

**Aguaytia Energy Del Peru S.R.L. v Maple Gas Corp.
Del Peru S.R.L.**

2021 NY Slip Op 31737(U)

May 19, 2021

Supreme Court, New York County

Docket Number: 652131/2019

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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AGUAYTIA ENERGY DEL PERU S.R.L.,	MOTION DATE	
Petitioner,	MOTION SEQ. NO.	001
- v -	DECISION AND ORDER ON MOTION	
MAPLE GAS CORPORATION DEL PERU S.R.L.,		
Respondent.		
-----X		

HON. BARRY R. OSTRAGER

Petitioner commenced this proceeding on April 10, 2019 to confirm the December 21, 2018 Final Award issued by the International Court of Arbitration in petitioner’s favor (NYSCEF Doc. No. 4). When the proceeding was pending before Justice Saliann Scarpulla, that Court issued various orders, including an Ex Parte Order of Attachment (seq. nos. 002 and 003), but as of February 2021 when this Court reviewed the docket following reassignment, service on respondent in Peru had still not been completed to the satisfaction of the Court.

Petitioner has since been granted by this Court various extensions of time to serve by alternate means, and significant efforts have been made by petitioner, at the Court’s direction, to ascertain a viable means to serve respondent so as to give respondent meaningful notice and an opportunity to be heard on the merits (see mot. seq. nos. 004-006). Further, upon learning that respondent is involved in liquidation proceedings in Peru, the Court requested confirmation as a matter of law that the liquidation proceedings did not require any stay of these proceedings. In the most recent decision and order dated March 24, 2021, this Court confirmed that service on the Peruvian Liquidator, combined with service on respondent at the Peruvian address on file in the liquidation proceedings, constituted valid service (mot. seq. 007, NYSCEF Doc. No. 125).

Before the Court at this time is the petition to confirm the arbitration award, now ready for a determination on the merits. Pursuant to the Court's direction, petitioner's counsel has efiled correspondence received by petitioner's firm from Jose Balta Gavifto, General Manager of JM&V Consultores S.A.C.. Liquidator of the respondent here Maple Gas Corporation del Peru, S.R.L. (NYSCEF Doc. No. 134). The letter states in its entirety as follows:

I understand that Aguaytia informed the Court that a petition to confirm an arbitration award cannot be stayed unless Maple's liquidator expends funds to proceed with a formal application for recognition of a foreign bankruptcy proceeding under Chapter 15 of the United States Bankruptcy Code. I respectfully disagree that the assets of Maple should be expended in this manner and request it to advise the Court that I respectfully request the Court to apply comity and fundamental fairness in considering Aguaytia's petition to confirm. I object to the petition, and ask the Court to deny it entirely, or at a minimum, stay the application pending the completion of the Peruvian liquidation process. Aguaytia has full status as a creditor regarding the same arbitration award that it seeks to confirm in the New York proceeding. As the Court noted, Aguaytia is participating in the Peruvian liquidation proceeding, and "any enforcement proceedings must be pursued in connection with the liquidation proceedings." It follows that, in my view, and I respectfully request the Court's deference to the Peruvian insolvency proceeding should be extended so that Maple's limited assets can be distributed in an equitable and orderly manner in a single proceeding.

Petitioner's counsel in his Reply Memorandum does not dispute that petitioner is a creditor of respondent involved in the Peruvian liquidation proceedings (NYSCEF Doc. No. 135). However, counsel argues that confirmation of the Award is separate from enforcement and that respondent has made no application to vacate the Final Award or deny confirmation pursuant to the limited grounds recognized by New York law. Petitioner relies on a Peruvian law opinion submitted by Renzo Agurto, opining that Maple's liquidation proceedings do not impact Aguaytia's right to confirm the Final Award. (NYSCEF Doc. No. 137). The Court is persuaded that petitioner is correct so will confirm the Award but will stay enforcement of any judgment pending the determination of the Peruvian liquidation proceeding.

Accordingly, it is hereby

ORDERED that the petition is granted and the December 21, 2018 Final Award issued by the ICC International Court of Arbitration (NYSCEF Doc. No. 4) is confirmed; and it is further

ORDERED that, upon petitioner's e-filing of a Proposed Judgment directed to the County Clerk, the Clerk shall enter judgment in favor of petitioner AGUAYTIA ENERGY DEL PERU S.R.L. against respondent MAPLE GAS CORPORATION DEL PERU S.R.L. as follows:

- i. \$5,286,116.70 for unpaid 2014 invoices;
- ii. \$13,458,181.98 for gasoline sold and delivered after March 1, 2016;
- iii. \$2,897,926.72 for interest on the above listed amounts;
- iv. Interest on the amount in (i) will continue to accrue from December 21, 2018, the date of the Final Award, through entry of judgment as calculated by the Clerk of the Court, and thereafter until paid, at the US prime rate, as published daily in the Wall Street Journal and supplied by petitioner in the form and manner required by the County Clerk, plus 2% per annum;
- v. Interest on the amount in (ii) will continue to accrue from December 21, 2018, the date of the Final Award, through entry of judgment as calculated by the Clerk of the Court, and thereafter until paid, at 6.25%; and
- vi. \$134,300.00 for respondent's share of the costs of the Arbitration;

and it is further

ORDERED that any enforcement of the judgment that is entered in this proceeding is stayed pending the determination of the Peruvian liquidation proceedings. Petitioner is directed to serve a copy of this Decision and Order on the Liquidator and to coordinate any enforcement proceedings with the Liquidator.

Dated: May 19, 2021

Barry R. Ostrager

BARRY R. OSTRAGER, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE