UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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In the Matter of the Arbitration Between:

WERNER SCHNEIDER, acting in his capacity as insolvency administrator of Walter Bau Ag (In Liquidation),

Petitioner,

-against-

THE KINGDOM OF THAILAND,

Respondent.
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10 Civ. 2729 (DAB)
CONFRIMATION OF ARBITRAL AWARD

DEBORAH A. BATTS, United States District Judge.

Petitioner, Werner Schneider, acting as insolvency administrator of Walter Bau Ag ("WB" or "Petitioner"), petitions this Court to confirm an arbitration award of approximately $40,000,000.00 against Respondent, The Kingdom of Thailand ("Thailand" or "Respondent"). In 1988, Thailand granted a concession to a consortium to construct and operate a tollway outside of Bangkok, Thailand. WB was an investor in that consortium and asserts Thailand deprived WB of the benefit of its investment. Thailand has filed a Cross-Petition to dismiss the Petition. Thailand argues that the Court should dismiss the Petition on forum non conveniens grounds or, if the Court considers the Petition, the Court should dismiss the Petition because the arbitrators did not have jurisdiction. For the reasons below, the Court GRANTS WB's Petition to confirm the

July 1, 2009 arbitration award in favor of WB and against Thailand and DENIES Thailand's Cross-Petition.

I. BACKGROUND[1]

A. Agreement to Develop and Operate the Tollway Project

During the 1980s, Thailand sought to develop its public infrastructure. One such project was the engineering, construction and operation of a 26-kilometer tollway extending from central Bangkok to (what was at the relevant time) Bangkok's international airport at Don Muang (the "Tollway Project"). (Jurisdiction Award ("Juris. Award") ¶ 1.49, Wenger Decl. Ex. 1.) Thailand decided not to commit public funds to the Tollway Project. Instead, the Thai Department of Highways, a department of the Thai government, invited parties to tender for a tollway concession.

On August 21, 1989, the Thai Department of Highways entered into a Concession Agreement ("Concession") with Don Muang Tollway Co. ("DMT"), a Thai company, for the Tollway Project. Both the Thai Council of Ministers (the "Cabinet") and the

[1] The Parties generally agree to the factual history in this arbitration petition. To the extent Respondent asserts that factual disputes remain, the Court will assume Respondent's factual aversions are true.

Supreme-Attorney General approved the Concession. Dyckerhoff & Widhamm AG ("D&W"), a German company, invested in DMT and following a restructuring of DMT, D&W owned just under 10 percent of DMT's shares. (Juris. Award ¶ 1.52, Wenger Decl. Ex. 1.) On August 16, 2001, D&W was merged into WB. Through the merger, WB acquired all of D&W's assets, including its shares in DMT. (Id. ¶ 1.53.)

DMT built the highway over a period of five years. A number of events occurred during this time. On June 11, 1990, the Cabinet approved the Tollway Project as being eligible for investment promotion privileges such as tax benefits, which were granted. On May 16, 1991, an inter-ministerial committee of the Thai government, the Board of Investment (the "BOI"), issued a certificate of investment to DMT for the Tollway Project. This certificate was issued under Thailand's Investment Promotion Act. On June 11, 1996, the Cabinet approved, in principle, an amendment to the Concession. On November 29, 1996, the Department of Highways granted an amendment to the Concession which extended the highway in the Tollway Project a further six kilometers. On March 6, 1998, the BOI issued a second certificate of investment to DMT for the construction and operation of a northern extension. The Don Muang Tollway opened on December 14, 1994, and has been open for traffic without

interruption ever since. There has been no issue over the Tollway Project's condition or operation.

B. WB's Involvement in the Tollway Project

WB was a significant part of the consortium that made up DMT. WB was the principal promoter of the Tollway Project. WB undertook much of the engineering work. WB selected, instructed and supervised the financial advisors who put together the debt and equity finance.

