

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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REPUBLIC OF KAZAKHSTAN,	INDEX NO. <u>652522/2020</u>
Plaintiff,	05/18/2022,
- v -	MOTION DATE <u>04/18/2022</u>
DANIEL CHAPMAN, ARGENTEM CREEK HOLDINGS LLC, ARGENTEM CREEK PARTNERS LP, PATHFINDER ARGENTEM CREEK GP LLC, ACP I TRADING LLC,	MOTION SEQ. NO. <u>002 003</u>
Defendant.	DECISION + ORDER ON MOTION
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 58, 59, 60, 61

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 36, 37, 42, 43, 44, 45, 46, 47, 48, 49, 55

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss (Mtn. Seq. No. 003) is granted and the motion to stay discovery (Mtn. Seq. No. 002) is denied as moot.

This action is predicated on an impermissible collateral attack of a confirmed arbitration award (NYSCEF Doc. No. 32; *Prime Charter, Ltd. v. Kapchan*, 287 AD2d 419, 419 [1st Dept 2001], citing *Corey v New York Stock Exchange*, 691 F2d 1205, 1211-12 [6th Cir 1982]). Simply put, there can be no action for aiding and abetting fraud without an underlying fraud (*Chambers v Weinstein*, 135 AD3d 450 [1st Dept 2016]). The lawsuit against these defendants who funded the enforcement proceedings of the arbitration award therefore fails as a matter of law.

The arbitration award was obtained by the court in Sweden and it is that court that has the charge of setting aside the arbitration award based on fraud, not this one (*InterDigital Communs., Inc. v Huawei Inv. & Holding Co.*, 166 F Supp 3d 463, 469 [2d Cir 2016]). Arguments that the award were obtained by fraud were indeed considered and rejected by the court in Sweden and the District Court of the District of Columbia (Svea Court of Appeal Opinion § 5.3.1; *Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 82-83 [2006]; *Stati v Republic of Kaz.*, 302 F Supp 3d 187, 209 [DDC March 23, 2018]). The findings of the DC Court are entitled to full faith and credit (*Matter of Frontier Ins. Co.*, 27 AD3d 274, 275 [1st Dept 2006], citing *Garvin v Garvin*, 302 NY 96, 103 [1951] and *Union Commerce Leasing Corp. v Kanbar*, 155 AD2d 396 [1989]; *Lewin v Four Seasons Solar Prods. Corp.*, 264 AD2d 716, 717 [2d Dept 1999]). It is wholly irrelevant that the plaintiff was able to convince a court in Belgium to indicate that the award was obtained by fraud and refused to recognize it there (NYSCEF Doc. No. 44 [denying Exequatur (enforcement proceedings) and declaring that in Belgium the Swedish arbitration award cannot be recognized or enforced because the Statis “committed acts which must be characterized as fraudulent acts . . . which have cause an unquestionable impact on the [a]rbital [a]ward”).

The court has considered the plaintiff’s remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that the motion to dismiss is granted; and it is further

ORDERED that the motion to stay discovery is denied as moot.


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8/29/2022
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: