

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL

International Commercial Chamber
DIVISION 5 - 16

JUDGMENT OF 12 SEPTEMBER 2023

(no. 70 /2023, 12 pages)

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Decision referred to the Court: Final award rendered in Paris on 9 December 2021 under the aegis of the International Arbitration Chamber of Paris (Case No. 3294)

APPLICANTS FOR SETTING ASIDE THE ARBITRAL AWARD:

Mr [C] [W]

born 21 August 1951 in [town 6] (CANADA), of Canadian nationality,
residing at [address 3] (CANADA),

Company ULTRA GOLD GUINEA

a company incorporated under Guinean law,

having its registered office at: [address 2] (REPUBLIC OF GUINEA), and its current address at [address 8] (REPUBLIC OF GUINEA),

in the person of its legal representatives,

Company WORLD AIRCRAFT LEASING INC.

a company incorporated under US law,

having its registered office at: [address 1] (UNITED STATES),

in the person of its legal representatives,

Represented, as counsel with right of audience, by Christophe PACHALIS, of SELARL RECAMIER AVOCATS ASSOCIES, of the PARIS Bar; locker: K148

Represented, as trial counsel, by Mr Bertrand REPOLT and Mr William BOURDON, of AARPI BOURDON & ASSOCIES, of the PARIS Bar; locker: R143

RESPONDENTS:

Company SPECTER AVIATION LIMITED

a company incorporated under English law,

having its registered office at: [address 4] (ISLE OF MAN)

in the person of its legal representatives,

Company UNITED MINING SUPPLY

a company incorporated under Guinean law,
having its registered office at: [address 5] (GUINEA)
in the person of its legal representatives,

Represented, as counsel with right of audience, by Luca DE MARIA, of the SELARL PELLERIN - DE MARIA - GUERRE, of the PARIS Bar, locker L0018

Represented, as trial counsel, by Marie DANIS and Marie VALENTINI, of SCP AUGUST & DEBOUZY et associés, of the Paris Bar, locker P0438

COURT COMPOSITION:

The case was heard on 23 May 2023, in open court, before the Court, composed of:

Mr Daniel Barlow, President
Ms. Fabienne SCHALLER, President
Ms. Laure ALDEBERT, Judge

who ruled on the case.

A report was submitted at the hearing by Ms. [I] [A] under the conditions provided for by Article 804 of the French Code of Civil Procedure.

Clerk at the hearing: Ms. Najma EL FARISSI

JUDGMENT:

- contradictory

- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by Daniel BARLOW, President, and by Najma EL FARISSI, Clerk to whom the minute was delivered by the signatory judge.

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I/ FACTS AND PROCEDURE

1. The Court is seized of an action for setting aside a final award made in Paris on 9 December 2021, under the aegis of the International Arbitration Chamber of Paris.

2. The dispute is between:

- Mr [C] [W], Canadian national,
- Company Ultragold Guinée, a Guinean company specialising in mining, headed by Mr [W],
- Company World Aircraft Leasing Inc, a company incorporated under US law and managed by Mr [W], on the one hand,

and

- Company United Mining Supply, a company incorporated under Guinean law specialising in integrated logistics and transport in Guinea and West Africa,
- Company Specter Aviation Ltd, a company incorporated under UK law specialising in the ownership and registration of aircraft.

3. On 27 April 2012, the company United Mining Supply (hereinafter “UMS”) and Mr [C] [W] (hereinafter “Mr [W]”) signed a memorandum of understanding for the purpose of creating a joint venture to operate an air transport business in Guinea and West Africa, under the banner “UMS Aviation” (hereinafter “the Memorandum”).

4. The Memorandum provided for UMS Aviation to operate two aircraft: a B0105 helicopter and a Britton Norman BN2 aircraft. The list of jointly operated aircraft could be extended.

5. In 2012, UMS acquired a Beechcraft King Air 90 aircraft (hereinafter the “Beechcraft 90”) operated by the joint venture. The registration certificate was issued in the name of company World Aircraft Leasing and registered with the Federal Aviation Administration.

6. The company Specter acquired a Beechcraft 300LM King Air aircraft (hereinafter the “Beechcraft 300 aircraft”) on 17 April 2018 and made it available to the joint venture from 5 May 2018 for a period of two years.

7. The parties having decided to terminate the joint venture amicably and by mutual agreement, negotiated an amendment to the Memorandum specifying the terms and conditions of the liquidation of the joint venture (amendment referred to as the “liquidation agreement”). Under the terms of this amendment, signed on 9 April 2019, the distribution of the aircraft between the parties provided for the return of the three BO105 helicopters and the Beechcraft 300 aircraft to World Aircraft Leasing Inc, and UMS retained the use of the BN2 90 aircraft.

