

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---|---|--------------------|
| IMPERIAL CRANE SALES, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 1: 15-CV-00859 |
| |) | |
| SANY AMERICA, INC., |) | |
| |) | |
| Defendant. |) | |
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**PLAINTIFF IMPERIAL CRANE SALES, INC.’s
MOTION TO CONFIRM THE FINAL ARBITRATION AWARD
AND FOR POST AWARD INTEREST AND ATTORNEYS’ FEES**

Now Comes, Plaintiff Imperial Crane Sales Inc. (“Imperial”) and in support of its Motion to Confirm the Final Arbitration Award for entry of judgment against SANY America, Inc. (“SANY”) pursuant to the Federal Arbitration Act 9 U.S.C. § 9 states as follows:

A. Jurisdiction

1. Imperial is an Illinois Corporation with its principal place of business in Illinois and is considered a citizen of Illinois for purposes of diversity jurisdiction under 28 U.S.C. § 1332 (Docket #1, Original Complaint ¶ 1, with Exhibit A attached).

2. SANY is Delaware Corporation with its principal place of business in the state of Georgia and is considered a citizen of Delaware and Georgia for purposes of diversity jurisdiction under 28 U.S.C. § 1332 (Docket #1, Original Complaint ¶ 2, with Exhibit A attached)..

3. The dispute at issue exceeds \$75,000 as an arbitration award in favor of Imperial has been issued for \$1,790,292.00.

4. Diversity jurisdiction under 28 U.S.C. § 1332 exists and no party has made claims of improper venue.

5. SANY has consented to personal jurisdiction and venue as it filed a Motion to Vacate the Arbitration Award with this Court.

6. In addition, under Rule 55(c) of the American Arbitration Association (AAA) Rules, the parties have consented that judgment upon the Award may be entered in any federal or state court having jurisdiction.

B. Background

7. Imperial Crane originally filed a lawsuit in the Circuit Court of Cook County on December 22, 2014, alleging breach of contract concerning the sale of certain industrial cranes by SANY to Imperial (Docket #1, with Exhibit A attached, copy of State Court Complaint).

8. On January 28, 2015, Defendant SANY removed the dispute to this United States District Court based on diversity jurisdiction (Docket #1, Notice of Removal).

9. On February 4, 2015, SANY then moved to compel arbitration of the entire dispute (Docket # 8, Motion to Compel Arbitration).

10. On July 15, 2015, this Court issued a Memorandum Opinion determining that the Arbitrator appointed by the AAA was to decide whether the claims were to be arbitrated pursuant to the parties' agreement, and if so, the Arbitrator was to conduct an Arbitration hearing on the merits (Docket #28).

C. The Arbitration Hearing

11. Consistent with this Court's July 15, 2015 Opinion, on September 3, 2015, Arbitrator Sherrill issued an interim ruling stating that all of the claims by Imperial were subject to arbitration (See attached Exhibit A, Arbitrator Interim Ruling).

12. The Arbitration Provision in the parties' Contract does not specify the court in which a judgment upon the award must be entered (see Docket #36, SANY Motion to Vacate attaching Contract as Exhibit C).

13. Arbitrator Sherrill then held a five day hearing from October 24-28, 2016 concerning the merits of the dispute (See attached Exhibit B, Final Arbitration Award, pg. 2).

14. On March 2, 2017, Arbitrator Sherrill issued an 11 page reasoned Final Arbitration Award in favor of Imperial as follows:

| Description | Amount |
|-------------------------------------|-----------------------|
| Direct Damages | \$1,592,938.00 |
| Reasonable Attorneys' Fees & Costs | \$159,784.00 |
| Administrative Arbitration Expenses | \$37,570.00 |
| TOTAL DAMAGES | \$1,790,292.00 |

Per the Award, Imperial was also entitled to post award interest at the statutory rate beginning thirty days from the date of the Award (See Exhibit B, pg. 11).

15. Under Georgia statute §7-4-12¹, the statutory post-judgment interest rate is the published prime rate plus 3%.

16. On April 2, 2017 (30 days after the Final Arbitration Award was issued) the prime rate was 4%, thus the post judgment statutory rate is 7%, translating into a yearly interest assessment of \$125,320.44, on the judgment, or a daily (365) assessment of \$343.34.

D. SANY Files A Motion to Vacate the Arbitration Award.

17. On March 23, 2015, SANY filed a Motion to Vacate the Arbitration Award with this Court (Docket #36, Motion to Vacate Arbitration Award).

¹ The parties agreed that Georgia law applied to the substance of the dispute as detailed in the Final Arbitration Award.

18. Imperial filed a response to that Motion (Docket #45) and SANY filed a reply (Docket #46).

19. To date, this Court has not yet ruled on the Motion to Vacate.

E. The Court Must Confirm the Arbitration Award In Favor of Imperial

20. In the absence of a legal basis to vacate, this Court has no discretion but to confirm the award. 9 U.S.C. § 9; *Bryson v. Gere*, 268 F. Supp.2d 46, 54 (D.D.C. 2003).

