

**IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
COMMERCIAL COURT**

**Before Mr Justice Butcher**

**22 October 2021**

**Selelevision Saudi Company -v- BeIN Media Group LLC**

**[2021] EWHC 2802 (Comm)**

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**CASE SUMMARY**

**Butcher J dismissed the Defendant's applications for permission to bring a counterclaim in an arbitration claim and for a stay of enforcement (pending the determination of the proposed counterclaim) of an undisputed New York Convention award, finding that there was no jurisdiction for the Court to permit a counterclaim under the CPR 62.18 procedure for applications for enforcement of foreign arbitration awards, alternatively declining to exercise the Court's discretion to permit the counterclaim.**

**Background**

BeIN Media Group LLC ("**BMG**") is a broadcasting organisation which operates satellite television channels in some forty countries and, through a subsidiary company, holds the exclusive right to broadcast coverage of certain major sporting competitions in the Middle East and North Africa ("**MENA**") region.

BMG retained Selelevision Saudi Company ("**Selelevision Saudi**") as a non-exclusive distributor of set top boxes ("**STBs**") enabling customers to watch BMG media channels in the Kingdom of Saudi Arabia ("**KSA**") under the terms of a distributor agreement dated 6 May 2014 (the "**Distributor Agreement**").

Disputes arose under the Distributor Agreement, which were referred to arbitration on 16 June 2016 at the DIFC, Dubai. The tribunal issued a final arbitration award on 5 June 2018 (the "**Award**"), finding against BMG and ordering BMG to pay Selelevision Saudi sums totalling US\$8,048,018.88, with interest accruing in respect of unpaid sums at an annual rate of 8% from the date of the Award.

BMG did not honour the Award. Having located potential assets of BMG in the form of shares in an associated company incorporated in England and Wales, Selelevision Saudi decided to bring an arbitration claim in the Commercial Court for leave to enforce the Award in the same manner as an English court judgment.

**The Arbitration Proceedings**

On 22 October 2020, Selelevision Saudi applied to the Court pursuant to CPR 62.18(1)(b) for permission to enforce the Award pursuant to section 101 of the Arbitration Act 1996 (the "**1996**

**Act**") by issuing an arbitration claim form (the "**Claim Form**"). The application was made without notice, as permitted under CPR 62.18(1).

Selevision Saudi stated in its Claim Form that it proposed to serve BMG with the arbitral proceedings. In consequence, the order which Selevision Saudi sought and which was granted by Cockerill J on 31 October 2020 included an order that:

*"The Claimant shall serve the Arbitration Claim Form, this Order and the Application on the Defendant..."*

By order of Andrew Baker J, it was declared that service of the Claim Form on BMG had been duly effected. On 21 December 2020, BMG filed an Acknowledgment on Service in which it indicated that it intended to contest the claim, and on 11 January 2021 it issued applications: (i) for permission to bring a counterclaim; (ii) for permission to bring Part 20 proceedings against a third party and to serve him out of the jurisdiction; and (iii) for a stay of enforcement of the Award pending final determination of the proceedings. The nature of BMG's proposed counterclaim is summarised at [17] to [21] of the Judgment.

### Principal Issue

The central issue which Butcher J had to determine was whether the Court had any jurisdiction to allow a counterclaim in the context of an application under CPR 62.18 for leave to enforce a New York Convention Award.

BMG's submissions in this respect were that:

1. Selevision Saudi had elected to seek an order that it should serve the Claim Form, and such an order was duly made pursuant to CPR 62.18(2);
2. BMG had acknowledged service, such that CPR 62.18(3) was engaged, which provides that the arbitration proceedings are to continue as if they were an arbitration claim under Section I of CPR 62;
3. CPR 62.3(1), in Section I of CPR 62, provides that arbitration claims must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure;
4. therefore, the Part 8 procedure applied to these proceedings; and
5. pursuant to CPR 8.7, Part 20 claims are allowed under the Part 8 procedure, with the Court's permission.

By contrast, Selevision Saudi contended that:

1. the reference in CPR 62.18(3) to proceedings 'continuing' as if an arbitration claim under Section I does not refer back to CPR 62.3(1) which is concerned only with starting an arbitration claim, instead it looks back to Section I for the procedure for the conduct of the proceedings post commencement, which is to be found in CPR 62.7 and not in Part 8; and
2. even if it did look back to CPR 62.3(1), the reference in that Rule to *issuing* an arbitration claim form in accordance with the Part 8 procedure did not mean that all the features of Part 8 become applicable to an application to enforce an award.

### Judgment

In his judgment on this issue (at [23] to [30]) Butcher J found that, whilst the relevant Rules are not currently expressed with the clarity which would be desirable:

(1) Applications pursuant to CPR 62.18 are intended to be a simple method to permit the enforcement of an award already made.

(2) There is no need for the Court to have the power to allow into that process either counterclaims (which would have to relate to a matter outside the scope of the arbitration agreement for otherwise they should have been part of the arbitration), or claims against parties who are neither the person(s) seeking enforcement of the award nor the person(s) against whom the award is invoked.

(3) There is no good reason why, as BMG's construction of the Rules necessarily implied, the Court should have the power to allow Part 20 proceedings within a CPR62.18 application only when the arbitration claim form is served on the defendant (for whatever reason), but not when only the order giving permission to enforce the Award is served on the defendant. Indeed, BMG's argument relies on 62.18(3) which applies only following service of the arbitration claim form, and there is no equivalent assimilation to Section I in relation to a case where it is only the order which is served under CPR 62.18(7) and (8), even where the defendant applies to set the order aside under CPR 62.18(9).

(4) Even if it is accepted that certain aspects of the Part 8 procedure are rendered applicable by the reference to Section I in CPR 62.18(3), this does not import all of the provisions of Part 8, and in particular CPR 8.7.

In the circumstances, Butcher J found that the correct reading of the relevant Rules was that CPR 8.7 is not part of the procedure for applications for enforcement of awards under CPR 62.18, and Part 20 claims may not be brought within them.

Having found for Selevison Saudi on this dispositive issue, Butcher J nevertheless went on to consider the alternative (from [31] to [47]), and concluded that in the instant case, the Court should not permit a counterclaim even if there was jurisdiction to do so.

Butcher J also considered briefly the question of a stay of enforcement of the Award (which did not arise in light of his ruling that there could be no counterclaim), discussing the Court's jurisdiction to grant such a stay at [48] to [51], and concluding at [52] that in the instant case he would not have exercised the Court's discretion to award a stay.

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**NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments of the Commercial Court are public documents and are available at: <https://www.bailii.org/ew/cases/EWHC/Comm>**