UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF THE ARBITRATION

between

AUDI NSU AUTO UNION AKTIENGESELLSCHAFT,

Petitioner,

vs. CIVIL ACTION

OVERSEAS MOTORS, INC., NO. 6-71054

Respondent.

_____/

MEMORANDUM OPINION AND ORDER GRANTING PETITIONER'S MOTION TO DISMISS THE RESPONDENT'S COUNTERCLAIMS AND MOTION FOR SUMMARY JUDGMENT OF CONFIRMATION

This matter was first brought before this Court on Audi NSU Auto Union Aktiengesellschaft's[1/] Petition for Confirmation of a Foreign Arbitral Award, under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards as codified in 9 U.S.C. §201 et seq.

While the procedure of confirmation is relatively straightforward, the convoluted procedural history of this litigation requires some recitation.

The early factual situation is completely described in Overseas Motors, Inc. v. Import Motors, et al., 375 F.Supp. 499 (E.D. Mich. 1974). In 1968, Overseas entered into an importer contract with NSU, the predecessor of ANAU, under which the plaintiff would be the exclusive distributor of NSU automobiles in a ten state area. Thereafter, Overseas complained that it could not obtain cars or spare parts in accordance with the contract,

_____

1/ Hereinafter "ANAU".

glomerate and that the latter refused to give Overseas an Audi franchise. Audi NSU regarded these grievances as contractual in nature; Overseas, however, perceived all these actions as an anti-trust conspiracy which had, as one objective, the elimination of Overseas' distributorship.

In September, 1971, the relationship between Overseas and ANAU had almost broken down although Overseas was, at that time, still trying to obtain a Porche-Audi franchise. Overseas abandoned that effort, obtained a Fiat dealership and then instituted an antitrust lawsuit against ANAU and other defendants. Count I of the Overseas' complaint alleged a Sherman Act Section 1 violation; Count II was a claim of violation of §7 of the Clayton Act and Count III was a claim of a violation of 15 U.S.C. §1222 which authorizes an automobile dealer to sue a manufacturer for his failure to act in good faith in complying with or terminating a franchise agreement.

Shortly after commencement of the antitrust action, ANAU notified Overseas that it intended to submit its grievances to arbitration pursuant to the language of the contract. Overseas objected to such proceedings and moved for a stay of arbitration proceedings. The Court denied that motion. On November 24, 1972, ANAU filed a complaint for declaratory relief with the arbitration court in Zurich, Switzerland asking it to declare that ANAU had not breached its contract with Overseas. ANAU's complaint was apparently predicated entirely on a breach of contract defense theory; it was not attempting to obtain declaratory relief regarding any antitrust violation.

Overseas refused to participate in the arbitration proceedings although it had proper notice of them. The Court did not order Overseas to arbitrate, although presumably it could have done so under §206 of the chapter implementing the Convention on the Recognition and Enforcement of Foreign Awards.

The arbitration proceedings were conducted and the arbitration court filed its decision on May 24, 1973, making findings of fact and law and handing down a judgment in favor of ANAC.

On July 5, 1973, the trial in the antitrust case before U. S. District Judge John Feikens commenced. The defendants extracted 35 findings of fact from the arbitration decision and moved that as such findings were relevant to the antitrust action that they be considered binding as collateral estoppel. The Court took that motion under advisement and proceeded with plaintiff's proofs. At the conclusion of plaintiff's case the defendants moved for a directed verdict. In an opinion reported at 375 F. Supp. 499, the court considers and decides both the motion in limine regarding application of collateral estoppel to the arbitration panel findings and the motion for a directed verdict.

Judge Feikens first distinguishes collateral estoppel from other res judicata concepts such as bar or merger and states the five basic requirements for collateral estoppel. He finds that four of the five requirements are clearly established and that although there is not exact identity of parties (i.e., some of the defendants were not parties to the arbitration), the doctrine of mutuality of estoppel has been discredited and rejected by the federal courts and consequently all the defendants "may properly benefit from any estoppel arising out of the arbitration." 375 F.Supp. 511-512.

Overseas refused to participate in the arbitration proceedings although it had proper notice of them. The Court did not order Overseas to arbitrate, although presumably it could have done so under §206 of the chapter implementing the Convention on the Recognition and Enforcement of Foreign Awards.

The arbitration proceedings were conducted and the arbitration court filed its decision on May 24, 1973, making findings of fact and law and handing down a judgment in favor of ANAC.

On July 5, 1973, the trial in the antitrust case before U. S. District Judge John Feikens commenced. The defendants extracted 35 findings of fact from the arbitration decision and moved that as such findings were relevant to the antitrust action that they be considered binding as collateral estoppel. The Court took that motion under advisement and proceeded with plaintiff's proofs. At the conclusion of plaintiff's case the defendants moved for a directed verdict. In an opinion reported at 375 F. Supp. 499, the court considers and decides both the motion in limine regarding application of collateral estoppel to the arbitration panel findings and the motion for a directed verdict.

Judge Feikens first distinguishes collateral estoppel from other res judicata concepts such as bar or merger and states the five basic requirements for collateral estoppel. He finds that four of the five requirements are clearly established and that although there is not exact identity of parties (i.e., some of the defendants were not parties to the arbitration), the doctrine of mutuality of estoppel has been discredited and rejected by the federal courts and consequently all the defendants "may properly benefit from any estoppel arising out of the arbitration." 375 F.Supp. 511-512.

The only defense to application of collateral estoppel of the arbitration findings which the court believed had some merit was "matters considered by the arbitrators involved exclusively antitrust issues which the arbitration court was incompetent to adjudicate." 375 F.Supp. 512.

The court noted the general principle that claims arising under the antitrust laws are within the exclusive jurisdiction of the federal courts, and not subject to arbitration. He then states:

> "As this court has previously determined, the questions submitted to the Zurich court of arbitration were not in the nature of antitrust claims. That cause of action was bottomed on contract, and in the absence of allegations that the contract itself was intrinsically violative of the antitrust laws, such actions are not preempted by this courts exclusive jurisdiction over them. Conversely an adverse judgment in that case is no bar to maintenance of antitrust claims arising out of the same transaction.
>
> The far more difficult question now before the court is the extent to which issue preclusion through collateral estoppel must also be limited in antitrust suits in order to preserve a viable policy of pre-emption. It is one thing to conclude that because the arbitration was based on a different cause of action and performed a distinct and legitimate function it was a proper proceeding, which could not be stayed and which resulted in a valid, binding judgment. It is quite another to conclude that the arbitrator's decision must be given collateral as well as direct effect so as to predetermine in some measure the result of this separate antitrust suit." Id. at 518. (Emphasis supplied).

The court then considered various approaches and policy considerations to limiting the application of collateral estoppel and concluded that:

> "The line between foreclosable and non-foreclosable issues represents a balancing of these interests and it is in the nature of any balancing test that it relies heavily

upon the particular facts of each case. Still, the standard of foreclosability is likely in most cases to closely approximate a standard of centrality (sic).

* * * * *

Conversely, where the prior decision is not intimately and inextricably bound up with the central issues in the antitrust case, but merely determines matters of fact and law which are incidental to the antitrust claim, the prior adjudication ought to be accorded effect as res judicata." (Emphasis added). Id. at 522.

In identifying the foreclosable issues in this case, Judge Feikens established three categories of findings of the arbitration panel: (1) findings of the court of arbitration that for a variety of reasons other than the public interest were considered inappropriate for estoppel; (2) findings too intimately connected with the central issues of this case to permit an estoppel; and (3) findings to which the doctrine of collateral estoppel can be applied without offense to the public interest. Only the latter group was considered to be binding in the antitrust action.

The court then turned to defendant's motion for directed verdict and held that based on the binding findings of fact and the evidence presented in plaintiff's case, the plaintiff had totally failed to make a prima facie case of antitrust conspiracy on any of the counts of the complaint. Judge Feikens' concluding remarks are significant. He stated:

"The overwhelming reality which emerges from the many weeks of testimony and the hundreds of exhibits in this case is the total failure of the plaintiff to even address many of the central questions raised by the law it has invoked, and its complete lack of concrete evidence as to those elements with which it has concerned itself. As to Counts I and II, plaintiff has fundamentally misconceived the nature of its

cause of action.

> 'The attempt is frequently made, with respect to the cases involving termination of dealerships, to employ the antitrust acts as a policing measure. Most, if not all, of the cases involving such terminations contain, indeed are based upon, allegations such as we have before us. Usually the acts are such as to conceivably come within the ambit of state laws relating to what we may term generically unfair competition (lack of proper notice of termination, pirating of employees, taking over favored accounts, and similar activities). But the antitrust acts do not purport to formulate a code of business morality. They are not tablets of stone for the conduct of business generally. They are directed at one aspect of business life and one only: the preservation of free competition.' B & B Oil & Chemical Co. v. Franklin Oil Corp. 293 F.Supp. 1313, 1317 (E.D. Mich. 1968).' [Judge Talbot Smith].
>
> The antitrust laws are simply not a high-powered version of the laws relating to breach of contract, to be used whenever one is possessed of a particularly passionate grievance growing out of a business relationship. In Count III plaintiff has stated a claim which more closely approximates the nature of its proofs, but it has failed to translate personal indignation into objective evidence." 2/

The German conglomerate having won on the antitrust case, then presented Overseas with the arbitration judgment and award for costs (arbitration costs was the only money element of the arbitration since it was essentially for declaratory judgment). Overseas refused to honor that judgment and Audi NSU Auto Union then filed the present petition for confirmation of the foreign arbitral award. Defendant's Motion to Dismiss was denied by this Court which found it had jurisdiction over this matter. Petitioners

---

2/ Judge Feikens' decision was affirmed by the Sixth Circuit, 519 F.2d 119 (1975), cert. den. 96 S.Ct. 395 (1975).

have now moved to confirm the award and judgment, dismissing respondent's counterclaims and affirmative defenses.

I.

Respondent's Counterclaims

A.

The petitioner contends that counterclaims are clearly improper in a confirmation proceeding. It supports its contention primarily by reference to Section 6 of Chapter 1 of the Arbitration Act, (9 U.S.C. §6) which requires that:

> "any application to the court . . . shall be made and heard in the manner provided by law for the making and hearing of motions . . ."

Since a counterclaim may not be interposed in a motion proceeding or in a response to a motion, the petitioner argues that counterclaims are precluded in this action.

The respondent, Overseas, strenuously argues that 9 U.S.C. §6 is inapplicable to the Convention for Enforcement of Foreign Arbitral Awards. Indeed, it argues that "confirmation of a foreign award in the United States is limited to the four corners of Chapter 2 of the Arbitration Act, 9 U.S.C. §201 et seq."

The Court notes that 9 U.S.C. §208 states that:

> "Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States."

Therefore Chapter 1, including the motion practice described above, is applicable unless clearly in conflict with the Convention. Respondent alludes to statements by McMahon in the Journal of Maritime Law and Commerce to support such a proposition, but when

read in context it is clear that McMahon was referring to the state of the law before the convention was ratified by the United States. Furthermore this article does not present sufficient authority to convince the Court that there is a clear conflict with the Convention.

Even if the Court were to look past the petitioner's §6 motion procedure argument, it is clear that counterclaims are inappropriate in a confirmation proceeding. Such an action is a post-judgment enforcement proceeding. It is not an original action. The petition which commences such an action is not equivalent to a complaint which begins a new action. A rough analogy could be made to a post-judgment garnishment action after the defendant defaults on a contractual debt. The defendant cannot raise counterclaims on the merits during garnishments motions. His time for that has come and gone. Such is the case here.

