside even if the tribunal made an error of law or fact in applying the doctrine of collateral estoppel.

The court also concluded that the tribunal’s decision to deny the investors the right to be heard due to “collateral estoppel” was not contrary to public policy in Singapore.

Case details

- Court: Singapore International Commercial Court
- Judge: Philip Jeyaretnam J, Vivian Ramsey IJ and Douglas Jones IJ
- Date of judgment: 01/6/2022

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