Vanishing Arbitration: U.S. Court Rejects DIAC Jurisdiction Post DIFC-LCIA Abolition

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In the recent dispute between Baker Hughes Saudi Arabia Co. Ltd. and Dynamic Industries, Inc. and its affiliates (Dynamic Industries International, LLC, and Dynamic Industries International Holdings, Inc.), the United States District Court for the Eastern District of Louisiana was presented with a significant contractual disagreement. The case, titled Baker Hughes Saudi Arabia Co. v. Dynamic Industries (Civil Action 2:23-cv-1396), was published on November 6, 2023□□.

The core of the dispute stemmed from a contract under which Baker Hughes Saudi Arabia agreed to supply materials, products, and services for an oil and gas project in Saudi Arabia, being executed by Dynamic Industries. Baker Hughes Saudi Arabia claimed it had fulfilled its contractual obligations but had not been paid the owed sum of $1.355 million by Dynamic Industries□□.

Dynamic Industries, in response, filed a motion to dismiss the case on the grounds of forum non conveniens (a legal principle allowing courts to dismiss a case if another more appropriate forum is available) or to compel arbitration. They based their argument on the contract's clause, which stated that any unresolved disputes should be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC LCIA (Dubai International Financial Center London Court of

International Arbitration)□□.

However, the situation was complicated by the fact that the DIFC LCIA had been abolished in 2021 by a decree from the government of Dubai and replaced with the Dubai International Arbitration Center (DIAC). Baker Hughes argued that the contract's arbitration provision was unenforceable because the agreed-upon forum, the DIFC LCIA, no longer existed□□.

Dynamic Industries countered by suggesting that the Dubai government's decree effectively transferred the assets, rights, and obligations of the DIFC LCIA to the DIAC, arguing that this allowed for the arbitration to proceed under the DIAC. However, Baker Hughes contested this, stating that the Dubai government could not unilaterally change the arbitration forum agreed upon in the contract□□.

After reviewing the arguments and considering the legal precedents, the court ruled in favor of Baker Hughes Saudi Arabia. It denied Dynamic Industries' motion to dismiss the case or compel arbitration in the DIAC, concluding that the original forum for arbitration, the DIFC LCIA, no longer existed and could not be substituted unilaterally. This decision underlines the importance of specific arbitration clauses in contracts and the challenges that may arise when the selected arbitration forum is no longer available□.

The court reasoned:

"As the Fifth Circuit explained, this Court "cannot rewrite the agreement of the parties and order the [arbitration] proceeding to be held" in a forum to which the parties did not contractually agree. Nat'l Iranian Oil Co., 817 F.2d at 334. Nor can the Dubai government. Whatever similarity the DIAC may have with the DIFC LCIA, it is not the same forum in which the parties agreed to arbitrate. That forum is no longer available, and this Court thus cannot compel Plaintiff to arbitrate."

The ruling in Baker Hughes Saudi Arabia Co. v. Dynamic Industries sets a significant precedent for future disputes involving DIFC-LCIA clauses, particularly in U.S. and other international jurisdictions. With the dissolution of the DIFC-LCIA and government-mandated transfer of DIFC-LCIA arbitrations to DIAC, contracts specifying the former as the arbitration forum face legal uncertainties. U.S. courts, as demonstrated in this case, may not recognize the DIAC as a valid substitute, thereby impacting the enforceability of arbitration clauses and potentially leading to more litigations being adjudicated in court rather than through arbitration. This development urges parties in international contracts to reassess and potentially revise their arbitration clauses to ensure clarity and enforceability, acknowledging the evolving landscape of international arbitration forums.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com