8. The Beechcraft 300 was taken to Canada by Mr [W].

9. Considering that there had been an erroneous substitution in the liquidation agreement of the reference to the Beechcraft 300 aircraft instead of the BN2 aircraft, UMS and Specter filed a request for arbitration before the CAIP on 5 October 2020.

10. At the same time, on 7 October 2019, UMS and Specter filed a complaint with the Guinean courts for theft, fraud and breach of trust, in particular against Mr [W] and the pilot of the Beechcraft 300 aircraft. On 9 October 2019, the Conakry court ordered the preventive seizure of the aircraft.

11. On 10 October 2019, a motion was filed with the Superior Court of the District of [town 6] to seek the seizure of the Beechcraft 300 aircraft on Canadian territory.

12. In a partial award rendered on 12 May 2021, the arbitral tribunal accepted jurisdiction over the dispute between the parties relating to the amendment to the Memorandum.

13. In a final award rendered on 9 December 2021, the arbitral tribunal:

“- Held that the Liquidation Agreement dated 9 April 2019 is vitiated by a clerical error in that it refers to the King Air Beechcraft 300 aircraft instead of the Britten Norman BN2A-21 aircraft, and therefore does not reflect the common will of the parties at the time it was signed;

Consequently,

- Rectified the clerical error and ruled that the relevant parts of the Liquidation Agreement should read as follows:

In the preamble:

“[...]

For the purposes of its business, UMS Aviation currently operates a fleet of aircraft owned by Ultragold:

- 3X-AAL / Eurocopter BO105 (TrusteeWordl Aircraft Leasing Inc.)*
 - N282DB / King Air C90 (Trustee World Aircraft Leasing Inc.)*
 - N64BX / Eurocopter BO105 (Trustee ...)*
 - N59BX / Eurocopter BO105 (Trustee World Aircraft Leasing Inc.)*
 - 3X-GEF / **Britten Norman BN2A-21** (Trustee World Aircraft Leasing Inc.)*
- UMS manages the back office”.*

Article 2:

“Article 2. Winding up of operational activities

The parties have decided to wind up their operating activities in the joint venture without drawing up liquidation accounts but on the following terms:

*-The 3 BO105 helicopters, the **Britten Norman BN2A-21** aircraft, their administrative and technical documentation, their spare parts equipment and tools will be returned to World Aircraft Leasing Inc. and will be delivered to the USA at UMS’s expense to an address to be determined. This return will be made “as is” and without any guarantee as to the proper functioning of the aircraft or any liability on the part of UMS”.*

Terms in bold are corrected terms.

- Held that the Liquidation Agreement dated 9 April 2019, both in its defective version and in its corrected version, does not transfer ownership of the Beechcraft 300 aircraft to Mr [W] or any of his companies;

- Held therefore that the Beechcraft 300 aircraft must be returned to its owner;

- Ordered the Defendants jointly and severally, in respect of the operating loss of the Beechcraft 300, to pay the Claimants the sum of 1,635,949.75 euros, with interest at the Guinean legal rate from the date of this arbitration award until full payment;

- Ordered the Defendants jointly and severally, in respect of the costs of caretaking of the Sherbrook airport, to pay the sum of 49,010.51 euros, with interest at the Guinean legal rate from the date of this arbitral award until full payment;

- Dismissed all the other applications, claims and submissions of the Parties;

- Held that the Defendants shall jointly and severally bear two-thirds of the costs of the arbitration;

- Held that each Party shall bear the expenses incurred in its defence.”

14. On 7 March 2022, Mr [W] and the companies Ultragold and World Aircraft Leasing brought an action to set aside the partial award on jurisdiction and the final award on the merits. The applicants subsequently withdrew from the proceedings relating to the partial award.

15. The parties have notified their agreement to the Memorandum of the International Commercial Chamber of the Paris Court of Appeal.

16. Closing was declared on 18 April 2023 and the case was called for oral argument on 23 May 2023.

II/ CLAIMS OF THE PARTIES

17. According to their latest submissions, sent electronically on 14 March 2023, [C] [W], Ultragold Guinee and World Aircraft Leasing Inc. ask the Court, pursuant to Articles 1518 and 1520 of the Code of Civil Procedure and the Arbitration Rules of the International Arbitration Chamber of Paris, to:

- SET ASIDE the arbitral award rendered by the Arbitral Tribunal constituted under the aegis of the International Arbitration Chamber of Paris on 09 December 2021 on the merits of the dispute (Case No. 3294) between Specter Aviation Limited and United Mining Supply SA and Mr [C] [W], Ultragold and World Aircraft Leasing;
- DISMISS Specter Aviation Limited and United Mining Supply SA's claims, submissions and findings in their entirety;
- ORDER Specter Aviation Limited and United Mining Supply SA to pay Mr [C] [W], Ultragold and World Aircraft Leasing the sum of 115,230.04 euros in respect of the costs and fees of the arbitration proceedings;
- ORDER Specter Aviation Limited and United Mining Supply SA to pay [C] [W], Ultragold and World Aircraft Leasing the sum of 20,000 euros each on the ground of the irrecoverable costs of these proceedings, under Article 700 of the Code of Civil Procedure;
- ORDER Specter Aviation Limited and United Mining Supply SA to pay all the costs of these proceedings, which shall be apportioned in accordance with Article 699 of the Code of Civil Procedure.

