

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ACEQUIP LTD., et al.,	:	
Plaintiffs,	:	
	:	
v.	:	Civ. No. 3:01cv676 (PCD)
	:	
AM. ENG’G CORP.,	:	
Defendant.	:	

RULING ON DEFENDANT’S MOTION FOR STAY PENDING APPEAL

I. BACKGROUND

Transact International, Inc. (“Transact”) entered into a construction agreement with Defendant, American Engineering Corporation, to provide construction services on a U.S. Air Force base in Okinawa, Japan. The agreement provides that “[t]his Agreement is made in accordance with the laws and statutes of the State of Connecticut. In the event of disagreement between the parties to this agreement, Arbitration shall be conducted pursuant to the laws of and in the State of Connecticut, USA.” Transact subsequently assigned its rights under the agreement to ACEquip Ltd. (“Acequip”).

Acequip and Transact filed an application for the appointment of an arbitrator on March 26, 2001 in the Connecticut Superior Court for the Judicial District of Stamford/Norwalk. On April 20, 2001, Defendant removed the case to this court. On July 19, 2001, Defendant’s motion to dismiss for lack of personal jurisdiction, for forum non conveniens, for failure to state a claim, and for lack of standing was denied. After resolving an order to show cause why the case should not be dismissed for lack of subject matter jurisdiction, on September 4, 2001, the application for an order appointing an

arbitrator was granted. On September 18, 2001, the order appointing an arbitrator was clarified. Defendant now moves for an order staying arbitration pending appeal.

II. DISCUSSION

Defendant moves pursuant to FED. R. CIV. P. 62(c) to stay the present case pending the resolution of its appeal. In considering such a motion, a district court should consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the stay applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” See Rodriguez ex rel. Rodriguez v. DeBuono, 175 F.3d 227, 234 (2d Cir. 1999) (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)).

After consideration of each factor in turn, the balancing of factors does not favor granting a stay for the full duration of the appeal. Independent of the power of this court, the Court of Appeals has the power to grant a stay. See FED. R. APP. P. 8(a)(2). So that Defendant may be afforded a meaningful opportunity to seek such a stay there and given the short timeline involved before arbitration begins, Defendant is granted a stay of arbitration proceedings until October 16, 2001.

A. Strong Showing of Likely Success on the Merits

A stay applicant must make a strong showing that he is likely to succeed on the merits of his appeal and not merely list the issues he intends to appeal. Defendant asserts three errors by this court.

First, Defendant argues it was error to appoint an arbitrator in the absence of

requiring Acequip to submit evidence of a valid assignment between Transact and Acequip. Acequip did submit evidence of the valid assignment between Transact and Acequip; it submitted a copy of the assignment agreement as an exhibit. Moreover, it was Defendant who argued, in its motion to dismiss, that because there was an alleged assignment, Transact lacked standing and should be dismissed for this reason. Transact and Acequip offered no objection to Transact being dismissed as long as Acequip did not subsequently challenge the assignment. Defendant did not so object, and on that basis Transact was dismissed. If Defendant denies the validity of the assignment, it was improper to assert the contrary and to argue that Transact should be dismissed. See FED. R. CIV. P. 11(b). Defendant is held to its argument and may not now whipsaw Transact and Acequip. Defendant cannot dismiss both Transact because there was an assignment and also dismiss Acequip because there was no assignment.

Second, Defendant argues it was error to allow the arbitrator to determine the validity of the assignment between Transact and Acequip. As the suit was originally framed, Transact and Acequip, as joint plaintiffs, moved for an order appointing an arbitrator. With the arbitration agreement uncontested, an arbitrator in determining the validity of the assignment would then also have determined who was the proper plaintiff. Based on the submission of the assignment agreement and Defendant's arguments that Transact should be dismissed because of the assignment, the assignment was sufficiently valid to appoint an arbitrator. The provision in the September 4, 2001 order permitting the arbitrator(s) to determine the validity of the assignment was retained to preserve and enhance Defendant's rights, not to take them away. Should the arbitrator(s) find the

assignment invalid, Defendant could move to vacate any arbitration award on that ground.

Third, Defendant argues it was error to require the parties to arbitrate pursuant to the rules of the American Arbitration Association. The September 4, 2001 order appointing an arbitrator held that “[a]rbitration shall be pursuant to the laws of Connecticut and the rules of the American Arbitration Association.” Defendant’s argument flows from its misperception of what the order holds. Defendant lifts the quote from the paragraph describing the process for appointing arbitrators. Acequip applied only for appointment of an arbitrator, and this was all the order was intended to resolve. While the court intended to set out a reasonably complete process, it was recognized that it was possible that some unforeseen situation might arise concerning the selection. For this reason, the rules of the American Arbitration Association were invoked to supplement the selection process, if the described process should prove insufficient.

Defendant fails to make a strong showing that it is likely to succeed on the merits of its appeal.

B. Irreparable Injury to Defendant Absent a Stay

Defendant must show more than mere injury from a lack of stay. He must demonstrate a “harm . . . so imminent as to be irreparable if a court waits.” Rodriguez, 175 F.3d at 235. First, Defendant argues that it is put to a Hobsonian choice, to either participate in an arbitration it believes improper or to refuse to participate and to risk a default judgment being entered against it. Defendant’s assertion of harm is a mere incantation that it lost the application for an order to appoint an arbitrator. While absent a stay, it would have to bear costs (as would Acequip) in furtherance of arbitration, this

would be true for most litigation and for most motions that an applicant loses; namely, the litigation continues under a ruling the applicant considers adverse. More is required; the harm must be irreparable.

Second, Defendant argues that as arbitration may be completed before the appeal is resolved, its appellate claims will be mooted. This is not so. Should Acequip appeal successfully, doing so will likely preclude confirmation of any arbitration award, should one be awarded. Defendant also has the right to seek an expedited appeal.

Other than to conclusorily assert it, Defendant fails to show that the harm to it would be irreparable. This is further reinforced, when as here, the litigation costs are due to arbitration. Arbitration costs are typically less than court-based litigation. Furthermore, should the granting of the application to compel arbitration be reversed, any discovery or efforts expended in arbitration may well be offset by a savings from duplicating such efforts before a court.

C. Substantial Injury to Acequip if Stay Granted

Defendant argues that Acequip would not be substantially harmed if a stay were granted. It asserts that the only injury would suffer would be the time it takes for the appeal to be resolved. While Acequip essentially concedes that the only injury is delay, it argues that this delay constitutes a substantial injury. Although this goes to show an injury to Acequip, it does not show a substantial injury to Acequip.

D. Public Interest

Defendant argues that the public interest favors granting the stay as “orderly procedure will better be served by first disposing of questions addressed to the authority

of an arbitrator to act.” See Int’l Bhd. of Teamsters v. Shapiro, 138 Conn. 57, 65 (1951). Defendant’s argument is rejected. Questions addressed to the authority of an arbitrator to act have been addressed and adjudicated by this court. Defendant’s argument, if accepted, would be a basis to stay all appeals of arbitration orders. As “federal [public] policy favor[s] arbitration,” Moses H. Cone Mem’l Hosp. v. Mercury Constr. Co., 460 U.S. 1, 24 (1983), so the public interest lies in allowing it to proceed.

IV. CONCLUSION

Defendant’s motion for stay pending appeal, (Dkt. No. 36), is **denied**. Arbitration proceedings are stayed until October 16, 2001.

SO ORDERED.

Dated at New Haven, Connecticut, October __, 2001.

Peter C. Dorsey
Senior United States District Judge