

CITATION: InFrontier AF LP v. Rahmani, 2025 ONSC 3968
COURT FILE NO.: CV-24-00727305-00CL
DATE: 20250703

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: InFrontier AF LP, Applicant

AND:

Roen Rahmani, Respondent

BEFORE: Cavanagh J.

COUNSEL: *Michael D. Schafler and Ekin Cinar*, counsel, for InFrontier AF LP, the Applicant
Eric Morgan, counsel for Roen Rahmani, the Respondent

HEARD: March 19, 2025

ENDORSEMENT

Introduction

[1] The Applicant, InFrontier AF LP (“InFrontier”), makes an application for an order recognizing and enforcing an arbitral award dated August 2, 2024, issued by arbitrator Antonia Birt (the “Arbitrator”) in the matter of Arbitration No. 230078 under the Rules of the Dubai International Arbitration Centre 2022 (“the Award”). The Award is in favour of InFrontier.

[2] The Respondent, Roen Rahmani opposes InFrontier’s application and requests that it be dismissed.

[3] For the following reasons, I grant InFrontier’s application.

Background facts

[4] Mr. Rahmani resides in Woodbridge, Ontario. He is the founder of a university and several schools in Afghanistan, including the Kardan School and the Kardan School for Girls (the “Schools”).

[5] InFrontier is a for-profit, private equity firm based in the UK.

[6] On September 10, 2020, the Kardan School and the Kardan Girls Private School (the “Schools”) executed a Term Loan Agreement with InFrontier (the “Loan Agreement”). Mr. Rahmani was the Schools’ guarantor.

[7] The Loan Agreement contains an arbitration agreement which provides for arbitration of any dispute arising out of the Loan Agreement under the Rules of Arbitration of the Dubai International Finance Centre – London Court of International Arbitration by one or more arbitrators appointed in accordance with said rules.

[8] InFrontier’s position is that on or about December 15, 2022, the Schools defaulted on the Loan Agreement. On February 10, 2023, InFrontier filed a Request for Arbitration with the Dubai International Arbitration Centre (“DIAC”) naming the Schools and Mr. Rahmani as respondents. I refer to the arbitration as the “Arbitration”.

[9] The seat of the Arbitration was the Dubai International Finance Centre (“DIFC”), a common law jurisdiction within the United Arab Emirates (“UAE”) with its own legal system and procedural rules distinct from the UAE’s federal civil law system. The Arbitration was conducted under the arbitration rules of the DIAC (the “DIAC Arbitration Rules”).

[10] Mr. Rahmani objected to the jurisdiction of the Arbitrator under the DIAC Arbitration Rules. The Arbitrator denied the Arbitration Respondents’ procedural objections for reasons given in the Final Award dated August 2, 2024 (the “Award”) at paragraphs 96-110.

[11] The Arbitrator concluded that the Schools had breached the Loan Agreement and that Mr. Rahmani was liable as guarantor. Pursuant to the Award, the Arbitrator:

- (a) found that she had jurisdiction over the dispute,
- (b) directed Mr. Rahmani to pay to InFrontier the sums of US\$2,500,000 (principal), US\$246,472 (interest), US\$70,613.42 (penalties), and AED 265,310 (costs),
- (c) denied all other claims, and
- (d) found that the Award was binding with immediate effect under Article 34.2 of the DIAC Arbitration Rules.

Analysis

[12] The *International Commercial Arbitration Act, 2017*, S.O. 2017, c.2, Sch 5 provides in s. 2(1):

Subject to this Act, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958 and set out in Schedule 1, has force of law in Ontario in relation to arbitral awards or arbitration agreements in respect of differences arising out of commercial legal relationships.

[13] I refer to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York

on 10 June 1958 as the “New York Convention”. Both Canada and the DIFC are parties to the New York Convention and it applies to the issues raised on this application.

[14] The question on this application is whether the Award should be recognized and enforced pursuant to the New York Convention.