Between August 1989 and July 1997, WB invested about 750 million Thai baht (approximately $24.4 million in today's value[3]) in the Tollway Project. Based on the investors' original expectations, WB should have received its first dividend from DMT in 1997. At the time of the underlying arbitration hearing, its investment would have been worth approximately $129 million. However, in 2007, after multiple attempts to resolve its disagreements with Thailand, WB sold its shares in DMT.

WB asserts, and the arbitrators found, that WB's investment was, in essence, thwarted by the wrongful acts and omissions of Thailand. These included Thailand's blocking of DMT's ability

[3] As stated in Petitioner's September 24, 2010 brief.

to charge the agreed-upon tolls, carrying out continuous programs of improvement of roads competing with the Don Muang Tollway, causing tolls to be decreased, and closing the Don Muang airport. Thailand denies wrongdoing and asserts that it was an economic downturn in Thailand that negatively affected the Tollway Project.

C. The Relevant Treaties

Thailand and Germany have entered into two treaties that are at issue in this case. The first treaty is the December 13, 1961 Treaty between the Federal Republic of Germany and the Kingdom of Thailand concerning the Promotion and Reciprocal Protection of Investments (the "1961 Treaty"). (Wenger Decl. Ex. 2.) The second treaty is the June 24, 2002 Treaty between the Kingdom of Thailand and the Federal Republic of Germany for the Encouragement and Reciprocal Protection of Investments, which entered into force on October 20, 2004 (the "2002 Treaty"). (Wenger Decl. Ex. 3.) The 1961 Treaty does not provide investors with a right to arbitrate disputes against Thailand, while the 2002 Treaty grants investors the right to arbitrate investment-related disputes with Thailand as long as their

investments receive official approval from Thailand. (1961 Treaty, Article 11; 2002 Treaty, Articles 2(2), 10.)

The Parties agree on several aspects of the requirements for the approval of investments under the 1961 Treaty and the 2002 Treaty, including: (1) For pre-2002 Treaty investments such as WB's investment, Article 8 of the 2002 Treaty only protects "approved investments" (Thailand's Post-Hearing Submission ¶ 15, Wenger Decl. Ex. 4.); (2) An investment approved under the 1961 Treaty was an "approved investment" under Article 8 of the 2002 Treaty (Thailand's Post-Hearing Submission ¶ 4, Wenger Decl. Ex. 4.); and (3) In the 1961 Treaty, the Protocol to Article 1 (the "Protocol") sets forth the requirements for approval, and hence the requirements for protection under the 2002 Treaty (Thailand's Post-Hearing Submission ¶ 16, Wenger Decl. Ex. 4; WB's Post-Hearing Submission ¶¶ 10.2-10.7, Wenger Decl. Ex. 5.).

D. Procedural History of the Arbitration

On September 21, 2005, WB submitted a Request for Arbitration against Thailand ("Request"). (Juris. Award ¶ 1.2, Wenger Decl. Ex. 1.) WB alleged that Thailand breached its obligations to WB under the 2002 Treaty by not properly fixing

or increasing the levels of tolls for the highway built by DMT, depriving WB of its return on its investment. (Id. ¶ 1.59.)

The Parties agreed on a panel of three arbitrators (the ("Arbitrators"). On October 6, 2006, Thailand submitted a Memorial on Jurisdiction ("Thailand's Juris. Memorial") objecting to the Arbitrators' jurisdiction over WB's claims. Thailand asked the Arbitrators to bifurcate the proceedings and determine whether they had jurisdiction before hearing the merits of the case. (Juris. Award ¶ 1.27, Wenger Decl. Ex. 1.)

On December 8, 2006, WB replied to Thailand's jurisdiction objection. The Arbitrators granted Thailand's request for bifurcation and agreed to consider issues of jurisdiction at the outset. (Juris. Award ¶ 1.28, Wenger Decl. Ex. 1.) The parties submitted multiple filings and participated in a hearing on Thailand's objections to the Arbitrators' jurisdiction.

