SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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AECOM TECHNICAL SERVICES, INC. and AECOM,

Plaintiffs,

- v -

CREDIT AGRICOLE CIB and ITAU CORPBANCA COLOMBIA S.A.,

Defendants.

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INDEX NO. 653558/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 48, 49, 50, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 91, 97, 103

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

This action arises from the design and construction of a light rail system in Bogota, Columbia (Project). Plaintiffs AECOM Technical Services Inc. d/b/a AECOM Technical Services – Sucursal Colombia (AECOM) and AECOM (AECOM Delaware)[1] claim that, in July 2023, the nonparty engineers of the Project (FFSDI and CFRO defined below) attempted to improperly draw $4.7 million on bank guarantees at defendant Itaú Corpbanca Columbia S.A. (Itaú), which in turn seeks to draw on letters of credit at defendant Credit Agricole CIB (Agricole).[2] (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶¶ 58-59; NYSCEF 114, tr at 5:18 [September 5, 2023 Oral Argument].) Plaintiffs' motion is denied because this is an ordinary contract dispute which does not rise to the level of fraud.

[1] AECOM Delaware's sole connection to this case is that it is the guarantor on the letters of credit at issue. (NYSCEF 2, Complaint at n 1.)

[2] The letters of credit between plaintiffs and Agricole provide for (1) New York as the forum and (2) the application of New York law. (NYSCEF 2, Complaint ¶ 12.)

Nonarty Empresa Ferrea Regional (EFR) is Columbia's public entity which manages the Project. (NYSCEF 2, Complaint ¶ 14.) EFR engaged nonparty Consorcio Interventor Regiotram de Occidente to supervise the Project. (*Id.*) EFR also engaged Concesionaria Ferrea De Occidente S.A.S's (CFRO) to design, construct, finance and manage the Project. (*Id.*) CFRO subcontracted the design work to China Railway Fifth Survey and Design Institute Group Co. Ltd and CCECC Fuzhou Survey & Design Institute Co., Ltd. (FFSDI), which in turn subcontracted to AECOM as a design consultant. (*Id.*; NYSCEF 7, June 25, 2020 Consulting Contract.)

In motion sequence number 001, filed July 25, 2023, plaintiffs move by OSC,

1. "pursuant to CPLR 6301 and 7502, preliminarily enjoining and restraining [Itaú] and its agents, …, pending final judgment herein, from honoring any draw request with respect to [8] Bank Guarantee … and from submitting a draw request to [Agricole] seeking disbursement or otherwise seeking to facilitate the transfer of funds from [8 corresponding] Letters of Credit …."

2. "pursuant to CPLR 6301 and 7502, preliminarily enjoining and restraining Agricole and its agents, …, pending final judgment herein, from honoring any effort by Itaú to draw funds from [8] Letters of Credit …"

(NYSCEF 3, Proposed OSC [seq. 001].) The court heard argument on the TRO on July 27, 2023, to which there was no objection, and issued the TRO making this OSC returnable on August 14, 2023. The court directed plaintiffs to serve CFRO, which at that time was a nonparty.[3] On August 11, 2023, CFRO filed opposition papers to this

[3] In motion sequence number 003, filed by OSC on August 24, 2023, CFRO seeks "to intervene for the limited scope of opposing Plaintiffs' Application for a Preliminary Injunction" and an award of attorneys' fees and costs and opposes the preliminary injunction and TRO. (NYSCEF 99, Proposed OSC [seq. 003].) Seq. 003 is scheduled for argument on September 26, 2023, the motion is unopposed. (NYSCEF 118, Plaintiffs' Responding Memo at 3 ["CFRO's motion to intervene is unopposed by all parties."].) Thus, argument is canceled, and the motion is granted as unopposed. The court apologizes for any confusion and will issue a separate order regarding seq. 003.

motion without first filing the motion to intervene. The August 14, 2023 argument on this motion was adjourned to September 5, 2023 to allow plaintiffs time to respond to CFRO. (NYSCEF 116, Oral Argument Transcript [August 14, 2023].) CFRO participated in the September 5, 2023 argument. (NYSCEF 114, Oral Argument Transcript [September 5, 2023].) FFSDI has not appeared in this action.