[15] Mr. Rahmani submits that this Court should not recognize and enforce the Order because:

- (a) the composition of the tribunal and the arbitration procedure was not in accordance with the agreement of the parties;
- (b) the arbitration was conducted in such a manner that Mr. Rahmani was unable to present his case; and/or
- (c) recognition and enforcement of the Award would be contrary to public policy principles applicable in Ontario.

Should recognition and enforcement of the Award be refused because the composition of the tribunal and the arbitration procedure was not in accordance with the agreement of the parties?

[16] Article V 1(d) of the New York Convention provides that “[r]ecognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that ... (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ...”.

[17] The Loan Agreement provides at section 22.2

22.2 Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof shall be finally settled by arbitration to be held in Dubai International Financial Centre [“DIFC”], United Arab Emirates under the Rules of Arbitration of the DIFC-LCIA, by one or more arbitrators appointed in accordance with said rules, and judgement [sic] upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

[18] The Loan Agreement specifies the seat of the arbitration (the DIFC) and the rules of arbitration (the Rules of Arbitration of the DIFC-LCIA). The Loan Agreement specifies that the arbitrator or arbitrators are to be appointed in accordance with said rules. The Loan Agreement does not specify the institute that will administer the arbitration.

[19] Mr. Rahmani submits that this Court should not recognize and enforce the Award because (i) the Arbitration was not conducted in accordance with the arbitration rules expressly agreed to by the parties in the Loan Agreement (the DIFC-LCIA Arbitration Rules), and (ii) the Arbitrator was not appointed pursuant to those rules.

[20] InFrontier submits that Mr. Rahmani's position with respect to this issue misapprehends the effect of a DIFC law made in September 2021 when the Dubai government issued Decree No. (34) Concerning the Dubai International Arbitration Centre (the "Decree"). I refer to this law as the "Decree".

[21] InFrontier submits that the effect of the Decree is to affirm any existing arbitration agreements (such as the one in the Loan Agreement) but to replace the DIFC-LCIA Arbitration Rules in arbitration agreements with the DIAC Arbitration Rules in respect of any new arbitrations commenced after March 21, 2022 (when the new DIAC Arbitration Rules became effective), subject to the parties' right to agree otherwise. The Arbitration commenced after March 21, 2022.

[22] Mr. Rahmani disagrees. He submits that the law of the seat of the arbitration is not relevant for an analysis under Article V.1(d) of the New York Convention where the Court's role is simply to determine whether an award was made in accordance with the parties' arbitration agreement. Mr. Rahmani submits that the parties to the Loan Agreement agreed on the arbitral tribunal (to be appointed under the DIFC-LCIA Arbitration Rules) and the procedural rules that would apply (the DIFC-LCIA Arbitration Rules). He submits that the Decree plainly provides that after it was made, the parties' arbitration agreement continues to be valid.

[23] Mr. Rahmani submits that there is an important distinction to be drawn between arbitral administrative services and the procedural rules that apply in an arbitration. He submits that the Decree altered the institution that would administer arbitrations, but it did not change the parties' choice as to the procedural rules that would apply to these arbitrations. Mr. Rahmani submits that the Decree does not have the effect of changing the Loan Agreement by which the parties agreed that a dispute shall be finally settled by arbitration under the DIFC-LCIA Arbitration Rules.

[24] Mr. Rahmani submits that by showing the Arbitrator was appointed under the DIAC Arbitration Rules and the Arbitration was conducted under the DIAC Arbitration Rules, he has furnished proof, as required by the New York Convention, that the composition of the arbitral authority and the arbitral procedure were not in accordance with the agreement of the parties.

[25] In order to determine whether the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, I must determine what their agreement provides for in these respects. To do so, I refer to the DIFC-LCIA Arbitration Rules that are expressly referenced in section 22.2 of the Loan Agreement as being the rules applicable to the appointment of one or more arbitrators and as being the applicable procedural rules to an arbitration.