The Parties' dispute before the Arbitrators centered on the approval requirements of the Protocol to Article 1 of the 1961 Treaty and whether the approvals received by WB qualified under that Article. WB argued, inter alia, that it had met the requirements under the 1961 and 2002 Treaties. Thailand argued, inter alia, that for WB's investment to have been approved under the 1961 Treaty and be entitled to protection under the 2002

Treaty, the Protocol required WB to obtain a Certificate of Admission (also referred to as a Certificate of Approval) ("CA") classifying its investment as an "approved project." WB never obtained a CA. (Thailand's Post-Hearing Submission ¶¶ 25, 29, Wenger Decl. Ex. 4.)

On October 5, 2007, the Arbitrators concluded that WB was a protected investor under Article 8 of the 2002 Treaty because WB had made an "approved investment" under the 1961 Treaty, and therefore, the Parties' dispute should be arbitrated. (Juris. Award ¶ 5.13, Wenger Decl. Ex. 1.) The Arbitrators denied Thailand's objections to their jurisdiction over WB's claims.

On July 1, 2009, the Arbitrators issued the final Award, assessing damages against Thailand in the amount of 29.21 million euros, plus costs in the amount of 1,806,560 euros, plus interest ("the Award"). On March 26, 2010, WB filed its Petition seeking confirmation of the Award. Thailand filed its Cross-Petition to dismiss WB's Petition on August 17, 2010.

II. DISCUSSION

A. Applicable Law Under the FAA

Foreign arbitral awards are recognized and enforced under the Federal Arbitration Act (the "Act"), which codified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). 9 USC § 201. The United States has strictly adhered to, and enforced, arbitration awards made under the New York Convention. Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 (1974). The Act permits any party to an arbitration to apply to any court having jurisdiction for an order confirming the award within three years after an award is made. Petitioner WB makes such an application.

Arbitration awards are subject to "very limited review" in order to ensure that "the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation" are met. Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 111 (2d Cir. 1993). Accordingly, "[t]he showing required to avoid summary confirmation of an arbitration award is high, and a party moving to vacate the award has the burden of proof." Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp., 103 F.3d 9, 12 (2d Cir. 1997)(citations omitted). The Act instructs that a court "shall" confirm the award unless it finds a ground for refusal or deferral of recognition or enforcement specified in the Convention. 9 USC §

207. The burden of proof is on the party opposing the recognition and enforcement of the arbitral award. Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, 973 (2d Cir. 1974).

Thailand presents two main arguments as to why the Petition in this case should be dismissed: (1) the Arbitrators improperly asserted jurisdiction as the Parties did not agree to arbitrate; and (2) forum non conveniens grounds based primarily on the fact that Thailand has no assets in the United States.

B. The Court's Review of the Arbitrators' Award

Thailand argues that the Court should take a "fresh look" at whether Thailand and WB agreed to arbitrate the dispute that resulted in the arbitration Award. In support of its argument, Thailand cites First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995). In First Options, the Supreme Court held that whether someone is bound by an arbitration agreement is a question of arbitrability that should be decided by the courts, absent clear and unmistakable evidence of an agreement between the parties to submit the question to arbitration. Id. at 943-45. The Court held that a general and broad arbitration clause

was not enough to satisfy the clear and unmistakable evidence requirement. Id.

The Second Circuit has declined to read First Options so expansively as to extend it to all questions of arbitrability. Abram Landau Real Estate v. Bevona, 123 F.3d 69, 72 (2d Cir. 1997).[4] As the Second Circuit has stated, problems of arbitrability arise in two contexts: (1) when parties disagree whether an arbitration clause covers a particular dispute; and (2), when the parties disagree not about the scope of the arbitration clause but about "whether there is even a valid agreement to arbitrate in effect at a particular time." Acequip Ltd. v. American Eng'g Corp., 315 F.3d 151, 155-56 (2d Cir. 2003)(citing Abram Landau Real Estate v. Bevona, 123 F.3d 69, 72 (2d Cir. 1997)); see also Consol. Rail Corp. v. Metro. Trans. Auth., 1996 WL 137587, at *5 (S.D.N.Y. Mar. 22, 1996) (confirming arbitration award after finding that "arbitrability falls into three distinct categories.").