The $900 million Project, estimated to take 26 years to complete, consists of four phases A through D. (NYSCEF 2, Complaint ¶ 17; NYSCEF 114, tr at 22:1-3 [September 5, 2023].) The provisions of the Consulting Agreement at issue here are §1.04(c), which addresses advances, and §6.01, which address liquidated damages. Section 1.04(c) provides "[t]he advanced payment shall be amortized by [AECOM] to FFSDI through deductions applied to the monthly invoices in the same percentages equivalent to the disbursements of advance payments made to date." (NYSCEF 7, Consulting Agreement at 8.[4]) Section 6.01(3) provides for a cap on liquidated damages of 20% of the total value of the contract, but the cap does not apply if the breaches are due to AECOM's gross negligence or willful misconduct, which FFSDI asserts. (NYSCEF 7, Consulting Agreement at 20 [§§6.01(3) and (5)(b)]; NYSCEF 89, CFRO's Memo in Opposition at n 2; NYSCEF 112, FFSDI letter.) The deadline for AECOM's work (Phase A and B) was extended to February 24, 2023. (NYSCEF 2, Complaint ¶ 17.) The Consulting Agreement provides for arbitration in Toronto, Canada under ICC rules. (NYSCEF 7, Consulting Agreement §7.01.)

The Consulting Agreement calls for AECOM to issue three types of guarantees for the benefit of CFRO: (1) the Advance Payment Guarantee, (2) the Performance

[4] NYSCEF pagination.

Guarantee, and (3) a Guarantee of Service Quality. (NYSCEF 7, Consulting Agreement §5.01[i]-[ii], [iv].) The Advance Payment Guarantee "secured the repayment of" an advance payment issued by FFSDI to AECOM in an amount equal to 100% of the advance payment. (NYSCEF 2, Complaint ¶¶ 23-24; NYSCEF 7, Consulting Agreement §5.01[i].) The Performance Guarantee secured the "fulfilment of all the obligations of [AECOM] under the [Consulting] Contract" in an amount equal to 20% of the contract price.[5] (NYSCEF 7, Consulting Agreement §5.01[ii]; NYSCEF 2, Complaint ¶ 23.) Finally, the Guarantee of Service Quality "cover[ed] FFSDI for the damages derived from any service provided by [AECOM] that does not comply with the requirements of this [Consulting] Contract and that appears after [its] termination," in an amount equal to 5% of the contract. (NYSCEF 7, Consulting Agreement §5.01[iv].) These Guarantees are governed by the laws of Columbia. (NYSCEF 16, Bank Guarantees, ¶ 7.)

To fulfill its obligation to provide bank guarantees, AECOM called upon its 2017 credit facility with Agricole. (NYSCEF 2, Complaint ¶ 25; NYSCEF 12, Credit Facility Agreement [dated July 19, 2017]; NYSCEF13, Amendment No. 2 to Credit Facility Agreement; NYSCEF 14, Applications and Agreements for Irrevocable Standby Letters of Credit.) Agricole issued standby letters of credit in favor of CFRO and FFSDI. (*Id.*) Agricole requested that Itaú issue guarantees for the same values to the benefit of CFRO. (NYSCEF 2, Complaint ¶¶ 26-27.) Logistically, upon "Itaú's receipt of a demand for payment from CFRO, Itaú could make a draw on the letters of credit issued

[5] The contract price is 26 billion Columbian pesos or $6 million US under current exchange rates plus $5.6 million US. (NYSCEF 7, Consulting Agreement § 1.04.)

in its favor by [Agricole]." (NYSCEF 2, Complaint ¶ 27.) Under the Guarantees, Itaú had seven business days to issue payment to CFRO. (*Id.*) Agricole, in turn, was required "to release payment to Itaú within three business days of the receipt of a draw." (*Id.*)

As the Project progressed, FFSDI and AECOM executed several change orders. Change Order #19 contained a revised ten-month schedule for the completion of AECOM's final designs." (*Id.* ¶ 30.) Change Order #19 "required FFSDI to provide design inputs … ***before*** AECOM could finalize the design for FFSDI's review." (*Id.* ¶ 31.) Change Order #19 provides, in part,

> "**Rely upon Inputs**: In order to successfully complete the scope hereby established according to the schedule to be defined between the parties; FFSDI shall provide the following inputs according to the dates defined on Annex F.
>
> -If any of the inputs listed are not provided in full by the indicated date as provided In Annex F, AECOM shall move forward and complete the designs with the information available at the time, this information should be confirmed by FFSDI in a period no longer than a week. FFSDI/CFRO will compensate AECOM in case any further adjustments are required.
> -If FFSDI delays the inputs delivery to AECOM, AECOM will notify that the package was impacted and therefore will be delayed and rescheduled by both parts, FF3DI will pay 35% of the cost of the deliverable on the original delivery date.
> -If the inputs to be provided by FFSDI get delayed less than a 1 month, then the affected packages submission dates will be rescheduled by both parties, considering the critical path.
> -If the inputs to be provided by FFSDI get delayed more than 45 days. then a schedule and fee will have to be reviewed and agreed between the parties
> -If the milestones get delayed by AECOM more than 45 days, then fines will apply.
>
> -This schedule of payments assumes that FFSDI will provide the design inputs according to the table schedule provided by FFSDI Annex F
> -Any possible claim or change order from the designer should be notified at least 20 days in advance (PDN) from the latest input submission date,

> in order for FFSDI to provide the corresponding Information or instructions."

(NYSCEF 17, Change Order #19 at 5.)

On February 24, 2023, FFSDI sent a letter to AECOM that the Consulting Agreement would expire on its termination date, February 25, 2023, and that FFSDI did not intend to extend its duration. (NYSCEF 24, FFSDI Letter.) FFSDI terminated the Consulting Agreement on February 25, 2023. (NYSCEF 2, Complaint ¶ 45.)

On April 10, 2023, AECOM commenced a settlement proceeding consistent with the Consulting Agreement. (*Id.* ¶ 49.) On June 30, 2023, FFSDI served AECOM with a demand for payment of $3.6 million US. (NYSCEF 32, Demand.)

"On July 18, 2023, AECOM received notice that FFSDI triggered a demand on a series of guarantees related to the repayment of an advance FFSDI made to AECOM and a claim for liquidated damages." (NYSCEF 2, Complaint ¶ 3.) On July 21, 2023, Itaú issued written demands for payment to Agricole under the associated letters of credit. (*Id.* ¶ 59.)

Finally, on August 26, 2023, AECOM initiated ICC arbitration against CFRO and FFSDI which is scheduled for September 23, 2023. (NYSCEF 116, tr at 7:1-7 [August 14, 2023].) In the ICC arbitration, AECOM asserts breach of contract, not fraud, and does not challenge the draws on the bank guarantees or the letters of credit. (NYSCEF 106, Qingtao aff ¶ 5 [dated September 4, 2023];[6] *cf Strabag Spa v Credit Agricole CIB*,

[6] While this affidavit was filed the night before the September 5, 2023 argument, and mislabeled a Rule 18 letter, its actual purpose is to respond to alleged new facts asserted in AECOM's replies. As of the argument, the court had yet to read this affidavit and AECOM objected to its tardiness. While the facts are new, the argument was made in the complaint. AECOM asserted in the complaint that it would be irreparably harmed because FFSDI and CFRO suffered from financial difficulties. In its

2023 NY Slip Op. 31184[U], 10-11 [Sup Ct, NY County 2023] [Plaintiff alleged fraud in the ICC arbitration as well as breach of contract].)

Plaintiffs' complaint consists of one cause of action for injunctive relief. (NYSCEF 2, Complaint ¶¶ 62-76.) Plaintiffs assert that the draws on the guarantee and letters of credit are fraudulent because FFSDI prevented AECOM's performance under their contract. (*Id.* ¶ 65.) Plaintiffs insist that AECOM "is still owed several million dollars in payments for work performed under the [Consulting Agreement]." (*Id.* ¶ 46.)

Plaintiffs move under CPLR 6301 and in support of the mediation pursuant to CPLR 7502. For injunctive relief under CPLR 6301, the movant must establish likelihood of success on the merits of the action; the danger of irreparable harm in the absence of a preliminary injunction; and a balance of equities in favor of the moving party. (*Gliklad v Cherney*, 97 AD3d 401, 402 [1st Dept 2012] [citations omitted].) "A preliminary injunction should not be granted unless the right thereto is plain from the undisputed facts and there is a clear showing of necessity and justification." (*O'Hara v Corporate Audit Co.*, 161 AD2d 309, 310 [1st Dept 1990] [citations omitted].) In addition to the three prongs standard under Article 63, the standard under CPLR 7502(c) is whether "any award issued by the arbitrator may be rendered ineffectual if the relief is not granted." (*Project Orange Assoc., LLC v Gen. Elec. Intl., Inc.*, 23 Misc 3d 764, 767-768 [Sup Ct, NY County 2009].)

Defendant Agricole takes no position on this motion. Itaú contends the court lacks personal jurisdiction over it. Since the preliminary injunction is denied, the court

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replies responding to defendants' oppositions, AECOM asserted facts to support its conclusory contention. Accordingly, the sur-reply is permissible.

does not address Itaú's jurisdiction objection. Itaú also argues that the court must deny the preliminary injunction because "New York courts routinely refuse to enjoin payments under irrevocable guarantees and letters of credit because such payments do not present a risk of irreparable harm to the plaintiff," and "entry of an injunction would cause substantial hardship to [Itaú] decidedly tipping the balance of the equities against an award of such relief." (NYSCEF 65, Itaú Memo of Law at 4.) However, as to likelihood of success, Itaú takes no position on plaintiffs' fraud allegations.

The court rejects Itaú's argument that its obligation to honor the demand is absolute. "[A] bank that issues a letter of credit is not required to look beyond the payment documents presented by the beneficiary in order to ascertain whether the parties to the underlying transaction have complied with their respective duties and obligations." (*Archer Daniels Midland Co. v JP Morgan Chase Bank, N.A.*, 2011 WL 855936, *4 [SD NY 2011] [citation omitted].)

> "Letters of credit are commercial instruments that provide a seller or lender (the beneficiary) with a guaranteed means of payment from a creditworthy third party (the issuer) in lieu of relying solely on the financial status of a buyer or borrower (the applicant). Historically, letters of credit have been used to assure predictability and stability in mercantile transactions by diminishing a seller's risk of nonpayment and a buyer's risk of nondelivery due to insufficient funds."

(*Nissho Iwai Europe PLC v Korea First Bank*, 99 NY2d 115, 119 [2002] [citation omitted].)

New York applies the "independence principle" to letters of credit, which "requires strict compliance with facially valid requests for payment under a letter of credit." (*Archer Daniels,* 2011 WL 855936 at *4 [citations omitted].) "[A]n issuing bank's obligations under a letter of credit are separate from, and independent of, the rights and

obligations of the parties to the underlying commercial transaction." (*Id.*, citing *410 Sixth Ave. Foods, Inc. v 410 Sixth Ave., Inc.*, 197 AD2d 435, 436 [1st Dept 1993].) However, fraud is an exception to the independence principle. (*3M Co. v HSBC Bank USA, N.A.*, 2018 WL 1989563, *9 [SD NY 2018].) In New York, the fraud exception is codified in UCC § 5-109(a) which provides:

> "If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant[,] . . . [t]he issuer, acting in good faith, may honor or dishonor the presentation . . . ."

(UCC § 5-109 [a] and [a] [2].) The exception is narrow to ensure "the smooth operation of international commerce" by preventing pre-payment litigation. (*3M Co.,* 2018 WL 1989563 at *9.)

The conditions necessary before the fraud exception applies are: (1) "fraud must be found either in the documents or must have been committed by the beneficiary on the issuer or applicant"; and (2) the "fraud must be 'material.'" (UCC § 5-109, Official Comment 1 [citation omitted].) "Material fraud by the beneficiary occurs only when the beneficiary has no colorable right to expect honor and where there is no basis in fact to support such a right to honor." (*Id.*) The circumstances must "plainly show that the underlying contract forbids the beneficiary to call a letter of credit." (*Id.*) The fraud exception will apply "where the beneficiary's conduct has 'so vitiated the entire transaction that the legitimate purposes of the independence of the issuer's obligation would no longer be served.'" (*Id.*, quoting *Ground Air Transfer, Inc. v Westate's Airlines, Inc.*, 899 F2d 1269, 1272-73 [1st Cir 1990].) Finally, "[t]he courts should be skeptical of

claims of fraud by one who has signed a 'suicide' or clean credit and thus granted a beneficiary the right to draw by mere presentation of a draft." (UCC § 5-109, Official Comment 3.)

Accordingly, to satisfy the likelihood of success prong for a preliminary injunction, plaintiffs must establish the likelihood of success on their fraud theory; a contract dispute is not sufficient. (*See 410 Sixth Ave. Foods, Inc.* 197 AD2d at 437 ["At best, the evidence supports solely mutual allegations of breach of contract, not fraud."].) A basic contract dispute becomes fraud when there is a draw on a letter of credit without any legal basis to support that draw. (*See Strabag SPA*, 2023 WL 2859777 at *10, citing *3M Co.*, 2018 WL 1989563.)