[26] The DIFC-LCIA Arbitration Rules provide in Article 16.5 that the DIFC-LCIA Arbitration Rules shall be interpreted in accordance with the laws of England and Wales. No evidence was tendered on this application of the law of England and Wales. I apply the law of Canada with respect to the interpretation of the DIFC-LCIA Arbitration Rules that are referenced in section 22.2 of the Loan Agreement.

[27] In support of this application, InFrontier tendered the affidavit of Ibrahim Kamal, a Dubai lawyer who represented InFrontier in the arbitration. I refer to his evidence concerning how the DIFC-LCIA Arbitration Rules came into effect.

[28] Mr. Kamal's evidence is that the DIFC Arbitration Institute (an arbitration institution in the DIFC that was regulated by laws in force in the DIFC) and the London Court of International Arbitration ("LCIA") made a partnership and created a new arbitration institution in the DIFC. This arbitration institution, the DIFC-LCIA Arbitration Centre, adopted a set of arbitration rules based on the rules of the LCIA. These rules of arbitration, effective January 2021 (the "DIFC-LCIA Arbitration Rules"), are in the application materials as an exhibit to Mr. Kamal's cross-examination. These are the rules of arbitration referenced in the Loan Agreement as applying to an arbitration pursuant to that agreement.

[29] The DIFC-LCIA Arbitration Rules provide in their Preamble:

Preamble

Where any agreement, submission or reference howsoever made or evidenced in writing (whether signed or not) provides in whatsoever manner for arbitration under the rules of or by the DIFC-LCIA Arbitration Centre or DIFC-LCIA, the parties thereto shall be taken to have agreed in writing that any arbitration between them shall be conducted in accordance with the Rules of Arbitration of the DIFC-LCIA Arbitration Centre as set forth below or such amended version of those rules as the DIFC-LCIA Arbitration Centre may have adopted hereafter to take effect before the commencement of the arbitration and that such Rules of Arbitration form part of their agreement (collectively, the "Arbitration Agreement"). These Rules of Arbitration of the DIFC-LCIA Arbitration Centre comprise this Preamble, the Articles and the Index, together with the Annex and the Schedule of Arbitration Costs as from time to time may be separately amended by the DIFC-LCIA Arbitration Centre (the "DIFC-LCIA Rules").

[30] Through their agreement in the Loan Agreement to the application of the DIFC-LCIA Arbitration Rules, InFrontier and Mr. Rahmani agreed that they shall be taken to have agreed in writing that any arbitration shall be conducted in accordance with such rules or, importantly, "such amended version of those rules as the DIFC-LCIA Arbitration Centre may have adopted hereafter to take effect before the commencement of the arbitration and that such Rules of Arbitration form part of their agreement (collectively, the "Arbitration Agreement")".

[31] The question before me is whether, through the Decree, the DIAC Arbitration Rules became an "amended version" of the DIFC-LCIA Arbitration Rules to take effect before the commencement of the Arbitration, such that the parties to the Arbitration "shall be taken to have agreed in writing that any arbitration shall be conducted in accordance with such rules".

[32] To address the effect of the Decree on the arbitration rules to be applied in an arbitration under the Loan Agreement, I first review the background leading to the Decree.

[33] In 2008, the DIFC enacted legislation governing arbitrations seated in the DIFC. The Arbitration Law (DIFC Law No. 1 of 2008) applies to arbitrations in the DIFC and is attached as an exhibit to the affidavit of Mr. Kamal. The DIFC Arbitration Law, according to Mr. Kamal's evidence, provides the procedural framework for arbitration proceedings, including the powers of the tribunal, procedural rules, and grounds for setting aside awards.

[34] In September 2021, the Dubai government issued the Decree. Pursuant to Article (4)2 of the Decree, the DIFC Arbitration Institute is abolished. Under the Decree, all rights and obligations of the DIFC Arbitration Institute are transferred to the Dubai International Arbitration Centre ("DIAC"), an arbitration institution which was established in 2004 pursuant to another Dubai government decree.

