LAPORTE E.G.L v LAPORTE M.A.R

2025 SCJ 35

Record No. 125375 (5A/10/24)

THE SUPREME COURT OF MAURITIUS

In the matter of:

Eric Georges Lucien Laporte

Applicant

v

Marc Albert René Laporte

Respondent

JUDGMENT

1. This is a motion made pursuant to rules 28, 29 and 30 of the Supreme Court (International Arbitration Claims) Rules 2013 together with Article VI of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It is an ancillary application and relates to security and securities for costs to be provided pending an appeal[1] before the Judicial Committee of the Privy Council.

2. The first prayer, A, is asking the Court to give an order that the full amount awarded in the arbitral claim be given as a "suitable security", namely in the sum of EUR 5,640,636.77. The second prayer, D, is asking for a security for costs for the appeal to the Judicial Committee of the Privy Council, in the amount of EUR 40,000. Prayers B, C and E have been dropped.

3. It is necessary to set out the sequence of other connected cases lodged as well as their outcomes (including judgment and orders).

4. Following an arbitration between the two parties with its seat in Mauritius, an award was delivered on 5th of January 2023 in favour of the applicant (referred to as Eric Laporte in this judgment). An application was made before the Chief Justice on 10th of July 2023 for a provisional order for the enforcement of the award which was granted on 14th of July 2023[2].

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[1] SCR 125725.
[2] SCR 124718.

5. On 2nd of February 2023, the respondent (referred to as Marc Laporte in this judgment) made an application to set aside the Arbitral Award[3]. This application was heard in July 2023 and the judgment in this matter was delivered on 10th of October 2023 (referred to as "the judgment") where the application was rejected with costs; with the result that therefore, the Arbitral Award is still valid. It is this judgment which is now subject to appeal before the Judicial Committee of the Privy Council.

6. Marc Laporte entered an application to set aside the provisional order of the Chief Justice which had granted the enforcement of the Arbitral Award against him (hereinafter referred to as the "enforcement proceeding)[4]. This was done on 11th of September 2023 and before the judgment (delivered on 10th of October 2023) which is now subject to appeal before the Judicial Committee of the Privy Council.

   To summarise in chronological order:

• Arbitral Award delivered.	05.01.2023
• Application to set aside Arbitral Award[5].	02.02.2023
• Provisional Order of Chief Justice[6].	14.07.2023
• Application to set aside provisional order of Chief Justice[7] (enforcement proceeding).	11.09.2023
• Judgment delivered on application to set aside Arbitral Award[8].	10.10.2023
• No objection by Eric Laporte to the stay of execution of the Arbitral Award (before Chief Justice)[9] subject to suitable security being provided pursuant to Article VI of the New York Convention.	16.10.2023
• Application for conditional leave to the Judicial Committee of the Privy Council[10].	30.10.2023
• Application for security for costs[11].	23.11.2023
• Leave to appeal to Judicial Committee of the Privy Council granted[12], with conditions including security in the sum of Rs. 150,000 for due prosecution of appeal under 1968 Order for appeals to Privy Council.	13.02.2024
• Final leave to appeal to Judicial Committee of the Privy Council granted[13] by acting Chief Justice.	29.04.2024

[3] SCR 124100.
[4] SCR 124943.
[5] Heard on 12 July 2023 and judgment delivered on 10 October 2023, SCR 124100.
[6] SCR 124718.
[7] SCR 124943.
[8] SCR124100.
[9] SCR 124943.
[10] SCR 125152
[11] SCR 125725
[12] SCR 125152 with conditions.
[13] SCR 125725

7. This ancillary application raises two questions, firstly whether security for costs can be granted under the 2013 Rules, notwithstanding the pre-existing Mauritius (Appeals to Privy Council) Order 1968 ("Order of 1968") which regulates the conditions for appeals to the Judicial Committee of the Privy Council. The second question is whether security for the full amount of an Arbitral Award can be granted with regard to the facts and circumstances of the present matter.