18. According to their latest submissions, sent electronically on 11 April 2023, Specter Aviation Limited and United Mining Supply ask the Court, under Articles 559, 700 and 1520 of the Code of Civil Procedure, to:

- HOLD that the International Award rendered on 9 December 2021 by the Arbitral Tribunal composed of Mr [F] [V] [D], Mr [X] [G] and Mr [B] [E] does not violate French international public policy;
- HOLD that the International Award rendered on 9 December 2021 by Mr [F] [V] [D], Mr [X] [G] and Mr [B] [E] does not violate the terms of reference of the arbitral tribunal;
- DISMISS Mr [C] [W], World Aircraft Leasing Inc. and Ultragold's request to set aside the International Award rendered on 9 December 2021;
- DISMISS Mr [C] [W] and World Aircraft Leasing Inc and Ultragold's request for Specter Aviation Limited and United Mining Supply to be ordered to pay Mr [C] [W], Ultragold and World Aircraft Leasing the sum of 115,230.04 euros in respect of the costs and fees of the arbitration proceedings;
- DISMISS Mr [C] [W] and World Aircraft Leasing Inc and Ultragold's request for an order against Specter Aviation Limited and United Mining Supply to pay Mr [C] [W], Ultragold and World Aircraft Leasing the sum of 20,000 euros each under Article 700 of the Code of Civil Procedure;
- DISMISS Mr [C] [W] and World Aircraft Leasing Inc. and Ultragold's further claims;
- HOLD that the right of Mr [C] [W], World Aircraft Leasing Inc and Ultragold to take legal action has degenerated into an abuse;

As a result,

- ORDER Mr [C] [W] and World Aircraft Leasing Inc and Ultragold in solidum under Article 559 of the Code of Civil Procedure to pay a fine of 10,000 euros each on the ground of their abusive action;

- ORDER Mr [C] [W] and World Aircraft Leasing Inc and Ultragold, in solidum, on the basis of Article 559 of the Code of Civil Procedure, to compensate the companies United Mining Supply and Specter Aviation Limited for the entire loss suffered on 15 September 2023 as a result of the abusive action for setting aside in the amount of 65,760 Canadian dollars, or the equivalent in euros, at the conversion rate in force on the date of filing of these submissions, corresponding to 44,696 euros,
- ORDER Mr [C] [W] and World Aircraft Leasing Inc and Ultragold in solidum to pay the companies United Mining Supply and Specter Aviation Limited the sum of 120,000 euros under Article 700 of the French Code of Civil Procedure, and to pay all costs.

III/ REASONS FOR THE DECISION

19. Mr [W] and World Aircraft Leasing and Ultragold put forward two grounds for setting aside, the first alleging breach of international public policy on the grounds that the award flagrantly infringes freedom of contract (A), and the second alleging that the arbitral tribunal failed to comply with its terms of reference (B).

20. In response, United Mining Supply and Specter Aviation argue that the alleged infringement of freedom of contract does not constitute a breach of international public policy or a breach of the terms of reference and is in fact aimed at obtaining a review of the award on the merits, which is not a ground for an action for setting aside in France.

A) Violation of international public policy (article 1520, 5° of the Code of Civil Procedure)

21. The applicants submit that the review of the award's compliance with international public policy is a comprehensive review, in fact and in law, and that freedom of contract is a principle of international public policy within the meaning of Article 1520 of the Code of Civil Procedure.

22. They argue that the enforcement of the arbitral award in this case is in clear breach of freedom of contract and therefore not in compliance with international public policy, and that by amending the terms of the liquidation agreement, the arbitral tribunal did not interpret the agreement but seriously undermined the legal certainty that the parties expected.

23. They argue that under the guise of interpreting the will of the parties, the arbitral tribunal vitiated its findings and assessments with a manifest error, that it modified the terms of the talks by means of an inoperative and contradictory statement of reasons, that it thus modified the content and meaning of the talks that led to the conclusion of the liquidation agreement and aggravated Mr [W]'s situation by withdrawing the benefit of a commitment in respect of which he had accepted the other modifications to the draft amendment. As a result of the rectification ordered, the award gives effect to an agreement on which the will of the parties never came together, infringing [C] [W]'s freedom not to enter into a contract and his freedom to determine the content of the contract he intends to enter into, which causes the award to produce effects contrary to international public policy.