First Options only considered the case where a party resists arbitration or seeks to vacate an arbitral award "on the grounds that he or she was never party to an agreement to arbitrate." Consol. Rail Corp., 1996 WL 137587, at *5. In that

[4] While Abram Landau Real Estate is in the employment context, it is instructive on the application of First Options.

type of situation, the party arguing against arbitration is entitled to have a court review whether they agreed to arbitrate disputes at all. First Options, 514 U.S. at 944-45. This case is inapposite as the dispute here involves a valid arbitration agreement that "gave at least some thought to the scope of arbitration." Id. at 943 (emphasis added).[5]

Thailand has conceded, as it must, that it entered into the two Treaties that expressly provide for the arbitration of disputes between Thailand and German investors. Thus, this case does not concern a question of agreement formation. Instead, "the issue at hand is a construction of the language of the agreement itself." DaPuzzo v. Globalvest Mgmt. Co. L.P., 263 F.Suppl. 2d 714, 719 (S.D.N.Y. 2003). Specifically, Thailand and WB dispute what kind of actions an investor must undertake in order for his investment to fall within the scope of the 2002 treaty arbitration provision. This is clearly the first type of arbitrability - one of scope. "As to scope, the standard to

[5] Thailand cites to a UK Supreme Court case Dallah v. Pakistan in support of its argument. [2010] UKSC 46 UK. Dallah cites to First Options in the UK Supreme Court's analysis of the New York Convention. However, Dallah can be factually distinguished. In Dallah, the question was whether Pakistan was a party to an arbitration agreement given that it never signed the agreement itself. The scenario in Dallah is like the one in First Options as it considers the formation of the arbitration agreement. It is not a question of scope, as is the issue in the present case.

apply when parties have agreed to arbitrate but disagree on whether a particular matter is arbitrable is a strong presumption of arbitrability." Consol. Rail Corp., 1996 WL 137587, at * 7 (citing Moses H Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983) ("any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration)); India v. Cargill Inc., 867 F.2d 130, 133 (2d Cir. 1989)). As First Options is inapplicable to this case, the Court will not conduct a de novo review of the Arbitrators' Award.[6]

C. Section 10(a) of the FAA or Manifest Disregard

Section 10(a) of the FAA sets forth four situations in which a court may vacate an arbitration award.[7] In its Cross-

[6] As the Court has held that First Options is inapplicable, the Court does not need to reach the issue of whether there was clear and unmistakable evidence that the parties intended that the question of arbitrability be decided by the Arbitrators.

[7] Thailand has not filed a formal motion to vacate the award. However, since WB seeks confirmation of the award and Thailand opposes it, the Court treats Thailand's "Cross-Motion to Dismiss the Petition for Confirmation" as a motion to vacate the award. See D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 112 (2d Cir. 2006)(noting that under the FAA, any objections to a confirmation motion are treated as if a formal motion for

Motion, Thailand does not even argue that any of the Section 10(a) factors apply. The Second Circuit has "consistently accorded the narrowest of readings to [§ 10(a)] in order to facilitate the purpose underlying arbitration: to provide parties with efficient dispute resolution, thereby obviating the need for protracted litigation." ReliaStar Life Ins. Co. v. EMC Nat'l. Life Co., 564 F.3d 81, 85 (2d Cir. 2009) (citation omitted). Thus, a party seeking vacatur of an arbitration panel's decision "must clear a high hurdle." Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp., 130 S.Ct. 1758, 1767 (2010). It is not enough "to show that the panel committed an error--or even a serious error. It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable." Id. (citation omitted).