[35] The Decree provides in Article (6)a :

All agreements to resort to arbitration at the [DIFC Arbitration Institute], concluded by the effective date of this Decree, are hereby deemed valid. The DIAC will replace the [DIFC Arbitration Institute] in considering and determining all Disputes arising out of said agreements unless otherwise agreed by the parties thereto.

[36] This provision of the Decree addresses the validity of agreements to resort to arbitration and the replacement of the DIFC Arbitration Institute with the DIAC as the institution considering and determining all Disputes arising out of such agreements.

[37] Mr. Rahmani accepts that the Decree altered the institution that would administer arbitrations. He submits that the Decree did not change the parties' choice as to the procedural rules that would apply to these arbitrations. Section 22.2 of the Loan Agreement does not identify an arbitration institution, so the Decree did not alter the institution that would administer the Arbitration.

[38] The Decree also provides in article (8)c:

The rules of arbitration and conciliation adopted by the [DIFC Arbitration Institute] and the DIAC, including the rules of arbitration and conciliation approved pursuant to the above-mentioned Decree No. (11) of 2007, will continue in force to the extent that they do not contradict the provisions of this Decree and the Statute attached hereto, until the new DIAC rules of arbitration and conciliation are approved by the Board of Directors of the DIAC.

[39] The DIAC and the LCIA issued a joint press release dated March 29, 2022 by which they announced that they have agreed on terms consistent with Decree No. (34) by which the LCIA will administer all existing DIFC-LCIA cases from London. These institutions announced that all arbitrations referring to the rules of the DIFC-LCIA commenced on or after 21 March 2022 shall be registered by DIAC and administered directly by its administrative body in accordance with the respective rules of procedure of DIAC through DIAC's own case management systems, unless otherwise agreed by the parties.

[40] The new DIAC arbitration rules (the “DIAC Arbitration Rules”) were approved at a meeting of DIAC’s Board of Directors on February 25, 2022 and came into effect as of March 21, 2022. This is shown in the text of the new DIAC Arbitration Rules which are appended as an exhibit to Mr. Kamal’s affidavit.

[41] The Decree expressly addresses the DIFC-LCIA Arbitration Rules in arbitration agreements. The Decree provides in Article (8)c. that the rules of arbitration adopted by the DIFC Arbitration Institute (the DIFC-LCIA Arbitration Rules) will continue in force “until the new DIAC rules of arbitration and conciliation are approved by the Board of Directors of the DIAC”. The clear implication from this language is that the DIFC-LCIA Arbitration Rules will not continue in force after the time that the new DIAC Rules come into effect. This was on March 21, 2022.

[42] Mr. Rahmani accepts that the Preamble to the DIFC-LCIA Rules contemplates that there may be an “amended version” of these rules to which the parties shall be taken to have agreed in writing. He submits that such an “amended version” could only become effective by adoption of amended rules by the DIFC-LCIA Arbitration Centre, as stated in the Preamble. He submits that the promulgation of the Decree, a law of the DIFC, does not constitute adoption by the DIFC-LCIA Arbitration Centre of an amended version of the DIFC-LCIA Arbitration Rules.

[43] The DIFC-LCIA Arbitration Centre, an arbitration institution, is subject to the laws of the DIFC with respect to arbitrations seated in the DIFC.

[44] The parties did not provide evidence of the law of the DIFC with respect to the interpretative rules that apply to interpretation of its written laws. Accordingly, I follow principles of Canadian law with respect to interpretation of the Decree.

[45] When I give Article (8)c of the Decree a purposive interpretation, I conclude that the interpretation of this law that will best ensure its object is that the government of the DIFC intended, through the Decree, to replace the DIFC-LCIA Arbitration Rules adopted by the DIFC-LCIA Arbitration Centre, an arbitration institution subject to the laws of the DIFC, with a new version of arbitration rules, the DIAC Arbitration Rules, provided that the adoption of this new version of the DIFC-LCIA Arbitration Rules, although made at the time of the Decree, would become effective when the new DIAC Arbitration Rules became effective.

[46] Through Article (8)c, the Decree changed the rules of arbitration that were adopted by the DIFC-LCIA Arbitration Centre and substituted a new version of the DIFC-LCIA Arbitration Rules, which were the new DIAC Arbitration Rules.

[47] By force of the Decree, the DIAC Arbitration Rules, once they were effective on March 21, 2022, became an amended version of the DIFC-LCIA Arbitration Rules and, therefore, as provided for in the Preamble, the parties to the Loan Agreement are taken to have agreed that any arbitration between them shall be conducted in accordance with the DIAC Arbitration Rules.

[48] After the Decree, the parties to the Loan Agreement were free to agree that instead of the DIAC Arbitration Rules (which had become the “amended version” of the DIFC-LCIA Arbitration Rules), the original version of the DIFC-LCIA Arbitration Rules, or any other set of arbitration

rules, would apply to an arbitration under the Loan Agreement. This is provided for in the DIFC Arbitration Law, at Article 26(1), which provides that “[s]ubject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings”.

[49] The DIAC Arbitration Rules also confirm that the parties are free to agree on a different set of arbitration rules. Section 2.3 provides that the DIAC Arbitration Rules shall apply to arbitrations which commence after the date on which they came into force regardless of the date on which the underlying agreement to arbitrate was entered into, “unless the parties agree otherwise”.

[50] The parties to the Loan Agreement did not make any such agreement after the Decree.

[51] For these reasons, I conclude that Mr. Rahmani has not furnished proof that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties. I decline to refuse to recognize and enforce the Award under Article V.1(d) of the New York Convention.

[52] Mr. Rahmani submits that the DIAC Rules and the DIFC-LCIA Rules are materially different. He submits that the selection of the DIFC-LCIA Arbitration Rules was important to him, and the Arbitrator, by incorrectly applying the DIAC Arbitration Rules, made an error that should result in the Award not being recognized or enforced.

[53] Because I have concluded that the Arbitrator correctly applied the DIAC Arbitration Rules, which were the “revised version” of the agreed upon rules of arbitration, it is not necessary for me to decide whether the two sets of rules are materially different.

[54] I do not accept InFrontier’s alternative submission that Mr. Rahmani failed to submit to the Arbitrator the jurisdictional objection he is making to this Court or that he failed to raise this objection in his responding application material. I do not accept that Mr. Rahmani is estopped from raising this objection to recognition or enforcement of the Award, or that his objection is somehow an abuse of process.

Should recognition and enforcement of the Award be denied because the Award is contrary to public policy?

[55] Article V. 2(b) of the New York Convention provides the recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that “(b) The recognition or enforcement of the award would be contrary to the public policy of that country”.

[56] Mr. Rahmani submits that recognition and enforcement of the Award should be denied under Article V.2(b) of the New York Convention because the Award is contrary to the public policy of Ontario.

[57] Mr. Rahmani submits that the Award was obtained through the Arbitrator's incorrect application of procedural rules to which the parties did not agree. He submits that recognition and enforcement of the award in these circumstances would offend the public policy of Ontario.

[58] Mr. Rahmani has not shown that the Award was obtained through the Arbitrator's incorrect application of procedural rules to which the parties did not agree.

[59] Mr. Rahmani submits that the Award is also contrary to public policy because it depends on the effect of the Decree which purports to retroactively amend an arbitration agreement without the consent of the parties.

[60] The Decree does not amend an arbitration agreement without the consent of the parties. Pursuant to the Decree, a revised version of the arbitration rules became effective, as the parties agreed might occur and, if it did, the revised version would apply. Mr. Rahmani has not shown that the Decree operates in a way that is contrary to the public policy of Ontario.