8. With respect to the second question, it is noteworthy that in the enforcement proceeding, SCR 124943, on 16th of October 2023, the statement made before the Chief Justice shows that "*suitable security being provided pursuant to Article VI of the New York Convention"* remains a live issue. Hence the present ancillary application. The submissions on behalf of Eric Laporte, are that the Court is empowered to order that security be provided for in the full amount of the Arbitral Award.

9. On the first question of security for costs, Mr. G. Glover, Senior Counsel for Marc Laporte is of the view that it is solely the Order of 1968 which applies as the legislation governing all appeals to the Judicial Committee of the Privy Council and which includes final decisions handed down under the International Arbitration Act. This is referred to specifically in section 44 of the International Arbitration Act.

10. The first premise is that only the Order of 1968 applies and therefore the Chief Justice (or other Judge) is empowered to set out the conditions for the appeal to proceed before the Judicial Committee of the Privy Council.

11. The second and alternative premise is that the Supreme Court (International Arbitration Claims) Rules 2013 finds its application and security for costs can be ordered. If this is the case, then it would follow that it would have to be brought before 3 designated judges[14] for a decision.

12. The Order of 1968 applies for all appeals to the Judicial Committee of the Privy Council. It became part of our legislation upon the independence of Mauritius and in our view is the general law. Section 4 of this Order refers to "sufficient security" being provided. The relevant section in 1968, provided for a sum of Rs.10,000 which was increased to Rs 150,000 by amendment in 1990[15] and has remained static since for over thirty years. The International Arbitration Act (referred to as the "IAA") came into force in 2008. The IAA, in sections 42(1) and

[14] Under section 42(1) of the International Arbitration Act
[15] Act No. 29 of 1990.

43, provides for six designated judges and for applications to be heard before a panel of three of the designated judges. Section 44 of the IAA then provides for appeals against a final decision to the Judicial Committee of the Privy Council under section 42(2). It also provides for an appeal under the Enforcement of Foreign Arbitral Awards Act. Both types of appeals are to be made in accordance with the procedure applicable to appeals as of right under the Mauritius (Appeals to Privy Council) Order 1968. It is noteworthy that reference is made to the Order of 1968 in section 44 of the IAA.

13. Now the IAA does not mention specifically security for costs to be provided when a matter is appealed to the Judicial Committee of the Privy Council. However, section 2C(2)(c)(iii) of the International Arbitration Act provides that "*for the avoidance of doubt*" rules are to be made by the Chief Justice pursuant to section 198 of the Courts Act for the payment of security for costs. These rules came into force on 1st of June 2013 (2013 Rules).

14. In the 2013 Rules, we see that rule 30 has as heading "**Security for costs of an appeal**" and it states that a Court may order security for costs of an appeal on the same grounds under rule 28. We, then refer to Rule 28 which has as heading: **Security for costs in arbitration claims**. This allows a defendant to any arbitration claim, to apply for security for his costs of the proceedings. It describes the mode of such application. Rule 28(3) enables the Court to determine the amount of security, the manner in which and the time within which it should be given. It also provides that the Court shall make an order specifying the consequences of a breach of the order of the security for costs.

15. It is under these provisions that Eric Laporte is praying for an order for security for costs.

16. We agree with part of the submissions made by Mr. J. Peeroo of Counsel found at paragraph 116 of his skeleton arguments, namely that Rule 30 has not been drafted in vain, the relevant part is reproduced:

> "For all the above reasons, the Applicant submits that there is no inconsistency between the 2013 Rules and the Order. The Applicant further submits that Rule 30 has not been drafted in vain, as suggested by the Respondent, but rather that it is essential to ensure coherence within the chapter regarding the security for costs set out under the 2013 Rules and within the arbitration legal framework under the IAA by [taking] into account the actual costs involved in any given appeal before the JCPC under the IAA."

17. We find that the International Arbitration Act, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act and the 2013 Rules have to be interpreted and read in conjunction with each other. All of these are specific and special laws.

18. We are of the considered view that it is the specific legislation dealing with international arbitration which should prevail over the 1968 Order in the present matter in so far as security for costs is concerned.