Allied Garment Worker's Unions v. Leonard Workman, Civ. No. 73-1601 (S.D. N.Y., filed August 21, 1973), cited by the petitioner is on point. Although that case involved a non-foreign award, such a distinction is irrelevant since 9 U.S.C. §6 is now as applicable to foreign awards as to local awards. The court in that case held that counterclaims are not properly interposable in a confirmation proceeding.

B.

Res Judicata Impact on Counterclaims

The parties disagree as to the proper interpretation of the court's ruling in Overseas, supra, on the collateral estoppel effect of certain findings of fact by the arbitration court. It is important to keep in mind the trial court's position while considering those prior findings. It was only concerned whether the

arbitration court's findings would have collateral estoppel effect on its antitrust suit, because of the peculiarly federal character of such litigation. But for the nature of the proceedings, it is clear that the trial court would have accorded collateral estoppel effect to the arbitration court's findings. See 375 F.Supp. at 509-518. At this stage of the litigation, however, the court is not merely concerned with the collateral estoppel effect of the arbitration court, but also with the collateral estoppel effect of the trial court decision in Overseas, supra. Therefore, to the extent that any counterclaims are based on an antitrust cause of action they are barred by the decision in Overseas, supra. That theory was fully litigated by the respondent and it lost. To the extent that any counterclaim is based on the written contract between the parties, the decision in Overseas, supra, is clear that the arbitration decision operates as a bar to further litigation. The fact that it was rendered in a default judgment is not relevant as the court in Overseas, supra, noted:

> "The decision of the Zurich court of arbitration meets both preconditions for the use of a default judgment as collateral estoppel. It appears from an examination of the complaint and the arbitrator's opinion that the findings made therein do relate to matters raised in the complaint. They were formally put in issue and properly before the tribunal; decision on them was within the scope of that proceeding as defined by the complaint. Plaintiff also had a 'full and fair opportunity to argue [its] version of the facts' before the court of arbitration. The possibile inconvenience of litigating in that forum is outweighed by its voluntarily assumed contractual obligation to do so in the event of a dispute. Although plaintiff has consistently denied any intention to pursue its contractual remedies for ANAU's alleged breach, and thus might ordinarily have had little incentive to contest ANAU's claim of no liability under the contract, it is undenied that the arbitration was a proper proceeding for the determination of contractual rights and liabilities."

Concededly the doctrine of res judicata as a complete bar to such quasi-contract claims is inapplicable here as there was not complete identity of parties. However as noted above, the doctrine of collateral estoppel is applicable and the findings of the arbitration court and the trial court in the antitrust case are binding on the respondent on any future action in pursuit of these "counterclaims."

As the Court concludes that such counterclaims are improperly interposed in this action, the petitioner's motion to dismiss the counterclaims is hereby granted.

II.

Motion to Dismiss Respondent's Affirmative Defenses and Confirm the Foreign Arbitral Award.

Section 207 of Title 9 states:

> "Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention. (Emphasis added).

Aside from such an application, the proponent of the award must also supply the duly authenticated original award or a duly certified copy and supply the original arbitration agreement or a certified copy, and a translation of each, if appropriate. (Art. IV of the Convention).

> "Having done that, recognition and enforcement of the award follows unless the opposing party establishes one of the five specified defenses or the competent authority, on its own motion or the motion of the defense, finds one of the two additional disabilities. L. Quigley, Convention on Foreign Arbitral Awards, 58 A.B.A.J. 821, 824-25 (August, 1972).

These affirmative defenses are listed in Article V of the Convention (9 U.S.C.A. §201, 1976 cum. supp.).

Thus, it is seen that when the few preconditions are met, an order of confirmation must be entered by the Court unless the respondent can establish one of the listed defenses. It follows that if this Court finds respondent's affirmative defenses here must be dismissed, then it must also confirm the foreign arbitral award. Under the circumstances, each affirmative defense must be considered separately.

The respondent, however, contends that as this matter is entitled a motion for summary judgment, and as he has proffered counteraffidavits relating to the affirmative defenses raised, that questions of fact are raised which call for a trial and respondent demands a jury trial.

The respondent again misapprehends the entire nature of a proceeding for confirmation of a foreign arbitral award. It is not an original action. And although "the implementing legislation prescribed a summary procedure in the nature of federal motion practice to expedite petitions for confirmations of foreign arbitral awards," Imperial Ethiopian Government v. Baruch-Foster Corp., 535 F.2d 334 (5th Cir. 1976), it is not the absolute equivalent of a motion for summary judgment under the Federal Rules of Civil Procedure. As is clearly stated in Imperial Ethiopian, supra, "9 U.S.C. §207 mandates that 'the court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.' The burden of proof is on the party defending against enforcement." 535 F.2d at 336. The goal of the Convention was to encourage recognition and enforcement of international arbitration agreements, not deter them. Id.

To accept the respondent's contention would mean that such confirmation proceedings must be set for trial for jury findings of fact. Yet it is clear from the context of the defenses set forth in Article V of the Convention that they are primarily legal in nature. Again the Court must repeat that this is not in the nature of an original action, but rather a post-judgment enforcement proceeding. The Court finds no authority for a jury trial in such a proceeding; it would appear that the only defense which might raise questions of fact is whether proper notice of the arbitration proceedings was given and an evidentiary hearing could be scheduled for such a limited factual finding if it were disputed.

A.

First Affirmative Defense

Respondent's first affirmative defense is that it did not receive proper notice of the arbitration proceeding, specifically the arbitration proceedings relating to the Supplemental Award and never received a copy of said award. It is clear that respondent received proper notice of the original arbitration proceedings; indeed the respondent attempted to stay them. Therefore any allusion to improper notice of the main proceedings is totally frivolous.

With respect to its contention that it never received notice of the supplementary proceedings or award, he supports this with an affidavit of Ondred Demrovsky, an officer of the respondent who avers that he never received notice of the hearing or the award. The petitioner attaches a verified copy of a transmittal from Dr. Heinrich Stutz, Secretary of the arbitration panel, to the effect that notice of the supplemental award was served on Overseas on July 23, 1973.

To accept the respondent's contention would mean that such confirmation proceedings must be set for trial for jury findings of fact. Yet it is clear from the context of the defenses set forth in Article V of the Convention that they are primarily legal in nature. Again the Court must repeat that this is not in the nature of an original action, but rather a post-judgment enforcement proceeding. The Court finds no authority for a jury trial in such a proceeding; it would appear that the only defense which might raise questions of fact is whether proper notice of the arbitration proceedings was given and an evidentiary hearing could be scheduled for such a limited factual finding if it were disputed.

A.

First Affirmative Defense

Respondent's first affirmative defense is that it did not receive proper notice of the arbitration proceeding, specifically the arbitration proceedings relating to the Supplemental Award and never received a copy of said award. It is clear that respondent received proper notice of the original arbitration proceedings; indeed the respondent attempted to stay them. Therefore any allusion to improper notice of the main proceedings is totally frivolous.

With respect to its contention that it never received notice of the supplementary proceedings or award, he supports this with an affidavit of Ondred Demrovsky, an officer of the respondent who avers that he never received notice of the hearing or the award. The petitioner attaches a verified copy of a transmittal from Dr. Heinrich Stutz, Secretary of the arbitration panel, to the effect that notice of the supplemental award was served on Overseas on July 23, 1973.

Petitioner does not state that notice of the supplemental hearing was given to the respondent, but it is clear from the nature of the supplemental proceeding that lack of such notice is not a fatal defect. The supplemental proceeding only related to the determination whether the petitioner had paid 60,000 Swiss francs to the arbitration panel to cover arbitration costs, to ensure it could validly be awarded costs. Such information and the resulting determination was solely within the purview of the Swiss arbitration panel and the petitioner, and the respondent's lack of notice of that matter does not constitute a lack of due process to create an affirmative defense to confirmation.

Moreover, it is clear that in the original award of May 24, 1973 (which respondent clearly received), it was notified that the 60,000 Swiss francs element of costs would be finalized upon payment by petitioner to the arbitration panel.

For all of the above reasons the Court holds that respondent's first affirmative defense is without merit and must be dismissed.

B.

Second Affirmative Defense

The respondent contends that the arbitration panel's award of 92,838.40 Swiss francs at the exchange rate at date of judgment is in contravention of Article III of the Convention, 9 U.S.C. §201.

First it is noted that such a defense is not among the affirmative defenses listed in Article V of the Convention which can defeat confirmation. But more importantly, again the respondent completely misapprehends the significance of that provision.

Article III of the Convention states that:

> "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards. (Emphasis added).

Article III clearly states that the court confirming a foreign arbitration award cannot impose higher fees or more onerous conditions on the enforcement of such a judgment than on a domestic award. It does not apply nor is it at all relevant to the costs awarded by the foreign arbitration panel. Clearly the Convention does not require that the costs of arbitration be identical in every contracting state.

It is not within the confirming court's prerogative to question the amount of costs awarded by the arbitration court and this Court declines to do so. Therefore respondent's second affirmative defense is also dismissed.

C.

Third Affirmative Defense

Respondent contends that the award deals with a difference between the parties "not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of submission to arbitration . . ." Article V (1)(c) of the Convention. Respondent supports this with the contention that "the court of arbitration based its decision in part on antitrust claims."

This is entirely without merit. The question was submitted in the prior litigation and it was held that "as this court has previously determined, the questions submitted to the Zurich court of arbitration were not in the nature of antitrust claims." 375 F.Supp. at 518. This decision was not contested in the Court of Appeals and shall be followed here. Respondent's statutory construction argument contained in that defense statement is entirely without merit. Therefore, respondent's third affirmative defense is hereby dismissed.

D.

Fourth Affirmative Defense

Respondent claims that the award and supplemental award deal with a difference not contemplated by or not falling within the terms of the submission to arbitration, because petitioners sought a declaratory judgment. Again respondent misapprehends the nature of the defense it seeks to interpose. It confuses procedure with substance. A declaratory judgment is merely the procedure for deciding the substantive claim; the defending party commences the action and as such is not in a position to seek damages but merely ward off or protect itself from potential damages. However the substance of the arbitration action was clearly contractual in nature and such disputes are clearly within §16 of the Agreement, which provides, in part, that "all disputes, controversies or differences which may arise out of . . . this contract . . . shall be decided finally and binding . . . by a court of arbitration." It is generally held that this defense to enforcement of a foreign award must be construed narrowly and respondent must overcome "a powerful presumption that the arbitral body acted within its powers."

Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, 976 (2d Cir. 1974).

For these reasons respondent's fourth affirmative defense must also be dismissed.

E.

Fifth Affirmative Defense

Again respondent contends that the subject matter of the arbitration is not capable of settlement by arbitration because it contained antitrust issues. Again the Court emphasizes that only respondent perceives it to be so. The petitioner's action was based solely on contractual differences as stated in its complaint to the Arbitration Court. The trial court in respondent's antitrust case again held that the arbitration proceeding did not involve antitrust issues. Certainly some of the factual findings were common to both the contractual dispute and the antitrust claim. But that does not make the former "not capable of settlement by arbitration." Again quoting from Judge Feikens' opinion:

> ". . . the questions submitted to the Zurich court of arbitration were not in the nature of antitrust claims. That cause of action was bottomed on contract, and in the absence of allegations that the contract itself was intrinsically violative of the antitrust laws such actions are not preempted by this Court's exclusive authority over them." 375 F.Supp. at 518. (Emphasis added).

Therefore respondent's fifth affirmative defense is also dismissed as without merit.

F.

Sixth Affirmative Defense

Respondent contends that enforcement of this award would be contrary to public policy, but makes an insufficient showing of any contravention, particularly in the absence of a meritorious

antitrust resolution defense. This affirmative defense will also be dismissed.

G.

Seventh Affirmative Defense

Respondent contends that the arbitration panel applied Swiss law instead of German law as called for by the Agreement. Granted, the arbitration panel did employ Swiss procedural law. However, there has been no showing that determinations of substantive validity of the cause of action were not in accordance with German law. Article V (1)(a) upon which respondent's contention is based must be rationally interpreted as applying only to substantive law, not procedural law. Hence this affirmative defense is also without merit and will be dismissed.

H.

Eighth Affirmative Defense

Finally respondent contends that the petition did not comply with Article IV of the Convention, which requires that the original or a duly certified copy of (1) the agreement and (2) the arbitral award be attached to the petition. The respondent argues that only copies, and translated copies at that, are attached to the petition and that this does not meet the requirements of Article IV.

The Court must reject this contention. First by the respondent's attorney's own affidavit, he has viewed the originals of the required documents during the litigation in the antitrust suit. No question as to their accuracy or authenticity was then raised. He now avers that he has read the copies provided with the instant petition; again he raises no claim of any inconsistency between the copies provided herein and the originals.

The purpose of Article IV is both to provide notice of the relevant provisions of the Agreement and the Award to be confirmed and to provide some assurance as to their accuracy and authenticity. Where the affected party has previously viewed the originals of such documents and has satisfied himself as to their authenticity and subsequently viewed attached copies of such documents and is unable to dispute the accuracy of the contents of such copies, it would appear to this Court that the purpose of Article IV has been fulfilled and the respondent may not assert such technical deficiencies to defeat or delay confirmation of a valid award.

Having found there to be no meritorious defense under the Convention, the Court, pursuant to 9 U.S.C. §207 hereby grants the petitioner's motion and confirms the foreign arbitral award given to it by the Zurich arbitration court.

IT IS SO ORDERED.

Philip Pratt

PHILIP PRATT
United States District Judge

Dated: March 15, 1977
Detroit, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF THE ARBITRATION

between

AUDI NSU AUTO UNION AKTIENGESELLSCHAFT,

Petitioner,

vs. CIVIL ACTION

OVERSEAS MOTORS, INC. NO. 6-71054

Respondent.

JUDGMENT OF THE COURT

The Court being advised in the premises, and having considered the arguments of counsel, for the reasons discussed above,

NOW IT IS ORDERED that petitioner's Motion for Summary Judgment is granted and pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the petitioner's foreign arbitral award in this matter is hereby confirmed.

IT IS SO ORDERED.

Philip Pratt

PHILIP PRATT
United States District Judge

Dated: March 15, 1977

Detroit, Michigan

SOUTHERN DIVISION

AUDI NSU AUTO UNION

Plaintiff

vs. CIVIL NO. 6 71054

OVERSEAS MOTORS, INC.

Defendant

PROOF OF MAILING

UNITED STATES OF AMERICA)
) SS
EASTERN DISTRICT OF MICHIGAN)

Helen M. Ogger, being first duly sworn deposes and says that she is the Secretary to the Honorable Philip Pratt, United States District Judge for the Eastern District of Michigan, and while acting in such capacity did send a copy of the

MEMORANDUM OPINION & ORDER GRANTING PETITIONER'S MOTION TO DISMISS THE RESPONDENT'S COUNTERCLAIMS AND MOTION FOR SUMMARY JUDGMENT OF CONFIRMATION; JUDGMENT OF THE COURT; and PROOF OF MAILING

by enclosing the same in an envelope, with first class postage fully prepaid and depositing same in a United States Postal Service receptacle on the undersigned date, to the following persons:

Burt Burgoyne, Esq., 2000 First National Bldg., Detroit, MI 48226

Wilfred L. Burke, Esq., 505 Palms Bldg., Detroit, MI 48226

Helen M. Ogger
Helen M. Ogger
Secretary

Dated: March 16, 1977

Subscribed and sworn to before me
this 16th day of March, 1977.

Roy Luxton, Notary Public
Oakland County (Acting in Wayne Co.), Mich.
My Commission expires November 6, 1979