21. Motions to vacate arbitration awards are highly disfavored in the Seventh Circuit, and this Court's review of such an award is "extremely limited." *See Yasuda Fire & Marine Ins. Co. of Europe, Ltd v. Cont'l Cas. Co.*, 37 F.3d 345, 349 (7th Cir. 1994); *see also Nat'l Wrecking Co. v. Int'l Bhd. of Teamsters, Local 731*, 990 F.2d 957, 960 (7th Cir. 1993). Courts may not interfere with an arbitrator's findings of fact merely because it disagrees with them, otherwise the purpose of arbitration proceedings as speedy and cost-effective dispute resolution options would be undermined. *See Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1258 (7th Cir. 1992).

22. In this regard, "[f]actual or legal errors by arbitrators—even clear or gross errors—do not authorize courts to annul awards." *Flexible Mfg. Sys. Pty. Ltd. v. Super Prods. Corp.*, 86 F.3d 96, 100 (7th Cir. 1996) (quoting *Gingiss Int'l, Inc. v. Bormet*, 58 F.3d 328, 333 (7th Cir. 1995)). Or, put differently, "neither error nor clear error nor even gross error is a ground for vacating an award." *IDS Life Ins. Co. v. Royal Alliance Assocs., Inc.*, 266 F.3d 645, 650 (7th Cir. 2001) (citing, inter alia, *Major League Baseball Players Assoc. v. Garvey*, 532 U.S. 504, 509, 121 S.Ct. 1724, 149 L.Ed.2d 740 (2001)).

23. Courts are not permitted to disrupt an award even when "an arbitrator committed serious error or the decision is incorrect or even whacky." *Johnson Controls, Inc. v. Edman Controls, Inc.*, 712 F.3d 1021, 1025–26 (7th Cir. 2013).

24. In this case, the parties already briefed in full SANY's Motion to Vacate the Final Arbitration Award. As explained in detail in Imperial's Response to that motion, the Court must deny SANY's Motion to Vacate the reasoned Final Arbitration Award as the Motion comes nowhere close to meeting the extremely limited standards outlined in 9 U.S.C. § 10. Because the Final Arbitration Award cannot be set aside under 9 U.S.C. §10, the Court must simply confirm the award under 9 U.S.C. § 9 and grant this Motion.

F. Imperial Is Entitled to Post Award Interest From This Court

25. "State law governs the availability and amount of prejudgment interest in diversity cases involving the Federal Arbitration Act." *AIG Baker Sterling Heights, LLC v. American Multi-Cinema, Inc.*, 508 F.3d 995, 1002 (11th Cir. 2007). The statutory imposition of interest applies to arbitration awards, *Robertson-Ceco Corp. v. Nat'l Union Fire Ins. Co.*, 292 F. Supp.2d 1082, 1085 (N.D. Ill. 2003), and the Court has no discretion to decline to award post judgment interest. *Id.* Thus, the confirmation of the award must include the post award interest as awarded by the Arbitrator.

G. Imperial Is Entitled to Attorneys' Fees For the District Court Proceedings

26. The Final Arbitration Award also construed Section 5.8 of the Contracts and awarded Imperial, as the prevailing party, its attorneys' fees expended in the Arbitration (Exhibit B., pg. 10).

27. The Seventh Circuit has held that when the underlying contract allows for the entry of attorneys' fees in arbitration, the district court can grant additional fees for prevailing on either defending the award and/or confirming the award in court. *Harter v. Iowa Grain Co.*, 220 F.3d 544, 557 (7th Cir. 2000).

28. Imperial is thus entitled to attorneys' fees for defending the award responding to the Motion to Vacate and for submitting the Motion to Confirm, and any additional fees and costs associated with these post-arbitration proceedings. Imperial will separately submit a petition for fees.

WHEREFORE, Imperial requests that the Final Arbitration Award be confirmed and a judgment be entered as follows:

- (1) Confirm the Final Arbitration Award in the amount of \$1,790,292.00 as a judgment;
- (2) Pursuant to the Final Arbitration Award, this Court must also grant post judgment interest in the daily amount of \$343.34 commencing April 2, 2017, through the date of the entry of judgment by this Court and indicate that such interest continues to accrue up until such time as the judgment and interest are paid in full, and
- (3) that this Court grant Imperial's its attorneys fees' incurred in defending against SANY's Motion to Vacate and in pursuing this Motion to Confirm, with such petition to be filed after the entry of the judgment.

IMPERIAL CRANE SALES, INC.

By: /s/Craig G. Penrose
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that **Plaintiffs' Motion to Confirm the Final Arbitration Award** was filed electronically on this 20th day of September, 2017. Notice of filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's System.

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