19. In Bennion, Bailey and Norbury, Statutory Interpretation, Chapter 21 addresses general and specific enactments and overlapping provisions and refers to the particular application of the principle that the general gives way to the specific. This is because a general power cannot be usually relied on to circumvent a specific set of statutory provisions[16] and which cited Lord Bingham CJ in **R v Liverpool City Council, Ex p Baby Products Association.**

20. Where there is a conflict between two provisions, as explained in Sullivan and Driedger on Construction of Statutes 4th edition Butterworths 2002 at page 273, "*the specific prevails over the general, it does not matter which was enacted first. This strategy for resolution of conflict is usually referred to by the latin name generalia specialibus non derogant".*

21. The Order of 1968 still applies on all other conditions and procedures which are required to be followed to pursue an appeal to the Judicial Committee of the Privy Council. It is the quantum and type of security which may be dealt with otherwise under the International Arbitration Act, and the 2013 rules.

22. Having reached the above conclusion in respect of security for costs, we therefore grant prayer D and order the respondent, Marc Laporte, to provide 40,000 Euros as security for costs since this amount was not made an issue. What was in issue was whether we are empowered to grant security for costs for an amount under the IAA.

23. In connection with the second question[17] to be answered, the issue for consideration is whether this Court's decision to award suitable security is dictated by the adjournment issue. The submission of Mr. G. Glover, SC for Marc Laporte, which is elaborated further in this judgment, is that the Court is constrained from awarding suitable security as he has not moved for an adjournment of the enforcement proceeding[18].

24. It is salient that during the enforcement proceeding, a stay was being prayed for in relation to the provisional order of the Chief Justice[19]. Now, it is the contention of the applicant, Eric

[16] Professor David Feldman, Diggory Bailey, Luke Norbury, Bennion, Bailey and Norbury on Statutory Interpretation (Eighth Edition, LexisNexis Butterworths 2020) Chapter 21, Code s 21.4
[17] Paragraph 7 of this judgment.
[18] SCR 124943.
[19] SCR 124718

Laporte, that this was a manoeuvre and the application for the stay of the provisional order of the Chief Justice, was only withdrawn because of the present ancillary application. Learned counsel for Eric Laporte interprets this as a backtracking because Marc Laporte was "faced with the prospect of having to provide security"[20]

25. We need to emphasise at this juncture that the decision of 10 October 2023 has found that the Arbitral Award is valid.

26. We note that the grounds under which the Arbitral Award was sought to be set aside and adjudicated upon in the judgment of 10 October 2023[21], are repeated as grounds upon which Marc Laporte is relying upon to set aside the provisional order of the Chief Justice[22] in the enforcement proceeding. This is agreed by all counsel before us at the hearing of the present matter. There are also some additional grounds which have been raised in the enforcement proceeding. Mr. J. Peeroo, learned Counsel for Eric Laporte, has indicated that the forthcoming decision of the Judicial Committee of the Privy Council is likely to dispose of both the issue of validity of the Arbitral Award and the issue of enforcement[23]. Therefore, the enforcement proceeding which is in abeyance[24] may well be academic and be redundant once the decision of the Judicial Committee of the Privy Council is handed down.

27. At the sitting of 4 November 2024, the enforcement proceeding was also called for hearing on the merits together (as connected cases) with the present application. At the outset all parties were aware of the constitution of the present bench which is the same one which delivered the judgment on 10 October 2023. No issue was made by either party as to the propriety of the same bench adjudicating the two matters (there are six designated judges under the IAA).

28. During the enforcement proceeding, after an exchange with counsel, which included references to the background and connection of the various cases between the Laporte brothers, learned Counsel obtained new instructions. They made a joint statement whereby they indicated their preference for the other (present) matter to be heard and to stay the enforcement proceeding in the light of the appeal to the Judicial Committee of the Privy Council. The Court then decided, in the light of their joint statement, to put the matter (SCR 124943) in abeyance pending the outcome of the appeal to the Judicial Committee of the Privy Council.

