IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 113 Date of filing 13 May 1983

✓ ITL

___ AWARD. Date of Award 13 May 1983

8 pages in English. 7 pages in Farsi.

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___ DECISION. Date of Decision _____

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CASE NO. 113
CHAMBER TWO
INTERLOCUTORY AWARD
NO. ITL 18-113-2

OWENS-CORNING FIBERGLASS CORP.,
Claimant,

and

THE GOVERNMENT OF IRAN; MINISTRY OF ECONOMIC AFFAIRS AND FINANCE; ORGANIZATION FOR THE EXPANSION OF OWNERSHIP OF INDUSTRIAL UNITS; GLASS WOOL COMPANY OF IRAN; SEA-MAN-PAK CO. LTD.; and THE REVOLUTIONARY COMMITTEE,

Respondents.

113-64
۱۱۳-۶۴

Interlocutory Award

Appearances:

For Claimant:
Stephen M. Truitt,
Mark N. Bravin,
Wald, Harkrader & Ross,
Attorneys

For Respondents:
Mohammad K. Eshragh,
Deputy Agent of the
Islamic Republic of Iran
Mr. Jafar Niaki,
Legal Adviser to the
Agent of Iran
Mr. Mahmoud Adib Nazari,
Attorney of Glass Wool Co.
Mr. Mohamoud Etesami,
Representative of
Glass Wool Co.

Also Present:
Arthur W. Rovine,
Agent of the United States
of America
John Reynolds,
Department of State

I. FACTS AND CONTENTIONS

On 18 November 1981 Owens-Corning filed this claim, seeking recovery of royalties allegedly owed under two patent licenses to Glass Wool Iran, one in 1965 for the production of certain fiber glass products("Centrifuging License") and the other in 1968 for the use of certain technology related to that production("Bonded Mat License"), and further seeking damages for the alleged expropriation of certain property belonging to one of its employees. Only the patent claims concern us for the purposes of this Interlocutory Award.

On 15 April 1982 Glass Wool Iran, in an extensive submission, both denied Owens-Corning's claims and instituted two counterclaims. First, Glass Wool sought recovery of damages it allegedly sustained by the failure of SODEFIVE, the licensing subsidiary of a French government-owned company, Saint Gobain Pont a Mousson, to provide certain machinery and technical assistance to Glass-Wool. Glass-Wool's counterclaim based on Saint Gobain's acts and omissions is asserted against Owens- Corning on the theory either that Saint Gobain was Owens-Corning's agent for the provision of technical assistance, or that Owens-Corning was the guarantor of Saint Gobain's performance. Glass-Wool has further counterclaimed for income taxes and late payment penalties alleged to be owing on various royalties.

By Order dated 13 December 1982 the Chamber scheduled a separate Hearing on the question of our jurisdiction over these counterclaims as counterclaims "aris[ing] out of the same contract, transaction or occurrence that constitutes the subject matter of [Owens-Corning's] claim." Claims Settlement Declaration, Article II, paragraph 1. That Hearing was held, with both parties present, on 31 March 1983.

Counterclaimant Glass-Wool seeks to connect Owens-Corning and Saint Gobain in part by noting certain cross-licensing provisions in the their separate patent licenses with Glass-Wool pursuant to which Glass-Wool was allowed to credit in its payments to that licensor a percentage of the royalties otherwise payable to the other one of them, as both owned patents used in the processes. Glass-Wool also submitted a letter dated 28 March 1967 from Owens-Corning to Glass-Wool referring to Saint Gobain as "a conduit or agent" for the transfer of Owens-Corning's "know-how and developments" with respect to the then-proposed Bonded Mat License, as evidence of an agency relationship. No "guarantee" by Owens-Corning was ever produced.

Owens-Corning denied that the cross-licensing arrangements resulted in its assuming any liability for Saint Gobain's performance under the letter's separate license and technical assistance agreements with Glass-Wool, and it asserted that claims based on alleged defects in performance

by Saint Gobain do not arise from the same "contract, transaction or occurrence" as Owens-Corning's claim. Owens-Corning opposed jurisdiction over the tax counterclaims by denying the enforceability of Iran's tax laws outside of Iran, and by arguing that any claims for taxes on royalties owing but as yet unpaid could not by definition have been outstanding as of 19 January 1981.