Courts in this circuit have also vacated arbitration awards that are in "manifest disregard of the law." See T. Co Metals, LLC v. Dempsey Pipe & Supply, Inc., 592 F.3d 329, 339 (2d Cir. 2010). While the future of the "manifest disregard" standard is unsettled, see Stolt-Nielson, 130 S.Ct. at 1768 n. 3 (stating that the Supreme Court would "not decide whether 'manifest

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vacatur has been made).

disregard' survives"), in the Second Circuit, "manifest disregard" has been reconceptualized as "a judicial gloss" on the FAA's specific grounds for vacatur, and so interpreted, "remains a valid ground for vacating arbitration awards." T. Co Metals, 592 F.3d at 340 (citation omitted). "[A]wards are vacated on grounds of manifest disregard only in those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent." Id. at 339 (citation omitted).

The Court has engaged in a thorough review of the record and the submissions of the Parties. In addition, on February 4, 2011, the Court held oral argument on the Petition and Cross-Petition. The Court is satisfied that the Arbitrators' award meets the light burden imposed by Section 10(a) and the "Manifest Disregard Standard." While the Court finds it unnecessary to review the Arbitrators' Award de novo, it is important to note that based on February 4, 2011 argument, there is serious doubt as to whether, even on a de novo review, Thailand would be able to overturn the Arbitrators' well-reasoned Award.

A few facts presented during oral argument weigh conclusively in WB's favor. While Thailand argues that a German investor is not covered by the treaty arbitration provision

unless he has obtained a CA, there have been only eight CAs issued during a forty-year period of German investment in Thailand. (See Transcript of Oral Argument at 30, Schneider v. Kingdom of Thailand, No. 10-2729 (S.D.N.Y. argued Feb. 4, 2011)). Moreover, none of the applicants for these CAs had BOI approval. (Id.) In other words, there is not a single example of a German investor in Thailand who had both the BOI certificate and the CA. (Id. at 32.) These facts support WB's arguments.

Further, the project in question here was specifically requested by the Thailand government and was approved at various levels of this same government. Thailand never gave WB any indication that a CA was required.[8] Yet, once this dispute arose, Thailand claimed that under the treaty arbitration provision, WB's investment did not qualify for treaty protection unless a CA was issued. While such a reading of the arbitration provision appears plausible on its face, the facts and circumstances here do not support Thailand's position. (See

[8] WB has presented evidence suggesting that, long before WB's investment, Thailand's Ministry of Foreign Affairs considered BOI sufficient for treaty protection. Id. at 35-36. Thailand, in response, has only relied on the argument of counsel on this point.

generally Transcript of Oral Argument, Schneider v. Kingdom of Thailand, No. 10-2729 (S.D.N.Y. argued Feb. 4, 2011)).

D. Forum Non Conveniens

1. Applicable Law for Forum Non Conveniens

"A federal court has discretion to dismiss a case on the ground[s] of forum non conveniens when an alternative forum has jurisdiction to hear [the] case, and ... trial in the chosen forum would establish ... oppressiveness and vexation to a defendant ... out of all proportion to plaintiff's convenience, or ... the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems." Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 429 (2007)(quoting American Dredging Co. v. Miller, 510 U.S. 443, 447-48 (1994)). This Court has broad discretion in applying the forum non conveniens doctrine. Norex Petroleum Ltd. v. Access Indus., Inc., 416 F.3d 146, 153 (2d Cir. 2005). In exercising this discretion, courts consider: (1) the degree of deference afforded to plaintiff's choice of forum; (2) whether the alternative forum is adequate; and (3) the balance of the public and private interests implicated in the choice of forum. Norex Petroleum, 416 F.3d at 153. "Although the

[Inter-American] Convention establishes jurisdiction in the United States as a signatory state through a venue statute appended to the [FAA], there remains the authority to reject that jurisdiction for reasons of convenience, judicial economy and justice." In the Matter of Arbitration Between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine, 311 F.3d 488, 494 (2d Cir. 2002)("Monegasque").