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[20] Page 5, paragraphs 10, 11 and 13 of Applicant's skeleton argument.
[21] Now subject to an appeal to the JCPC.
[22] SCR 124943.
[23] Paragraph 2 of skeleton arguments of applicant, Eric Laporte.
[24] SCR 124943

29. The arguments of Mr. G. Glover, SC on behalf of Marc Laporte, is that he has not moved for an adjournment of the enforcement proceeding and therefore the Court should not order that suitable security be provided. He ventures even further by stating that the Court does not have the jurisdiction to do so in the absence of the motion for adjournment.

30. We set out some of the submissions by Marc Laporte's learned Counsel as to the factors 'which militates against an order for security'[25]:

> "Application for security under Article VI of the New York Convention
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> 13. Article VI of the New York Convention provides as follows[26]:
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> *"If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article v (1)(e), the authority may, if it considers it proper, adjourn the decision of the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security" [Emphasis added].*
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> …
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> 20. The two issues therefore that require a determination by the court are:
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> a. whether the Applicant is entitled to ask for security under Article VI of the New York Convention, in the absence of an adjournment of the enforcement proceeding being sought by the Respondent; and
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> b. whether the Court should exercise its discretion and order the Respondent to furnish security should it proprio motu adjourn the enforcement proceeding pending the determination of the appeal before the JCPC.
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> ***Is the Applicant entitled to pray for security in the absence of an adjournment being sought by the Respondent?***
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> 21. It is submitted that there is simply no jurisdiction for this court to order the Respondent to furnish security under Article VI of the New York Convention given that the Respondent is not praying for an adjournment of the enforcement proceeding, which proceeding is already scheduled for hearing on 4th November 2024.
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> 22. More recently, in the case of **Stati A & ors v The Republic of Kazakhstan 2015 EWHC 2542 (Comm)**, the English High Court, after affirming the principles laid down by the Court of Appeal in **Soleh Boneh International v Government of the Republic of Uganda [1993] 2 Lloyd's Reports 208, Dardana Limited v Yukos Oil Limited [2002] EWCA Civ 543 and IPCO (Nigeria) Limited v Nigeria National Petroleum [2005] 2 Lloyd's Reports 326**, reiterated the principle that that security can only be granted where there is an adjournment.
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> 23. The case was one where the party opposing the enforcement proceeding, was not seeking an adjournment and the Court held in no uncertain terms that this is a factor which militates against an order for security. The pertinent extract of the judgment reads as follows:

[25] Paragraph 23 of skeleton arguments of Mr. G. Glover, SC.
[26] Pages 5, 6 and 7 of written skeleton arguments of Mr. G. Glover, SC

> *"15. That was not a case where the court determined of its own motion that there should be an adjournment against the wishes of both parties. Nevertheless, in such a case it is important to bear in mind that security under section 103(5) can only be granted where there is an adjournment. The procedure in relation to the enforcement of an award under the New York Convention is that the application to enforce is made in the first instance ex parte; a provisional order is made permitting enforcement but providing that the award is not to be enforced until the other party has had an opportunity to make an application to set aside the enforcement order; if such an application is made, no security can be ordered in the first instance pending the determination of that application.* ***Accordingly, in the absence of any adjournment, there is simply no jurisdiction in the court to order a party against whom an award has been made to provide security pending the hearing of his application to set aside the provisional order that the award is to be enforced****.*
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> *16.* ***That suggests that it should be a very important factor militating against an order for security, that there has been no application for an adjournment on the part of the defendant*** *and where an adjournment has only come about because the court has determined that the interests of comity and of case management, and the public interest in the administration of justice and the interests of other court users, require that the matter be deferred." [Emphasis added].*

31. On the other hand, the submissions on behalf of Eric Laporte, are that there is a discretion conferred to the Court to order a stay of enforcement proceeding *propio motu*. Article VI of the New York Convention does not refer to an application for stay of enforcement and only alludes to an application for security. The present application being the case in point.

