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TABLE OF CONTENTS

ARTICLES

CHALLENGES TO AN INTERNATIONAL ARBITRATION AWARD	<i>Lionel M. Schooler</i>	1
HACKED E-EVIDENCE IN ARBITRATION: ADMISSIBILITY & INFORMATION SECURITY	<i>Rania Alnaber</i>	6
GOVERNMENT BLOCKING OF SOCIAL MEDIA PLATFORMS AS EXPROPRIATION OF CONTRACTUAL RIGHTS	<i>Aram Aghababyan</i>	15
INTERNATIONAL COMMERCIAL ARBITRATION & TECHNOLOGY: AN AUTHORS' INTERVIEW WITH GENERATIVE ARTIFICIAL INTELLIGENCE	<i>Dr. Piotr Wiliński & Dr. Maciej Durbas</i>	46
HOW THE ARBITRAL PROCESS AFFECTS THE AVAILABILITY AND EFFECTIVENESS OF MONETARY AND NON-MONETARY RELIEF	<i>Julien Faucheux</i>	106

BOOK REVIEWS

BOOK REVIEW THE DILEMMA OF CONSENT TO INTERNATIONAL ARBITRATION IN INVESTMENT AGREEMENTS WITHOUT A FORUM BY FERNANDO TUPA	<i>Christina Beharry</i>	113
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CHALLENGES TO AN INTERNATIONAL ARBITRATION AWARD

by Lionel M. Schooler

I. INTRODUCTION

The United States Court of Appeals for the Tenth Circuit recently decided *Baker Hughes Services International, LLC v. Joshi Technologies International, Inc.*¹ This decision serves as a reminder of the scope of the subject matter jurisdiction of an American federal court to evaluate a challenge to an arbitral award in an international arbitration proceeding conducted under the auspices of the New York Convention.² It also highlights the boundaries within which such a challenge must be evaluated.

II. BACKGROUND FACTS

The *Baker Hughes Servs. Int’l* court characterized the underlying contractual dispute as straightforward.³ The parties to the agreement were Baker Hughes Services International, Inc. (“Baker Hughes”), and a consortium (known as the “Consortio Pesago”) consisting of Joshi Technologies International, Inc. (“Joshi”) and its partner, Campo Puma Oriente S.A (“Campo”) (collectively, the “Consortium”).⁴ Baker Hughes was contractually obligated to provide goods and services in connection with the Consortium’s development of oil and gas interests in Ecuador.⁵ The agreement in question contained an arbitration clause requiring resolution of any dispute through the Arbitration and Mediation Center of the Ecuadorian-American Chamber of Commerce.⁶

Baker Hughes was determined to have timely provided the goods and services requested, but no one in the Consortium paid for these.⁷ Baker Hughes then

¹ *Baker Hughes Servs. Int’l, LLC v. Joshi Techs. Int’l, Inc.*, 73 F.4th 1139 (10th Cir. 2023).

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards [hereinafter “New York Convention”], June 10, 1958, 330 U.N.T.S. 38, 7 I.L.M. 1046.

³ *Baker Hughes Servs. Int’l*, 73 F.4th at 1143.

⁴ *Id.* at 1142–43; *Baker Hughes Servs. Int’l, LLC v. Joshi Techs. Int’l, Inc.*, No. 20-CV-626-TCK-SH, 2021 WL 4005596 at *3 (N.D. Okla. Sept. 2, 2021), *aff’d*, 73 F.4th 1139 (10th Cir. 2023).

⁵ *Baker Hughes Servs. Int’l*, 73 F.4th at 1143.

⁶ *Id.*

⁷ *Id.*



submitted a claim to the arbitral authority in Ecuador specified above to recover the amount due.⁸ An arbitrator was appointed.⁹ The arbitrator then considered the documents and evidence and issued an award in favor of Baker Hughes.¹⁰

Pursuant to the New York Convention, Baker Hughes then moved to confirm the award in the United States District Court for the Northern District of Oklahoma.¹¹ Joshi challenged the jurisdiction of that court to consider the matter, and also moved to vacate the award, contending in part that it was not bound by the terms of the agreement.¹² Holding that such matters were substantive matters resolved by the arbitral authority, the District Court rejected those challenges and confirmed the award.¹³

III. JURISDICTIONAL CHALLENGE

On appeal, the *Baker Hughes Servs. Int'l* court first addressed the jurisdictional issue raised by Joshi, focusing upon the procedural requirements for confirmation contained in Article IV of the New York Convention, as well as the substantive requirements under the New York Convention.¹⁴ Article IV generally requires submission of a duly authenticated award, together with the original agreement.¹⁵ Article IV further requires that if the award is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement is required to produce a certified translation of the documents into such language.¹⁶

In invoking Article IV as support for its jurisdictional challenge, Joshi contended that while the original award had been rendered by the arbitrator in Spanish, Baker

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 1143–44.

¹¹ *Baker Hughes Servs. Int'l*, 2021 WL 4005596 at *3.

¹² *Id.* at *2–3.

¹³ *Id.* at *5.

¹⁴ *Baker Hughes Servs. Int'l*, 73 F.4th at 1143.

¹⁵ New York Convention, *supra* note 2, at art. IV.

¹⁶ *Id.*



Hughes had only provided English translations of the agreement and the award to the district court in Oklahoma.¹⁷

The *Baker Hughes Servs. Int'l* court rejected this jurisdictional challenge, declining to ascribe jurisdictional relevance to Article IV.¹⁸ Instead, the court focused upon 9 U.S.C. § 203 as the Congressional pronouncement vesting federal courts with jurisdiction for matters “falling under the Convention.”¹⁹ It then turned to 9 U.S.C. § 202 for Congress’ definition of that phrase, and determined that section 202 allocates subject matter jurisdiction to a matter arising out of a commercial legal relationship in situations involving disputes between a U.S. citizen and a citizen of another country, where performance of the agreement occurs abroad.²⁰

Applying these provisions, the court decided that nothing in the Congressional standard imposed any jurisdictional requirement on a federal court arising from the New York Convention’s procedural rules.²¹ It therefore held that Article IV contained no jurisdictional component disqualifying the lower court from evaluating the merits of the award.²²

IV. AGREEMENT TO ARBITRATE

The *Baker Hughes Servs. Int'l* court next focused upon Joshi’s contention that the district court erred by deferring to the arbitrator’s conclusion that the Parties had agreed to arbitrate their dispute.²³ Joshi’s challenge here was that no valid arbitration agreement ever existed between Baker Hughes and Joshi because neither of them had signed the document containing the arbitration clause.²⁴

To review this contention, the court turned to the enumerated defenses contained in the New York Convention, initially noting that an award challenger (such

¹⁷ *Baker Hughes Servs. Int'l*, 73 F.4th at 1144–45.

¹⁸ *Id.* at 1145.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 1146.

²² *Id.*

²³ *Id.*

²⁴ *Id.*



as Joshi) bears a heavy burden because such defenses are construed “narrowly to encourage recognition and enforcement of commercial arbitration agreements in international contracts.”²⁵ The court then focused upon the specific defense identified in Article V(2)(a) raised here, which allows a court to refuse to recognize a foreign arbitral award if the subject matter of the dispute is not capable of settlement by arbitration under the law of the country where enforcement is sought.²⁶

The court first acknowledged that Joshi itself did not sign the agreement in question.²⁷ The court nevertheless noted that Campo—the other entity that compromised the Consortium—signed the agreement on behalf of the Consortium (i.e., on behalf of both Campo and Joshi).²⁸ Reviewing the facts underlying the relationship between Joshi, Campo, and the Consortium, the court determined that Campo and Joshi had agreed in writing to be jointly responsible for all obligations under the agreement.²⁹ It, therefore, rejected the Article V(2)(a) defense invoked by Joshi.³⁰

V. PROPER IDENTIFICATION OF ENTITY IN THE AWARD

Further, the court rejected Joshi’s objection that an incorrect entity was awarded the amount in question, premised upon the assertion that the agreement referred to Baker Hughes, Inc., whereas the award referred to Baker Hughes, LLC.³¹ Acknowledging that the party pursuing arbitration had been identified in two different ways, the court nevertheless focused upon the reality of the transaction, that is, the undisputed fact that the Consortium had willingly accepted goods and services from the supplier and then refused to pay for them.³² It declined to allow Joshi to prevail on the claim that the Consortium had never formed a binding

²⁵ *Id.*

²⁶ *Id.* at 1146–47.

²⁷ *Id.* at 1147.

²⁸ *Id.*

²⁹ *Id.* (noting that “[Joshi]’s name does not have to appear on the [agreement] for it to bind [Joshi]”).

³⁰ *Id.*

³¹ *Id.*

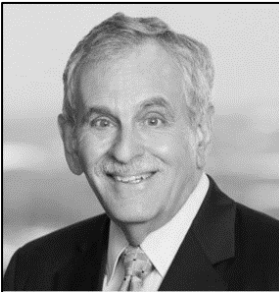
³² *Id.* at 1147–48.



agreement with the named Baker Hughes entity, determining that the dispute in question was, per the explicit requirements of applicable law, capable of settlement under American law.³³ It further held that the district court had no power to correct any mistake in the name of the appropriate party by the Ecuadorian arbitrator.³⁴ To the court, an arbitrator's mistake, even manifest disregard of controlling law, could not provide a basis for a domestic court to set aside a foreign jurisdiction's award.³⁵

VI. CONCLUSION

The decision in *Baker Hughes Servs. Int'l* highlights the importance of proper drafting of an agreement containing an arbitration clause. It further highlights the need for practitioners to focus carefully upon contractual requirements and available award support and defenses under the New York Convention when enforcing or responding to claims arising from arbitration agreements involving transactions within the scope of the New York Convention.



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³³ *Id.* at 1148.

³⁴ *Id.*

³⁵ *Id.* There were two ancillary rulings by the *Baker Hughes Servs. Int'l* court having to do with the award of attorney's fees and interest to Baker Hughes as the prevailing party. *Id.* Based on the explicit wording in the agreement authorizing recovery of professional legal fees, the Court determined that the fee award would be affirmed. *Id.* at 1148-49. However, the Court vacated the award of interest to Baker Hughes to permit the district court to re-calculate the appropriate amount based upon the applicable rate. *Id.* at 1149.

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TABLE OF CONTENTS

ARTICLES

CHALLENGES TO AN INTERNATIONAL ARBITRATION AWARD	<i>Lionel M. Schooler</i>
HACKED E-EVIDENCE IN ARBITRATION: ADMISSIBILITY & INFORMATION SECURITY	<i>Rania Alnaber</i>
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HOW THE ARBITRAL PROCESS AFFECTS THE AVAILABILITY AND EFFECTIVENESS OF MONETARY AND NON-MONETARY RELIEF	<i>Julien Faucheux</i>

BOOK REVIEW

THE DILEMMA OF CONSENT TO INTERNATIONAL ARBITRATION IN INVESTMENT AGREEMENTS WITHOUT A FORUM, BY FERNANDO TUPA	<i>Denise E. Peterson, FCI Arb</i>
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