2. Deference to WB's Choice of Forum

"A domestic petitioner's choice of its home forum receives great deference, while a foreign petitioner's choice of a United States forum receives less deference." Monegasque, 311 F.3d at 498. However, deference is measured on a "sliding scale." Monegasque, 311 F.3d at 498. "The more it appears that a domestic or foreign plaintiff's choice of forum has been dictated by reasons that the law recognizes as valid, the greater the deference that will be given to the plaintiff's forum choice." Iragorri v. United Tech. Corp., 274 F.3d 65, 71-72 (2d Cir. 2001)(en banc).

As a foreign Petitioner, WB's choice of a United States forum receives less deference than if it were a domestic petitioner. Nevertheless, WB is still entitled to some

deference. Varnelo v. Eastwind Transp. Ltd., 2003 WL 230741, *8 (S.D.N.Y. Feb. 3, 2003). There is no indication that WB's choice of forum was motivated by forum-shopping considerations. In addition, WB is not seeking to resolve any dispute or conduct extensive trial proceedings; instead it seeks only to confirm its Award. D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006)("[A]n arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court."). Accordingly, this Court affords deference to WB's choice of forum.

3. Adequacy of the Alternative Forum

"An alternative forum is ordinarily adequate if the defendants are amenable to service of process there and the forum permits litigation of the subject matter of the dispute." Monegasque, 311 F.3d at 499. Thailand argues that Thailand is an adequate alternative forum. However, the Court does not decide whether Thailand is an adequate alternate forum because, as discussed below, WB's choice of forum and the Gilbert factors (see infra), weigh in favor of retaining jurisdiction. Therefore, the Court assumes for the purposes of this motion that Thailand would be an adequate alternate forum. See Int'l

Equity Investments, Inc. v. Cico, 427 F.Supp. 2d 503, 506-07 (S.D.N.Y. 2006)(retaining jurisdiction despite assuming that there was an adequate alternative forum); Eclaire Advisor Ltd. as Trustee to Daewoo Int'l (America) Corp. Creditor Trust v. Daewoo Eng'g. & Constr. Co., Ltd., 375 F.Supp.2d 257, 265 (S.D.N.Y.2005)(same).

4. Public and Private Interest Factors

"A district court is constrained to balance two sets of factors in determining whether there should be an adjudication in a petitioner's chosen forum or in the alternative forum suggested by the respondent." Monegasque, 311 F.3d at 500 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507-09 (1947)). The private interest factors pertain to, inter alia, the convenience of the litigants, the relative ease of access to sources of proof, and the availability of compulsory process for attendance of unwilling witnesses. Monegasque, 311 F.3d at 500. "[T]he court should focus on the precise issues that are likely to be actually tried, taking into consideration the convenience of the parties and the availability of witnesses and the evidence needed for the trial of these issues." Iragorri, 274 F.3d at 74. The public interest factors "include the administrative difficulties associated with court congestion;

the imposition of jury duty upon those whose community bears no relationship to the litigation; the local interest in resolving local disputes; and the problems implicated in the application of foreign law." Monegasque, 311 F.3d at 500 (citing Gilbert, 330 U.S. at 508-09); Tel. Sys. Int'l., Inc. v. Network Telecom PLC, 303 F.Supp. 2d 377, 384 (S.D.N.Y. 2003).

Here, the private interest factors do not weigh in favor of forum non conveniens dismissal here as this dispute was resolved in arbitration and all that is left is the narrow issue of confirmation. See Monegasque, 311 F.3d at 500. Thailand attempts to present this confirmation as a complex matter that requires additional submission of evidence and full-blown de novo review by this Court.[9] However, as the Court holds, infra, the issue before the Court - the scope of the Parties' agreement to arbitrate - is a narrow one that requires no additional evidence or de novo review. Accordingly, the private interest factors weigh against a forum non conveniens dismissal.