32. The following permissive language of Article VI of the New York Convention is highlighted by Mr. J. Peeroo of counsel: "*may adjourn*", "*if it considers proper*" and the "*Court has discretionary power to adjourn its decision on enforcement*".[27] The following passage from the case of **Yukos Oil Co. v Dardana Ltd [2002] EWCA Civ 543** at page 12, paragraph 23 was referred to, wherein Lord Mance stated the following:

> "The power to adjourn granted by the first part of s 103(5) [which incorporates Article VI] is expressed generally, to apply "if the court thinks it proper". Contrast also the second part of s103(5) where the power to grant security is expressly confined to cases where the party seeking recognition or enforcement applies for security. Under the first part, even though neither party sought an adjournment, a court might conclude of its own motion that the determination of an applicant under s.103(2) would be an inappropriate use of court time and/or contrary to comity or likely to give rise to conflict of laws problems, when there were concurrent proceedings which would be likely to resolve the issue in the country in which or under the law of which the award was made (cf Soleh Boneh v Republic of Uganda [1993] 2 Ll.R. 208,..."

(Emphasis is added by learned Counsel for Eric Laporte)[28].

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[27] Paragraph 28 of skeleton arguments of applicant.
[28] See paragraph 30 of his skeleton arguments.

33. For completeness and clarity, we observe there is another judgment involving the same parties and delivered by the same bench on the same day with following reference: **Dardana Ltd v Yukos Oil Co [2002] EWCA Civ 584**.

34. It is not necessary to repeat the circumstances which led to the enforcement proceeding being in abeyance. The manner in which matters unfolded, led to it being unnecessary to duplicate a decision and that even if Marc Laporte has not formally moved for an 'adjournment', the background is such that it has been triggered by him, by his appeal to the Judicial Committee of the Privy Council (to which he is entitled), and the matter has had to be adjourned thus leading to the enforcement of the Arbitral Award being delayed.

35. Even if we were to find that the adjournment was not prayed for by Marc Laporte, we are of the view that the Court could, *propio motu* decide to award suitable security. The case of **Stati A & ors v The Republic of Kazakhstan 2015 EWHC 2542 (Comm)** affirmed the principle laid down in the cases of **Soleh Boneh International v Government of the Republic of Uganda [1993] 2 Lloyd's Reports 326**, **Yukos Oil Co. v Dardana Ltd [2002] EWCA Civ 543** and **IPCO (Nigeria) Limited v Nigeria National Petroleum [2005] 2 Lloyd's Reports 326**.

36. We do not agree with the submissions of Mr. G. Glover, SC that the Court does not have jurisdiction. We are inclined to agree with the submissions of Mr. J. Peeroo, learned Counsel for Eric Laporte, found at paragraph 28 of his skeleton arguments and alluded to paragraph 32 of this judgment.

37. With respect to the **Stati** case referring to the **Yukos Oil** judgment, it is important to note that in both cases, the factual backgrounds were not as in the present matter. Namely, that an application[29] preceding the enforcement proceeding[30], has already been heard and determined, albeit subject to an appeal. This is an important difference with the cases of **Stati** and **Yukos Oil**. In those 2 cases, the situation being considered was whether a party had the opportunity to apply to set aside an enforcement order. In the **Stati** case, the determination of the application before that Judge would not have finally disposed of the matter. As to the **Yukos Oil** case, a proceeding to set aside the award for lack of jurisdiction, was still in progress (see paragraphs 1, 2 and 3 of the **Yukos Oil** judgment).

38. The present enforcement proceeding had to be adjourned, and to borrow the words of Lord Mance from **Yukos Oil** at paragraph 23 of the judgment, for use in another context, it *"would be*

[29] SCR 124100 lodged on 2 February 2023.
[30] SCR 124943 lodged on 11 September 2023.

an inappropriate use of Court time". This when the matter can be resolved by the decision of the Judicial Committee of the Privy Council following a decision as to whether the Arbitral Award should be set aside. If the enforcement proceeding was not adjourned - simply to avoid the suitable security issue - this would have been nonsensical as amongst other issues, the issue of *res judicata* would have had to be addressed. It bears repetition that in any event "*the interests of comity and of case management, and the public interest in the administration of justice and the interests of other court users, require that the matter be deferred"* as *per* Justice Popplewell in the case of **Stati.** This is an important consideration. It would have to be an exceptional situation for a Court to decide it did not have a discretion which is definitely not the case at present.

39. We do not address the prospects of success of the challenge to the Arbitral Award, as canvassed by Mr. G. Glover, SC in his skeleton argument under the issue of 'adjournment' being given that the bench as presently constituted delivered the judgment of 10th of October 2023 and which is now subject to appeal before the Judicial Committee of the Privy Council. However, what is important is that there has already been a full hearing and a considered judgment given on the validity of the Arbitral Award. We therefore find that we are not "dictated" by the adjournment issue as couched by Mr. G. Glover, SC in his submissions and we hold that this Court has jurisdiction to consider suitable security.

40. Mr. G. Glover SC., has in his skeleton argument under the heading: ***Should the Court proprio motu exercise its discretion to adjourn the enforcement proceedings and order the Respondent to furnish security?,*** canvassed the adjournment issue, the order to furnish suitable security and stay of proceedings. However, he did not challenge whether the Court should grant security in the full amount of the Arbitral Award and in fact Marc Laporte has offered as suitable security, immoveable property in the Republic of Congo.

41. In light of the above discussion, we now consider whether to grant prayer A. The submissions made on this score on behalf of Eric Laporte, referred to both law and to the facts of this case. It also referred to whether the circumstances called for security to be provided, as well as the amount and manner. The submissions made on behalf of Marc Laporte concentrated on the offer of property in the Republic of Congo as being adequate, sufficient and a demonstration of his good faith.

42. On this issue, the affidavit of Marc Laporte is considered in conjunction with the skeleton arguments of Mr. G. Glover SC, parts of the latter are reproduced:

> 46. As disclosed in the present application, the Respondent has, his principal place of residence in Luxembourg and his secondary residence in the Republic of Congo and France. It is submitted that during his establishment to Luxembourg with his wife and children, the Respondent has only undertaken a coherent patrimonial structuring for the proper management of his business and assets[31] and this, in strict compliance with the law.
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> 47. It is submitted that this cannot be assimilated to a dissipation of assets and therefore the reasons advanced by the Applicant in support of his contention that the Respondent is attempting to dissipate his assets and adopting dilatory tactics to frustrate the execution of any final award have no merit.
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> 48. Why would the Respondent have offered to furnish his unencumbered assets in Congo as security (as will be canvassed below) had his intention been to dissipate his assets to frustrate the arbitral award? Why would the Applicant refuse to accept such assets as security if the Respondent, as alleged by the Applicant, is dissipating all his assets to frustrate the enforcement of the arbitral award?? Clearly, there is not an iota of truth in the allegations levelled against the Respondent in support of the prayer for security.
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> 49. It is therefore submitted that, based on the circumstances of the present case, there is no reason warranting the Court's exercise of its discretion in favour of ordering the Respondent to furnish security under Article VI, the more so that the Respondent is not praying for an adjournment of the enforcement proceedings but it is the Applicant who is inviting the Court to adjourn the proceedings.

43. It is noteworthy that the averment in paragraph 44 of Eric Laporte's affidavit has not been denied: namely, that Marc Laporte has transferred his assets "*with the sole view of concealing the true ownership of a villa owned by the latter and his wife in Mauritius*". It has also been averred that it is worth over 3 million Euros in 2016[32]. True it is that there is the answer in rebuttal by Marc Laporte that he is carrying out a "*coherent patrimonial structuring for proper management of his business and assets and this in strict compliance with the law*" but there is no specific denial of the averments of Eric Laporte. We also cannot ignore the timing of this exercise (November 2023) one month after the judgment of 10th of October 2023 (SCR 124100).

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[31] Paragraph 17 of Marc Laporte's affidavit at page 280 of the brief.
[32] Paragraph 41 of Eric Laporte's affidavit.

