

Amsterdam Court of Appeal grants leave to enforce award despite pending US setting aside proceedings

by *Practical Law Arbitration*, with *OSK Advocaten*

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In *Strabag v Libya* (ECLI:NL:GHAMS:2022:2646), the Amsterdam Court of Appeal granted leave to enforce a USD75 million award despite ongoing setting aside proceedings in the US.

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The Amsterdam Court of Appeal has granted a claimant, Strabag, leave to enforce an award, ordering Libya to pay USD75 million under construction agreements. It has refused to suspend its decision pending setting aside proceedings on appeal in the US.

First, the court ruled that it had local jurisdiction to rule on the request for enforcement. Strabag made clear that it wanted to enforce the award in Amsterdam, for instance by effecting attachment to assets held by third parties located in Amsterdam. Strabag was not required to identify the assets on which it wanted to take recourse more precisely.

Second, pursuant to article VI of the New York Convention, or alternatively under the applicable rules of the Dutch Code on Civil Proceedings, the court addressed Libya's request to suspend the decision in the enforcement proceedings, because proceedings to set aside the award were pending in the US. The court ruled that it had a discretionary power to order a suspension, taking into account the parties' interests. The court refused the suspension, as the US court had rejected Libya's setting aside application, confirming that the award was valid, binding and final. The fact that Libya appealed the US court judgment and considered its chances to succeed on appeal promising did not lead to a different outcome. That one of the arbitrators issued a partial dissenting opinion on Libya's set off defence did not prevent the award from being final, as provided for in article 70(3) of the applicable Additional Facility Rules of the International Centre for Settlement of Investment Disputes. All in all, the court ruled that Libya's interest in a suspension did not outweigh Strabag's interest in obtaining a decision on enforcement without delay.

Third, the court granted Strabag leave to enforce the award. The court did not allow Libya to file another submission on grounds to refuse the enforcement, as Libya had ample opportunity to address such grounds in the enforcement proceedings.

The decision confirms that pending setting aside proceedings in themselves do not always justify suspension of the decision in enforcement proceedings and that a party filing a request for a suspension should be mindful of adequately addressing any grounds to refuse enforcement at the same time, in the event the suspension is refused.

Case: *Strabag v Libya* (ECLI:NL:GHAMS:2022:2646) (9 August 2022).

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