Should recognition and enforcement of the Award be refused because the Arbitrator did not give Mr. Rahmani a fair hearing?

[61] Mr. Rahmani submits that this Court should refuse to recognize or enforce the Award because the Arbitrator did not allow him and the Schools a fair hearing and, as a result, he was unable to present his case.

[62] The procedural history of the arbitration is set out in the Award. On February 2, 2023, InFrontier delivered a notice of default to the Schools and Mr. Rahmani. On May 11, 2023, InFrontier delivered a notice of arbitration. On November 18, 2023, the DIAC appointed a sole arbitrator. InFrontier's Statement of Claim was delivered on January 18, 2024. The arbitration hearing was conducted on April 26, 2024. The Arbitrator issued the Award on August 2, 2024.

[63] Mr. Rahmani submits that he was denied a fair hearing because the Arbitrator rushed the process without giving proper consideration to the Taliban takeover of Afghanistan as having a significant effect on the arbitration proceeding. Mr. Rahmani submits that the arbitration proceeding took place over an unduly compressed time period, particularly between delivery of InFrontier's Statement of Claim and the hearing.

[64] Mr. Rahmani submits that because of the constrained time periods imposed by the Arbitrator, he was unable to retain legal counsel for himself or the Schools and was required to represent himself and the Schools without the benefit of counsel.

[65] In the Award, the Arbitrator described the procedural history of the arbitration, including her Procedural Order No. 1 which was made after allowing the parties to attend a preliminary meeting and provide comments on the terms of this procedural order. The Arbitrator refers to Mr. Rahmani's request on February 21, 2024 for a five-week extension to the filing of the Statement of Defence and Counterclaim, jurisdictional objections, including any documentary evidence and any witness evidence relied on, which were due the following day on 22 February 2024. The Arbitrator referenced her decision denying this request and giving reasons for this decision. On February 23, 2024, the Respondents to the Arbitration submitted their Statement of Defence and

jurisdictional objections. The Arbitrator describes in the Award the other procedural steps leading up to the hearing.

[66] Mr. Rahmani complains about what he describes as a compressed schedule for the arbitration. I do not agree that the procedural steps were unfairly compressed. The Arbitrator invited the parties to provide submissions about her procedural rulings, and she gave reasons in the Award explaining her rulings. The Arbitrator explains in the Award the procedural history regarding representation of the Schools, including issues regarding representation by a purported legal representative. Mr. Rahmani has not shown that he was denied a fair hearing because of the time constraints imposed by the Arbitrator.

[67] Mr. Rahmani submits that because the Arbitrator applied the wrong procedural rules and limited the time for the arbitration, he was denied the opportunity to obtain disclosure of documents regarding the identities of the funders behind InFrontier and whether InFrontier was authorized to bring the arbitration.

[68] The Arbitrator set out in the Award the procedural history regarding document disclosure. The Arbitrator wrote that in her ruling, she was guided by the requirement that documents should be relevant to the case and material to its outcome. The Arbitrator concluded that the requested documents are not relevant to the case or material to its outcome because they do not impact any cause of action which is required to be determined in the arbitration proceedings.

[69] I do not accept Mr. Rahmani's submission that he was denied procedural fairness in the arbitration proceeding. Mr. Rahmani has not shown that the procedure was unfairly compressed. He has not shown that there was unfairness in how the Arbitrator decided issues in relation to legal representation. He has not shown that he was unfairly denied access to relevant documents.

[70] I conclude that Mr. Rahmani has failed to establish that recognition and enforcement of the Award should be denied because he was denied procedural fairness by the Arbitrator.

Disposition

[71] For these reasons, I grant InFrontier's application and make an order that the Award is recognized and enforced. I ask counsel to provide me with an approved form of Order to be issued.

[72] If the parties are unable to resolve costs, they may make written submissions in accordance with a timetable to be agreed upon by counsel (with reasonable page limits) and approved by me.

Cavanagh J.

Date: July 3, 2025