The public interest factors do not weigh strongly in favor, or against, dismissal. The factors that weigh against dismissal

[9] Thailand describes the additional evidence it would submit to assist the Court in deciding the confirmation motions in a letter of February 4, 2011. WB's refutes Thailand's position in a letter dated February 14, 2011. This further undercuts Thailand's argument that dismissal is appropriate here.

include, first, American courts do have an interest in enforcing commercial arbitration agreements in international contracts. See Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n.15 (1974). Second, even though this case is a non-local dispute with non-local parties, no additional evidence would be helpful to the Court and there are no issues of foreign law present. There is also simply no evidence that Thailand is burdened in any way by proceeding in the United States.

On the other hand, it is true that there are few, if any, actual connections with the United States "other than the fact that the United States is a Convention signatory." Monegasque, 311 F.3d at 500. Thailand strongly asserts that the Parties and the dispute's lack of contacts with the United States, coupled with the fact that Thailand that it has no assets in the United States, favors strongly in favor of dismissal. Thailand argues that this is especially true given that WB seeks to collect an almost $40 million arbitration Award. Thailand is correct that a lack of assets is a factor that does weigh in favor of dismissal. Allstate Life Ins. Co. v. Linter Group Ltd., 994 F.2d 996, 1001 (2d Cir. 1993)(affirming dismissal on forum non conveniens grounds, noting that the district court "properly recognized that any judgment...will have to be enforced in Australia where all of the Banks' assets are located").

However, Petitioner disputes that Thailand has no assets in the United States and asserts that any search of assets should be the product of post-judgment discovery. WB also argues that even if Thailand has no assets currently in the United States, it may have assets here in the future and this reality should not overcome WB's choice of forum. Given the competing interests on both sides, it is clear that the public interest factors do not weigh strongly in favor, or against, dismissal.

Further, this case is inapposite to the facts in Monegasque. In Monegasque, the Second Circuit affirmed a district court's judgment dismissing an arbitration proceeding on forum non conveniens grounds. 311 F.3d at 500-01. The Second Circuit found that both the private interest factors and public interest factors weighed in favor of dismissal. Id. at 500. Unlike the summary proceeding here, the Second Circuit found that one of the parties in Monegasque, the Ukraine, would be entitled to discovery and, most probably, a trial on the factual issues as the Ukraine was a non-signer to the arbitration agreement at issue. Id. The private factors in Monegasque weighed in favor of dismissal as "the entire proceeding would be more easy, expeditious and inexpensive" in the Ukraine. Id. A dismissal of WB's arbitration petition here would likely only increase the cost of this arbitration dispute and further delay

its resolution. In addition, in Monegasque, the Second Circuit also dealt with the public interest factor that there were outstanding issues of Ukrainian and Russian law to be decided. Id. There are no such outstanding issues of foreign law to be decided in the case here.

The Court has determined that the public interest factors are neutral on the issue of dismissal and the Court has assumed that there is an alternative forum available. However, the private interest factors and Petitioner's choice of forum weigh against dismissal on forum non conveniens grounds. Given this analysis, WB's choice of forum will be given deference and the Court DENIES Thailand's Cross-Motion to dismiss the Petition on forum non conveniens grounds.

III. CONCLUSION

For the reasons above, the Court GRANTS WB's Petition to confirm the July 1, 2009 arbitration Award in favor of WB and against Thailand and DENIES Thailand's Cross-Petition. The Clerk is DIRECTED to enter final judgment in favor of Petitioner Werner Schneider, acting in his capacity as insolvency administrator of Walter Bau Ag (In Liquidation), and against The Kingdom of Thailand in the amount of: (1) EURO 29.21 million,

plus interest at the six month successive Euribor rate, plus 2% per year, beginning on December 3, 2006 until the date of payment of the award, compounded semi-annually; and (2) EURO 1,806,560, plus interest at the six month successive Euribor rate, plus 2% per year, beginning on July 1, 2009 until the date of payment of the award, compounded semi-annually. The Clerk is DIRECTED to close the docket in this case.

SO ORDERED.

Dated: New York, New York
March 14, 2010

Deborah A. Batts

DEBORAH A. BATTS
United States District Judge