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UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 9th day of February, two thousand and four.

PRESENT:

HON. AMALYA L. KEARSE
HON. GUIDO CALABRESI
HON. ROBERT A. KATZMANN,

Circuit Judges.

MGM PRODUCTIONS GROUP, INC.,

Petitioner-Appellee,

No. 03-7561

AEROFLOT RUSSIAN AIRLINES,

Respondent-Appellant.

For Petitioner-Appellee:

FRED G. BENNETT, Quinn Emanuel
Urquhart Oliver & Hedges, LLP, New York,
NY (Jeffrey A. Conciatori, Robert C. Juman,

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on the brief)

For Respondent-Appellant:

BRUCE E. YANNETT, Debevoise &
Plimpton, New York, NY (Carl Micarelli,
Scott Ruskay-Kidd, *on the brief*).

Appeal from the United States District Court for the Southern District of New York
(Berman, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED** that the judgment of the District Court is **AFFIRMED**.

Petitioner-Appellee MGM Productions Group, Inc. ("MGM"), a California corporation, is the assignee of a November 29, 2002 award ("Award") of over \$13 million plus interest and costs, obtained by Russo International Venture ("Russo"), a New York corporation, against Aeroflot Russian Airlines ("Aeroflot"), in an arbitration held in Stockholm, Sweden, pursuant to a 1992 agreement ("Agreement") between Russo and Aeroflot. The Award compensated Russo for Aeroflot's breach of the Agreement, under which Russo provided consulting services to Aeroflot in connection with the Russian airline's leasing of airplanes and other equipment to Iran Air.

MGM filed suit in federal district court, seeking confirmation of the arbitral award, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, open for signature, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ("New York Convention"). Aeroflot opposed confirmation, arguing that the Award fell under the "public policy exception" in Article V(2)(b) of the New York Convention, because it compensated Russo for Aeroflot's non-performance of an Agreement whose provisions allegedly violated the Iranian Transactions Regulations ("ITRs"), 31 C.F.R. § 560.101 *et seq.*, adopted by the Office of Foreign Assets

1 Control of the Department of the Treasury pursuant to Executive Orders issued by the President of
2 the United States under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-
3 1706. [Blue 4] The district court confirmed the Award, and we affirm.

4 The arbitrators considered Aeroflot's argument that the Agreement violated the ITRs
5 promulgated in 1995, and found that since the Agreement provided only for transactions between
6 Russo and Aeroflot, it did not contravene the regulations. We accord great deference to the
7 arbitrator's factual findings and contractual construction. See *Europecar Italia, S.p.A. v. Maiellano*
8 *Tours, Inc.*, 156 F.3d 310, 316 (2d Cir. 1998) ("[A]n arbitration award cannot be avoided solely
9 on the ground that the arbitrator may have made an error of law or fact."). Even if, in these
10 circumstances, we did not, it would be, at most, doubtful that the Agreement violated the 1995
11 ITRs. And, as such, the Agreement cannot be said to violate fundamental public policy. See
12 *Parsons & Whittemore Overseas Co. v. Société Generale de L'Industrie du Papier (RAKTA)*, 508
13 F.2d 969, 973-74 (2d Cir. 1974).

14 Aeroflot also argues that performance of the Agreement after August 20, 1997, the date
15 that amended ITRs went into effect, would have been illegal, and that MGM should not be
16 compensated for breach of the Agreement when its performance by MGM's predecessor in
17 interest would have violated U.S. public policy. We need not reach this question, however, since
18 Aeroflot breached the Agreement before the 1997 ITRs went into effect. We cannot know,
19 therefore, whether the parties would subsequently have amended their Agreement to avoid
20 potential violations of the regulations, were it not for Aeroflot's breach. Under these
21 circumstances, Aeroflot cannot now sustain an argument that enforcement of the Agreement
22 would violate U.S. public policy.

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We have considered all of the Appellant's arguments, and found them to be without merit.
Accordingly, we AFFIRM the judgment of the district court.

For the Court,

ROSEANN B. MACKECHNIE,

Clerk of Court

By: _____

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