

Benjamin Pilling KC and Daniel Khoo successfully resist challenge to enforcement of €20 million arbitration award

On 11 October 2018 Mrs Justice Cockerill handed down judgment in the Commercial Court in an application to resist the enforcement of a €20 million Paris-seated ICC arbitral award (the “Award”). The grounds for resisting enforcement were witness intimidation, lack of due process and lack of jurisdiction.

Eastern European Engineering Ltd (“EEEL”) terminated six contracts under which it had employed Vijay Construction (Proprietary) Ltd (“Vijay”) to construct a luxury hotel resort in the Seychelles. Following a commercial arbitration, there has been litigation in France, the Seychelles and England.

In England, EEEL sought enforcement of the Award. Vijay’s principal ground for resisting enforcement was that EEEL had interfered improperly with a witness in the arbitration in a manner contrary to public policy (section 103(3) of the 1996 Act). It also claimed that EEEL had not complied with mandatory steps under a contractual dispute resolution clause, such that the arbitrator lacked jurisdiction (framing the argument as being that the composition of the arbitral tribunal was not in accordance with the agreement of the parties (section 103(2)(c) of the Arbitration Act 1996)); and that it had been unable to present its case in the arbitration due to the late admission of an expert report (section 103(2)(e) of the 1996 Act).

The Court comprehensively rejected Vijay’s challenge to enforcement and ordered Vijay to pay costs on an indemnity basis. In addition to dismissing Vijay’s case on the merits, it held that Vijay was issue estopped on its jurisdictional argument by findings in the French courts and also that the previous foreign decisions weighed heavily against allowing Vijay to litigate the same (or similar) issues.

The decision underlines the pro-enforcement policy of the New York Convention and will provide welcome support to parties facing challenges to enforcement in multiple jurisdictions.

A copy of the judgment is available [here](#).

Benjamin Pilling KC and Daniel Khoo acted for the successful Claimant (instructed by Cooke, Young & Keidan LLP).