44. At this point, we refer to the submission[33] of Eric Laporte that the enforcement proceeding and the prayer for the stay in that case, were manoeuvres of Marc Laporte. This is how it is described by learned Counsel for Eric Laporte:

> "10. In September 2023, the Respondent filed an application, bearing Cause Number SCR 124943 (5A/241/23), to request the setting aside of the Provisional Order and to stay the enforcement proceedings. When the Applicant made the present application to request security under Article VI of the New York Convention, the Respondent dropped his prayer for a stay, and stated that:
> "*since he will not be insisting… for a stay of proceedings… the provisions of the law and Rules relied upon by the Applicant to make the present application do not find their application".*
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> 11. As discussed in the Applicant's second affidavit dated 26.02.24 (hereinafter referred to as "**AA2"**), the subsequent manoeuvre to withdraw its application for a stay of enforcement was only made "*when faced with the prospect of having to provide security".*
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> 12. It is clear that, as soon as he was faced with the prospect of having to furnish security, the Respondent backtracked, apparently in an attempt to defeat the purpose of the present application for security. The Applicant submits and will demonstrate that an application for a stay is not a precondition for the Supreme Court to stay proceedings and order security under Article VI."

45. The following pertinent consideration is submitted on behalf of Eric Laporte:

> The **UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Arbitral Awards** highlights that the purpose of the provision to grant security under Article VI of the New York Convention is threefold:
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> - To avoid dissipation and concealment of assets pending the setting aside proceedings to guarantee that the award may be successfully enforced if the setting aside action is dismissed;
> - To provide an incentive to the party opposing enforcement to avoid dilatory tactics and to proceed with its application for the setting aside of the award as expeditiously as possible; and
> - To assure that the party seeking enforcement of the award is provided with prompt payment if the setting aside action is dismissed.

46. We again refer to the submission[34] of learned Counsel for Eric Laporte on certain facts with respect to the current status of assets of Marc Laporte and reproduce part of these here:

> - *Funds in Monaco*
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> 65. Upon the rejection of the setting aside application by the Supreme Court on 10.10.23, the Applicant initiated "*saisie-arrêt"* proceedings in Monaco to effect the seizure of the funds held by the Respondent in Monaco. However, to the surprise of the Applicant, all three garnishee banks revealed that the Respondent had already withdrawn almost all of his funds from their banks.
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> - *Immovable property in Mauritius*

[33] Page 5, paragraphs 10, 11 and 13 of Eric Laporte's skeleton argument.
[34] Page 20, paragraphs 68 to 72 skeleton argument of applicant which in turn refer to exhibits annexed to his affidavit.

66. The Respondent owned a villa in Le Parc de Mont Choisy which was acquired in 2016 for the sum of MUR 141,965,837/- (approximately EUR 3 million). To acquire this property, the Respondent set up a company named Residence MCC Ltd in which he was the sole shareholder and his wife and him were the only directors as at March 2023.

67. However, as at November 2023, the Respondent has transferred all of his shares held in Residence MCC Ltd to a trust called "Oceans and Islands Trust" with the sole intent to conceal the true ownership of the company. Further, the Respondent and his wife are currently no longer directors of the company.

- *Immovable properties in France*

68. It came to the Applicant's knowledge that, in November 2023, the Respondent put up for sale one of the immovable properties in which he holds undivided rights with other family members in France.

47. Initially, learned Counsel for Eric Laporte described the actions of Marc Laporte as 'dissipation' which had been admitted to by Marc Laporte. At the hearing, he conceded that this was not as clear cut as it is characterised in his written skeleton argument. However, we again have to emphasise that Marc Laporte has not specifically denied paragraphs 32 to 55 of the applicant's affidavit, which include the assertions about the bank accounts in Monaco, the property in France and the 'concealment' of the ownership of the Mont Choisy referred to in paragraphs 65 to 68 of skeleton arguments reproduced above.

48. On an overall consideration of the background of events, the affirmations in the affidavits, the submissions and the various assets in different jurisdictions, we reach the conclusion that it is necessary to safeguard the total amount of the Arbitral Award. Although, Marc Laporte has been aware of the Arbitral Award since January 2023, he does not seem to have factored this in during his re-organising and carrying out a "coherent patrimonial structuring for the proper management of his business and assets". His offer of his property in the Republic of Congo seems to be a demonstration of good faith. However, the question remains as to why property in other jurisdictions have not been offered especially the one located in the Mauritian jurisdiction and which was in his and his wife's name at one point and is now transferred to another legal entity[35]. The reason this application is made in Mauritius, is because he was resident at the relevant time and the arbitration has its seat in Mauritius. Marc Laporte has not provided any justification as to why the asset of some EUR 3 million at Mont Choisy has not been offered as security.

[35] See paragraph 46 of this judgment.

49. We highlight the following assertions made by Marc Laporte both during the arbitration and before this Court. Namely, that he is a wealthy individual and has various assets in different countries. He has also not refuted specifically that there were acute difficulties in getting funds out of the Republic of Congo[36].

50. Marc Laporte is a resident outside of the jurisdiction and has changed his address since the claim was commenced and taken steps in relation to his assets which would make it difficult to enforce. Therefore, on an overall consideration of the facts placed before us, pursuant to rules 28, 29 and 30 of the 2013 Rules, we are of the view that suitable security as prayed for can be granted.

51. We re-iterate the following extract from the Guide to the Interpretation of the 1958 New York Convention, Handbook for Judges (May 2012 edition) and which is quoted in the judgment of **Arvee Family Foundation v Atics Consumer Grooming Products Limited [2024 SCJ 448]** at paragraph 17: "*The Convention is based on a pro-enforcement bias. It facilitates and safeguards the enforcement of arbitration agreements and arbitral awards and in doing so it serves international trade and commerce. It provides an additional measure of commercial security for parties entering into cross-border transactions"*.

52. International arbitration seeks to avoid protracted Court proceedings and where parties agree to enter into the parallel proceedings which does not entail appeals (or at least in a very restricted sense). It is under this lens that the present application needed to be considered.

53. We quote with approval the following extract, cited to us in the skeleton arguments of Eric Laporte at paragraph 59:

> 59. Gary B. Born observes that:
>
> "*the single most serious obstacle to enforcement of an international arbitral award is identifying assets which can satisfy the award: in the international context the possibility that funds will be dissipated or concealed can be very serious. It is unacceptable that a party, which complies with the contractual dispute resolution process and then obtains an award of damages, should have its rights frustrated through stalling tactics, deliberate diversion of assets or insolvency of the award- debtor. If national courts delay the process*

[36] Paragraph 22 (c) (b) of Eric Laporte's 2nd affidavit at page 506 and Marc Laporte's answer in his 2nd affidavit at page 538.

> *of recognizing an award, by suspending recognition proceedings then they should take special care to ensure that the award- creditor is safeguarded against such eventualities"*[37]*.*
> (emphasis is added)

54. We therefore order the respondent Marc Albert René Laporte to furnish suitable security equivalent to the quantum of the full Arbitral claim: EUR 5, 640,636.77 in the application bearing cause number SCR 124943 (5A/241/23). The suitable security to be furnished shall be by way of a bank guarantee in the sum of EUR 5, 640,636.77 within 6 weeks from the date of this judgment, from a Mauritian bank.

55. Costs in this application to be as per the agreed schedule of costs filed by both parties.

R. Teelock
Judge

M. I. Maghooa
Judge

V. Kwok Yin Siong Yen
Judge

23 January 2025

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[37] Chapter 26: Recognition and Enforcement of International Arbitral Awards, in Gary B. Born, International Commercial Arbitration (Third Edition), 26.06 [C], pp. 126, (Kluwer Law International).

Judgment delivered by Hon R. Teelock, Judge

For Applicant	**:**	**Mr. N. Ramasawmy, Attorney at Law** **Mr. J. Peeroo together with** **Ms. M. Soogah, both of Counsel**
For Respondent	**:**	**Mr. B. Sewraj, State Attorney** **Mr. G. Glover, Senior Counsel together with** **Ms. S. Mukoon, of Counsel**