

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

January 10, 2023

Christopher M. Wolpert
Clerk of Court

COMPAÑÍA DE INVERSIONES
MERCANTILES S.A.,

Petitioner - Appellee,

v.

GRUPO CEMENTOS DE CHIHUAHUA
S.A.B. DE C.V.; GCC
LATINOAMERICA, S.A. DE C.V.,

Respondents - Appellants.

No. 21-1196

COMPAÑÍA DE INVERSIONES
MERCANTILES S.A.,

Petitioner - Appellee,

v.

GRUPO CEMENTOS DE CHIHUAHUA
S.A.B. DE C.V.; GCC
LATINOAMERICA, S.A. DE C.V.,

Respondents - Appellants.

No. 21-1324

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:15-CV-02120-JLK)

David M. Cooper, Quinn Emanuel Urquhart & Sullivan, LLP, New York, New York
(Alex H. Loomis, Quinn Emanuel Urquhart & Sullivan, LLP, Boston, Massachusetts;

Juan P. Morillo, Quinn Emanuel Urquhart & Sullivan, LLP, Washington, D. C.; David G. Palmer, Greenberg Traurig LLP, Denver, Colorado; and Daniel Pulecio-Boek, Greenberg Traurig, LLP, Washington, D. C., with him on the briefs) for Respondents – Appellants.

Eliot Lauer (Gabriel Hertzberg, Juan O. Perla, Sylvi Sareva with him on the briefs) Curtis, Mallet-Prevost, Colt & Mosle LLP, New York, New York for Petitioner – Appellee.

Before **HOLMES**, Chief Judge, **MATHESON**, and **ROSSMAN**, Circuit Judges.

MATHESON, Circuit Judge.

A Bolivian arbitration tribunal awarded \$36 million in damages to Compañía de Inversiones Mercantiles S.A. (“CIMSA”) against Grupo Cementos de Chihuahua S.A.B. de C.V. (“GCC”). GCC fought the award in the Bolivian courts, losing before a chamber of Bolivia’s highest constitutional court in 2016.¹ In 2019, CIMSA obtained an order from the U.S. District Court for the District of Colorado confirming the award. In 2020, GCC convinced a different chamber of Bolivia’s highest constitutional court to invalidate its prior decision, and a Bolivian trial judge subsequently annulled the award. GCC then moved the U.S. district court to vacate the confirmation order. The district court (1) denied GCC’s motion and (2) ordered GCC to turn over assets located in Mexico to satisfy the award. GCC brought

¹ As we discuss below, Bolivia’s highest constitutional court is comprised of groups of judges, known as “chambers.” 21-1196, App., Vol. IV at 879 n.2; 21-1196, App., Vol. V at 1056-57, 1201 n.1.

separate appeals from these two rulings. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm in both appeals.

I. BACKGROUND

A. *Shareholder Agreement to Arbitration – 2005-2015*²

1. The Parties' Shareholder Agreement – 2005

In 2005, GCC, a set of related Mexican companies, sought to acquire an interest in Bolivia's largest cement company, Sociedad Boliviana de Cemento, S.A. ("SOBOCE"). *Compañía I*, 970 F.3d at 1276-77. At that time, CIMSA, a Bolivian company, was SOBOCE's controlling shareholder. GCC offered CIMSA approximately \$59 million to purchase a 47 percent interest in SOBOCE. *Id.* at 1276-77. CIMSA accepted, and on September 22, 2005, the parties entered into a shareholder agreement as SOBOCE's two principal shareholders (the "Shareholder Agreement"). *Id.* at 1277.

The Shareholder Agreement allowed each party to sell its shares in SOBOCE to a third party after a period of five years, so long as the selling party gave notice to the other party and provided it an opportunity to purchase the shares on the same or better terms within 30 days. *Id.*

² Our opinion in *Compañía de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 2793 (2021) ("*Compañía I*"), set forth the facts underlying these cases. We draw facts from that opinion unless otherwise indicated.

Under the Shareholder Agreement, (1) the parties would submit any disputes regarding a breach to international arbitration for final resolution and (2) the rules and regulations of the Inter-American Commercial Arbitration Commission (“IACAC”) would govern. *See* 21-1196, Suppl. App. at 2. The “national chapter of the [IACAC] in Bolivia” would conduct the arbitration, three arbitrators would preside, and Bolivian law would apply. *Id.*; *Compañía I*, 970 F.3d at 1278, 1291. The parties agreed that “[a]ny awards or orders issued by the Arbitration Court shall be final and of mandatory compliance” and “expressly waive[d] all actions for annulment, objection, or appeal against the award.” 21-1196, Suppl. App. at 2.

2. The Parties’ Commercial Dispute – 2009-2011

In 2009, GCC informed CIMSA that it intended to sell its SOBOCE shares after the five-year holding period. *Compañía I*, 970 F.3d at 1277. Between 2009 and 2011, the parties attempted to reach a deal for CIMSA to purchase those shares, but they failed to reach an agreement. *Id.*

In July 2011, GCC notified CIMSA that a Peruvian company had tendered a firm offer to buy GCC’s SOBOCE shares. *Id.* CIMSA reiterated its desire to purchase the shares. This time GCC said it would accept CIMSA’s proposed payment terms. *Id.* In August 2011, GCC sent CIMSA a draft purchase agreement. *Id.*

But “[r]ight before the transaction was set to close, GCC demanded an increase in the number of SOBOCE shares CIMSA would place in trust, from 4% to 27%, allegedly to ensure CIMSA’s compliance with a longer payment schedule.” *Id.*

In response, “CIMSA attempted to exercise its right of first refusal under the terms . . . that had been negotiated by the parties.” *Id.* GCC said CIMSA’s attempt to exercise that right was invalid and sold its SOBOCE shares to the Peruvian company. *Id.*

3. Arbitration – 2011-2015

In November 2011, CIMSA invoked the Shareholder Agreement’s arbitration clause and initiated arbitration proceedings, claiming that GCC violated the Shareholder Agreement by failing to honor the right of first refusal. *Id.* at 1278. A three-member tribunal (the “Arbitral Tribunal”) presided over the arbitration in Bolivia. *Id.* The parties agreed to bifurcate the proceedings into a merits phase and a damages phase. *Id.*

In September 2013, the Arbitral Tribunal issued a merits ruling, holding that GCC breached the right of first refusal in the Shareholder Agreement (the “Merits Award”). *Id.* In April 2015, the Arbitral Tribunal awarded CIMSA approximately \$34 million in damages and \$2 million in fees and costs, with interest accruing at 6 percent annually on those amounts (the “Damages Award”). *Id.* at 1280.

B. Court Proceedings – 2015-2021

Post-arbitration court proceedings primarily occurred in Bolivia and the United States, often simultaneously.³ GCC attempted to annul the Merits and Damages

³ Court proceedings also occurred in Mexico, but those are primarily relevant to Case No. 21-1324, so we defer our discussion of those proceedings until we turn to that appeal.

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