

CA on appeal from John Griffiths Williams QC, sitting as a Deputy Judge of the Queen's Bench Division before Saville LJ; Brooke LJ. 18th February 1997.

LORD JUSTICE SAVILLE: On 13th September 1995 the plaintiffs obtained two arbitration awards in their favour in Switzerland. The awards are New York Convention Awards, and in due course in December 1995 Master Murray made an order giving the plaintiffs leave to enforce the awards under section 3(1)(a) of the Arbitration Act 1975 and to enter judgment in terms of the awards. At the beginning of 1996 the defendants issued a summons to set aside that order. In November 1996 the summons was dismissed. The defendants appealed and the appeal came before John Griffiths Williams QC, sitting as a Deputy Judge of the Queen's Bench Division. The Deputy Judge dismissed the appeal. On 17th February the reasons for that dismissal were handed down by the judge, who refused leave to appeal and further refused a stay of execution pending an application to this court for leave to appeal.

Before us today Mr Cole on behalf of the defendants is not seeking to apply for leave to appeal so much as applying for a stay pending an application for leave to appeal, but he accepted, in my view wholly rightly, that the court would not be minded to grant a stay pending an application for leave to appeal unless persuaded that there are at least some merits in that proposed application.

It has throughout the case been the defendant's contention that they can bring themselves within the second part of section 5(3) of the Arbitration Act 1975. That subsection reads as follows: "*Enforcement of a Convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or*" -- and these are the words that matter in the present case -- "*if it would be contrary to public policy to enforce the award.*"

Mr Cole's case is not that the award itself is procured by fraud but that the surrounding circumstances as they now have become known are such as to enable it to be said that the awards are either tainted by fraud or likely to be tainted by fraud. He makes the latter submission on the basis that there is already sufficient material for him to be able to say that given a short further period of perhaps some months, the likelihood is that yet further material will come forward to support this case of tainting.

In essence his case is this, that it is contrary to English public policy and within the meaning of "*public policy*" in the subsection to which I have referred, for the courts of this country to enforce these awards as judgments where there is a prospect that evidence will become available which will cast doubt on the credibility of witnesses called on behalf of the claimants in the arbitration and indeed will taint the entire claims made in the arbitration by the plaintiffs in this case. There is at present, Mr Cole submits, some evidence to support this allegation and a likelihood that there will be further evidence.

These submissions and a number of other arguments were undoubtedly addressed to the judge. I have read the judgment and I have listened to Mr Cole's submissions this afternoon in relation to that judgment. It seems to me, if I may say so with respect, that the judge properly applied the law relating to public policy and the enforcement of arbitration awards and properly directed himself as to the correct tests to apply with regard to this question of enforcement of convention awards as judgments in this country. I can find no fault with his judgment. More importantly perhaps, I can find no fault with the exercise of the judge's discretion. As I pointed out to Mr Cole in the course of the argument, even if one makes virtually all the assumptions in favour of his clients that he asks the court to make -- and the judge indeed in his judgment made those assumption -- nevertheless, for the reasons the judge gave, he was not minded to exercise his discretion in favour of the defendants.

Mr Cole has, despite his valiant efforts, totally failed to persuade me that there is any ground whatsoever on which this court could possibly interfere with that discretion exercised by the judge. Mr Cole agreed that his task would have to be to persuade this court that no judge properly directing himself as to the law could, and indeed on the material before him should, have exercised his discretion in way in which he did. In my view that is a hopeless task. Not only do I think the task has failed, but my own view is that the judge exercised his discretion in a perfectly correct way which I myself would respectfully adopt as my own. For those reasons I would refuse this application.

LORD JUSTICE BROOKE: I agree.

ORDER: Application dismissed; leave given to withdraw the application for leave to appeal; defendants to pay plaintiffs' costs on an indemnity basis.

MR J COLE (instructed by Messrs Arturo Barone, London) appeared on behalf of the Applicant.
MR J ONIONS (instructed by Messrs Clifford Chance, London) appeared on behalf of the Respondent.