

COURT OF APPEAL FOR ONTARIO

CITATION: Xiamen International Trade Group Co., Ltd. v. LinkGlobal Food Inc.,
2024 ONCA 605
DATE: 20240806
DOCKET: COA-23-CV-1336

Miller, Harvison Young and Gomery JJ.A.

BETWEEN

Xiamen International Trade Group Co., Ltd.

Applicant (Respondent)

and

LinkGlobal Food Inc.

Respondent (Appellant)

Wei Jiang, for the appellant

David Woodfield, for the respondent

Heard and released orally: July 17, 2024

On appeal from the judgment of Justice Marie-Andrée Vermette of the Superior Court of Justice, dated November 15, 2023, with reasons reported at 2023 ONSC 6491.

REASONS FOR DECISION

[1] The respondent brought an application in Ontario to enforce an international arbitral award. At the hearing of the application, the appellant sought an adjournment to allow it to bring proceedings in China to compel the appellant's former legal counsel in China to give evidence about failures of natural justice in the international arbitration.

[2] The application judge weighed the factors set out in *Ariston Realty Corp. v. Elcarim Inc.* (2007), 51 C.P.C. (6th) 326 (Ont. S.C.), at para. 34 and denied the adjournment request. Further, she noted that the scope of refusal of an international arbitration award is narrow, and in the absence of evidence or substantive submissions with an air of reality, granted judgment for the enforcement of the arbitral award.

[3] The appellant's appeal is largely if not entirely grounded in the denial of the adjournment request. The appellant concedes that the application judge set out the correct factors governing the exercise of her discretion, and that discretionary decisions are generally entitled to deference. However, the appellant argues that this court ought not to defer because the result would be contrary to the interests of justice.

[4] We do not agree that the application judge's ruling is contrary to the interests of justice. The application judge appropriately noted the narrow scope to deny enforcement of foreign arbitral awards and was concerned with the further delay

that would be caused by the adjournment request. She noted that the appellant had a year from the time the hearing date was set to obtain the evidence it sought and took no steps until shortly before the hearing. It did not provide an explanation for its lack of diligence. She noted that the appellant's representative, who was in a position to provide some evidence of the proceeding in China, did not do so. The application judge was concerned about prejudice to the respondent caused by further delay, with no guarantee that the evidence the appellant sought to produce would be ultimately forthcoming.

[5] We would not interfere with the application judge's ruling.

[6] The appellant has not advanced a substantive argument independent of the appeal of the adjournment request. Accordingly, there is nothing remaining to the substantive appeal and the appeal is dismissed.

DISPOSITION

[7] The appeal is dismissed. The respondent is awarded costs of the appeal in the amount of \$17,500 all inclusive, as agreed between the parties.

"B.W. Miller J.A."
"A. Harvison Young J.A."
"S. Gomery J.A."