First, the court rejects plaintiffs' efforts to establish likelihood of success because the record instead demonstrates multiple contract disputes, and thus, FFSDI and CFRO have a colorable basis to draw on the letters of credit. Indeed, AECOM attempted mediation as required by the Consulting Agreement, but it failed. "[A] difference of opinion regarding the beneficiary's rights and obligations in an underlying contract, [is] insufficient to show fraud in the transaction." (*TC Skyward Aviation U.S., Inc. v Deutsche Bank AG*, 557 F Supp 3d 477, 488 [SD NY 2021]; *see also Kvaerner U.S., Inc. v Merita Bank PLC*, 288 AD2d 6, 6 [1st Dept 2001] [citation omitted] [affirming refusal to enjoin bank preliminarily from honoring demand on letter of credit because the record "[a]t best . . . merely supports allegations of breach of contract, not fraud, and a such is insufficient to justify enjoining payment of the letter of credit"]; *Magar, Inc. v Natl. Westminster Bank, USA*, 189 AD2d 580, 581 [1st Dept 1993] ["evidence at bar merely supports allegations of breach of contract, not fraud"]; *410 Sixth Ave.*, 197 AD2d at 437

["At best, the evidence supports solely mutual allegations of breach of contract, not fraud."].)

Second, the plaintiffs' objection to CFRO drawing on the guarantees because FFSDI is AECOM's contract partner not CFRO is without merit. The parties to the Consulting Agreement structured the financial arrangement: the Consulting Agreement is with FFSDI, a Chinese company, and CFRO, a Columbian company, is the beneficiary of the letters of credit. (*See* NYSCEF 2, Complaint ¶ 6.) Likewise, the court rejects CFRO's identical argument that the court must deny the motion for a preliminary injunction because plaintiffs fail to allege fraud against CFRO, which the parties agreed would be the beneficiary of the guarantees and letters of credit.

Third, plaintiffs insist that FFSDI's failure to comply with the Consulting Agreement prevented AECOM's performance. Where a party "behaves so as to prevent performance of the underlying obligation . . . the 'fraud' inheres in first causing the default and then attempting to reap the benefit of the guarantee." (*Rockwell Intl. Sys., Inc. v Citibank, N.A.*, 719 F2d 583, 589 [2d Cir 1983] [citations omitted].) Here, plaintiffs contend that FFSDI agreed to provide certain information and comments by certain dates which was a prerequisite to AECOM's performance, but FFSDI failed to do so. (NYSCEF 2, Complaint ¶¶ 32, 39.) Instead, FFSDI labeled the missing data AECOM's "inconsistencies" which is the sole basis for FFSDI's allegedly improper assertion of liquidated damages. (*Id.* ¶ 42.) This is a clear contract dispute that must be decided in arbitration and not a material fraud.

Fourth, plaintiffs assert that the demands connected to the liquidated damages were facially improper because the Consulting Agreement gives AECOM 30 days from

FFSDI's demand on June 30, 2023 for payment, or July 30, 2023 here, but the draws were made on July 19, 2023. (NYSCEF 114, tr at 10:18-19 [September 5, 2023]; NYSCEF 2, Complaint ¶ 70.) Again, this is a clear contract dispute that must be decided in arbitration and not a material fraud.

Fifth, plaintiffs assert that the draws exceed the liquidated damages 20% cap, which AECOM reconfigures based on its termination after completing Phase A only. (NYSCEF 114, tr at 22-23 [September 5, 2023].) This is a genuine contract dispute.

Sixth, plaintiffs argue that CFRO's draw to recover advanced payments made to AECOM, which remain unreimbursed to FFSDI, is improper. Since the Consulting Agreement is terminated, FFSDI is entitled to the return of its advance which AECOM does not dispute. AECOM's reliance on the Consulting Agreement's logistics for repayment of the advance during the term of the contract does not dictate repayment after the contract is terminated. Indeed, the Advance Payment Guarantee specifically secures the repayment of FFSDI's advance payment. Once again, this is a clear contract dispute that must be decided in arbitration and not a material fraud.

Seventh, plaintiffs argue that FFSDI's liquidated damages claim constitutes a double recovery because FFSDI is already withholding payment of approximately US$5 million from AECOM and is making a draw on the Letters of Credit. (NYSCEF 2, Complaint ¶ 70.) FFSDI does not deny it is withholding such funds. This is also a clear contract dispute.

Eighth, plaintiffs allege that "FFSDI's draw is premised on the belief that if AECOM's detailed designs were not perfect as of October 7, 2022, FFSDI is entitled to recover liquidated damages. This is directly contrary to the language of CO#19, upon

which AECOM relied, where the parties agreed to review and revise AECOM's designs to account for any inconsistences, omissions, or errors that FFSDI, CIRO, or EFR identified." (Id. ¶ 67.) This is a clear contract dispute as to how this iterative design process works which must be decided in arbitration and not a material fraud.

Ninth, at argument, plaintiffs challenged the veracity of FFSDI's claim of alleged deficiencies because FFSDI paid AECOM $1.17 million in February 2023, which is inconsistent with being in material default. (NYSCEF 114, tr at 11:6-12 [September 5, 2023].) While such a payment undermines FFSDI's veracity, it is not conclusive of fraud.

While plaintiffs fail to establish likelihood of success, they have successfully established that the parties are engaged in a contract dispute with many differences. The court is compelled to find that plaintiffs failed to establish likelihood of success where the facts are sharply disputed as they are here. (*Lincoln Plaza Tenants Corp. v MDS Props. Dev. Corp.*, 169 AD2d 509, 512 [1st Dept 1991], citing *Hartford v Resorts Intl., Inc.*, 43 AD2d 828, 829 [1st Dept 1974] [holding that movant not entitled to injunctive relief where there are "sharp factual disputes"].) Plaintiffs cannot satisfy the high threshold to show that FFSDI has no valid claim under the Consulting Agreement because this is a clear contract dispute that must be decided in arbitration; there is a colorable basis to call the letter of credit. (*See All Serv. Exportacao, Importacao Comercio, S.A. v Banco Bamerindus do Brazil, S.A.*, 921 F2d 32, 35 [2d Cir 1990].)

Plaintiffs also fail to establish that they will suffer irreparable harm. Plaintiffs contend that there is evidence that the Project is suffering financial difficulties and FFSDI maintains financial relationships with entitles located in jurisdictions where it may

be difficult for plaintiffs to sue for damages. (NYSCEF 72, Grigaliunas Kongas aff ¶¶ 7-8, 13, 9-12, 14.) Plaintiffs will suffer no irreparable harm because they have an adequate remedy – damages against FFSDI and CFRO. Plaintiffs' fear that defendants will immediately transfer the funds from the letters of credit out of the United States is conclusory and rejected. (NYSCEF 4, Plaintiffs' Memo in Support at 9.) That is the risk AECOM took when it entered an international project.

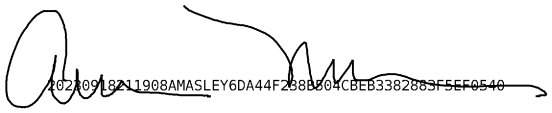
Finally, the court must weigh the burden on plaintiffs without the preliminary injunction against the burden on FFSDI and CFRO if the preliminary injunction issues. (*Nassau Roofing & Sheet Metal Co., Inc. v Facilities Dev. Corp.,* 70 AD2d 1021, 1022 [3d Dept 1979] ["In order for a preliminary injunction to issue it must be shown that the irreparable injury to be sustained by the plaintiff is more burdensome to it than the harm caused to defendant through imposition of the injunction."].) The court finds that the balance of equites favors FFSDI and CFRO. While the preliminary injunction here would simply maintain the status quo until an arbitration decision issues, a preferable situation, FFSDI and CFRO are entitled to the benefit of their bargain. A letter of credit must be honored regardless of any claims related to the underlying contract. (*TC Skyward*, 557 F Supp 3d at 488.) Defendants bargained for the right to be holding funds during a dispute which they will be compelled to return if they lose in the arbitration. The court rejects AECOM's argument that it will suffer irreparable harm because the letters of credit funds will be dissipated to China and Columbia. In addition to being speculative, AECOM assumed the business risk of this international transaction. (*KMW Intl. v Chase Manhattan Bank, N. A.*, 606 F2d 10, 15 [2d Cir 1979] [holding that plaintiff "assumed the business risks of international transactions"].)

Finally, plaintiffs cannot use a preliminary injunction to protect an anticipated judgment in its favor. (*Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 546 [2000].)

Plaintiffs' request to enjoin future draws on the Quality Guarantees is premature since there have yet to be such demands. (*KMW Intl.*, 606 F2d at 16.)

Accordingly, it is

ORDERED that plaintiffs' motion for a preliminary injunction is denied.



9/18/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	x	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
		GRANTED	X	**DENIED**	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**