II. REASONS FOR AWARD

With respect to the tax counterclaims, the Chamber determines that the question of their admissibility will be joined to the merits of the case. The Chamber notes at the same time that the royalties Owens-Corning was entitled to receive were net of taxes; therefore the question of the amount of any taxes which might be owing on unpaid royalties would necessarily arise as an offset against any recovery of those royalties, even if no affirmative recovery of such amounts could be allowed as a counterclaim. The Tribunal has to decide merely on the admissibility of the counterclaim based on Saint Gobain's performance of services.

The provision in the Claims Settlement Declaration allowing jurisdiction over counterclaims (Article II, paragraph 1) limits that jurisdiction to counterclaims assertable by the particular respondent against whom the claim has been brought and based on a cause of action that arises out of the "same contract, transaction or occurrence" relied on by the Claimant.

The Tribunal notes that this series is in the disjunctive, which suggests that "contract", "transaction" and "occurrence" are alternatives. In other words, if a claim is based solely on a contract, a counterclaim must arise from the same contract to be within the jurisdiction of the Tribunal. Similarly, if a claim is for an occurrence, such as a taking of property, then a counterclaim would have to arise out of that same occurrence. On the other hand, it can doubtless be argued that, in a case where a prolonged or complex business transaction results in several contracts, a counterclaim should be within our jurisdiction, even if it arises from a different one of those contracts than the one on which the claim was based, because both arise from the same transaction.

In the present case the Tribunal finds it unnecessary to decide this question, because the evidence indicates that the two license agreements constitute the entire transaction. Indeed, Article 18 of each license so provides.

> The terms and conditions contained herein constitute the entire agreement between the parties and shall supersede all previous communications, whether oral or written, between such parties with respect to the subject matter of this agreement, and no agreement or understanding varying or extending this agreement shall be binding upon any party hereto, unless set forth in writing by a duly authorized officer or representative of the party to be bound thereby, in which writing this agreement is expressly referred to.

The evidence submitted in this case demonstrates that the Glass-Wool Company's first contracts were with Saint Gobain (including its subsidiary, SODEFIVE), and that it was Saint Gobain which suggested to Glass-Wool the need to obtain licenses from Owens-Corning in order to utilize all the patents required for the processes in question. Saint Gobain owned the principal patents, but Owens-Corning owned patents covering certain improvements. This division of rights is consistent with the division of royalties, in which the larger part went to Saint Gobain.

The Respondents point to a letter from Owens-Corning dated 28 March 1967 as their principal evidence that Saint Gobain was acting as Owen-Corning's agent so as to make the latter responsible for defects in performance by Saint Gobain. This letter, which was sent during the negotiations that resulted in the second of the two license agreements on which the claim is based, contained the following two relevant paragraphs:

> As to your question relating to the two percent (2%) royalty, it was our understanding that this amount was not to be diminished under any circumstances. Saint Gobain will be transferring our know-how and developments, thus serving as a conduit or agent rather than providing the basis for the substance of the information transferred. Furthermore, we have generally not deviated from a two percent (2%) royalty with respect to our bonded mat licensees, thus making any lesser royalty unfair to such licensees. We feel that a two percent (2%) royalty is fair and will help to compensate us for the research and development expenditures that we have made with respect to bonded mat.
>
> It is our thought that any arrangement that you and Saint Gobain arrive at to compensate them for the time spent in teaching our know-how and developments to you and the cost of equipment

III. AWARD

For these reasons,

The Tribunal decides that the counterclaim of Glass-Wool based on certain acts and omissions alleged to be attributable to Saint Gobain is outside of its jurisdiction, and is therefore dismissed. All questions concerning jurisdiction over the claim and the tax counterclaims, as well as the merits of the claim and the tax counterclaims are joined to the merits.

Dated: The Hague
13 May 1983

Pierre Bellet
Chairman
Chamber Two

George H. Aldrich

IN THE NAME OF GOD

Shafie Shafeiei

Concurring