

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *China CITIC Bank Corporation Limited v.  
Yan,*  
2017 BCSC 596

Date: 20170221  
Docket: S165830  
Registry: Vancouver

Between:

**China CITIC Bank Corporation Limited**

Plaintiff

And

**Shibiao Yan**

Defendant

Before: The Honourable Madam Justice Fitzpatrick

## **Oral Reasons for Judgment**

Counsel for the Plaintiff:

K. Leung

Counsel for the Defendant:

No Appearance

Place and Date of Trial/Hearing:

Vancouver, B.C.  
February 21, 2017

Place and Date of Judgment:

Vancouver, B.C.  
February 21, 2017

[1] **THE COURT:** This is a petition proceeding brought by the petitioner, China CITIC Bank Corporation Limited (the "Bank") against the respondent, Shibiao Yan. CITIC seeks to recognize an arbitration award of the Shijiazhuang Arbitration Committee dated March 17, 2016 ("the Award").

[2] By way of preliminary comments, I will address the matter of service. It appears that Mr. Yan has been represented in this proceeding for a significant period of time prior to today's date through the law firm of Singleton Urquhart. This petition was filed on August 31, 2016, and there is no doubt that the petition materials were provided to Singleton Urquhart in accordance with the *Rules*.

[3] However, recently on February 14, 2017, Mr. Yan filed a notice of intention to act in person and indicated his address for service at 712 West 64th Avenue, Vancouver, B.C. That notice, of course, was forwarded to the Bank's counsel. From time to time, the Bank's counsel has forwarded materials to Singleton Urquhart and then directly to Mr. Yan. In particular, a letter was couriered to Mr. Yan's address on West 64th Avenue on February 17, 2017, enclosing the petition record and the Bank's written argument.

[4] I am advised by Mr. Leung, the Bank's counsel, that he has heard nothing from Mr. Yan concerning this matter arising from the petition materials which were served and the express notice to Mr. Yan that the petition was going to be heard on today's date. In addition, although this matter is being heard mid-afternoon, Mr. Yan has yet to appear in the Courthouse, despite numerous attempts having been made by court staff to page him to make him aware that the matter is proceeding in this particular courtroom.

[5] Accordingly, I am satisfied that, on the basis of the materials filed, the affidavit of service and submissions of the Bank's counsel, Mr. Yan had received appropriate notice in respect of this proceeding and this application in particular and that the court is in a position to proceed notwithstanding his failure to attend.

[6] Turning to the substance of the application, Mr. Leung has taken me through the background facts arising from the petition.

[7] Briefly, Mr. Yan's company, Tanyuan Wood Business Co. Ltd., borrowed a substantial amount of Chinese funds (RMB 50,000,000) from the Bank in June 2014. Mr. Yan guaranteed the loan from the Bank. When the loan became due one year later in June 2015, it was not paid. As a result, the Bank commenced proceedings in China to collect the debt not only from the company, as the principal debtor, but also from Mr. Yan under his guarantee.

[8] The loan documents signed in favour of the Bank provided for an arbitration of disputes. Accordingly, in July 2015, the Bank initiated proceedings before the Shijiazhuang Arbitration Committee in accordance with rules in place as they apply to that entity. That arbitration proceeding appears to have taken place throughout 2015 and included the Shijiazhuang Arbitration Committee providing various notices to Mr. Yan, either directly or by publication of the fact of the proceedings and his right to participate. On March 17, 2016, the Shijiazhuang Arbitration Committee issued the Award against Mr. Yan requiring that he repay in excess of RMB 52,000,000. As stated, the Bank seeks to enforce the Award on this application.

[9] Mr. Leung has also drawn my attention to the statutory basis on which this application is brought, namely the *Foreign Arbitral Awards Act*, R.S.B.C. 1996, c. 154. That *Act* provides in Article III of the Convention (which is adopted by the *Act*), that British Columbia courts are required to recognize arbitral awards, save and except in accordance with Article V. Article V provides that the person who is the subject of an application to enforce an arbitration award has the opportunity of providing proof to this court that various matters have occurred by which this court may choose to refuse to recognize the arbitration award.

[10] China is a signatory to what is called the New York Convention, i.e., the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as is British Columbia. The mandatory nature of the application, save where the exceptions are found, was reinforced by the British Columbia Court of Appeal in

*Sociedade-de-fomento Industrial Private Limited v. Pakistan Steel Mills Corporation (Private) Limited*, 2014 BCCA 205.

[11] Mr. Yan has not appeared before the court today for the purpose of providing the necessary proof and advancing any arguments as to the applicability of any of the matters mentioned in Article V of the *Act* that would provide some basis upon which I might choose to refuse to recognize the award. This is so despite the fact that, throughout the course of these proceedings, Mr. Yan has raised various issues, namely: firstly, that he did not sign the guarantee; secondly, that he was not given notice of the arbitration in China; and thirdly, he took the position, albeit somewhat vaguely, that to enforce the award would be contrary to Canadian public policy. Those exceptions arise under the Articles in the *Act*.

[12] These arguments, to the extent that they are at all relevant today, are met by the fact that Mr. Yan did, after the commencement of these British Columbia proceedings, apply to the Chinese court for an order setting aside the Award. He was decidedly unsuccessful in doing that. In October 2016, the Intermediate People's Court dismissed his application, holding that he had signed the guarantee and it was genuine. The Intermediate People's court also found that the notice of arbitration was served validly on Mr. Yan in accordance with the relevant rules that applied at the time.

[13] Accordingly, I am satisfied that the arbitration award is in accordance with Article III of the *Act* such that I am required to recognize it. Accordingly, I grant the relief as sought in paragraph 1 of the petition recognizing the Award.

[14] Mr. Leung has also referred me to the *Foreign Money Claims Act*, R.S.B.C. 1996, c. 155. The Bank's proposed form of order tracks the relief that is set out in s. 1(1) of that *Act*, which is appropriate given that the amount of the Award is in Chinese currency or renminbi.

[15] The Bank also seeks an order that Mr. Yan pay the Bank's costs of this proceeding. That relief is granted.

[16] In conclusion, all of the relief sought by the Bank in the petition is granted as sought.

“Fitzpatrick J.”