24. In response, the respondents maintain that, under the guise of a violation of international public policy, it is in reality a review of the merits that the applicants are trying to obtain by invoking freedom of contract as a principle of international public policy, whereas it has not been established that the award actually violates international public policy in a serious manner and the review of the merits of awards is not grounds for an action for setting aside in France.

25. They argue that freedom of contract is not a principle of international public policy and has never been enshrined as such in international arbitration, because this would call into question the possibility of submitting a contractual dispute to an arbitrator as a last resort without a posteriori review of the merits of the arbitrator's decision by the setting aside court.

26. In any event, they point out that the applicants do not provide evidence of a clear breach of French international public policy, as the arbitral tribunal's interpretation and application of the contract does not constitute a breach of freedom of contract which, moreover, has not been shown to breach international public policy.

27. They point out that criticism of the arbitral tribunal's reasoning or interpretation does not fall within the jurisdiction of the reviewing court and that, in any event, the arbitral tribunal did not distort or amend the liquidation agreement, but merely interpreted its clauses, which does not fall within the jurisdiction of the reviewing court.

On this matter,

28. Article 1520-5° of the Code of Civil Procedure provides that an action for setting aside may be brought if the recognition or enforcement of the award is contrary to international public policy.

29. The international public policy in view of which the setting aside court's review is carried out is the French legal system's conception of public policy, i.e. the values and principles that it would not tolerate being disregarded, even in an international context.

30. However, the review carried out by the setting aside court in defence of international public policy does not aim to ensure that the arbitral tribunal has correctly applied legal provisions, even if they are of public policy, but rather to verify that the recognition or enforcement of the award does not result in a clear breach of international public policy.

31. Mr [W] and Ultragold and World Aircraft Leasing essentially rely on the arbitrators' reasoning, which they describe as "inoperative" or "vitiating by a manifest error", to argue that the arbitral tribunal violated the principle of freedom of contract and hence international public policy, by ratifying a version of the agreement that had not been agreed by the parties.

32. However, in this case, apart from the fact that the setting aside court does not have the power to review the reasons given by the arbitrators, the manifest error of assessment by the arbitral tribunal of the will of the parties, even if it were established, relates only to the assessment of consent as it results from the contract and the will of the parties, and not to the freedom to contract, which was not challenged in the dispute.

33. As can be seen from the parties' written submissions, to which the award expressly refers (pp. 17 to 19 of the award), the parties asked the arbitral tribunal to interpret the will of the parties, without calling into question their freedom of contract.

34. Specter and UMS asked the tribunal to:

"rule that the reference to the Beechcraft 300 Aircraft in the Liquidation Agreement, according to which the Beechcraft 300 Aircraft should be "returned" to World Aircraft Leasing, is contrary to the real intention of the parties, which was in fact to refer to the Britten Norman BN2A-21 Aircraft" and consequently "rule that the clerical error in the Liquidation Agreement should be rectified..."

35. Mr [W], Ultragold and World Aircraft Leasing asked the court to:

"rule that the liquidation agreement dated 9 April 2019 is not affected by any clerical error, rule that the liquidation agreement dated 9 April 2019 is not subject to any interpretation, modification or rectification, rule that the liquidation agreement dated 9 April 2019 shall be enforced by the parties in accordance with its clear and precise terms".

36. The contractual freedom of the parties to terminate the joint venture within an amicable and conventional framework negotiated by them has never been called into question, only the arrangements for winding up the joint venture.

37. The arbitral tribunal, ruling in law and in fact, held that it had to ascertain the common intention of the parties, given the inconsistencies set out (pp. 29 to 43), and found that:

“In the present case, the terms of the agreement are not clear and precise. It has previously been established that the Liquidation Agreement did not reflect the common will of the Parties because of the erroneous reference to the Beechcraft 300, instead of the BN2. It is therefore necessary to interpret the agreement, which excludes any distortion. The Arbitral Tribunal refers to the legal sources cited by the Claimants in paragraphs 186 et seq. of their Statement of Reply, in particular exhibits CL-33, CL-37, CL-50 and CL-S2, which are relevant.

The Arbitral Tribunal also states that, in interpreting the agreement, it is strictly complying with the applicable law, in this case Article 674 of the Guinean Civil Code, as clarified by the UNIDROIT Principles, and is therefore not making an equitable decision.

The Arbitral Tribunal rejects the Defendants’ analysis that this was an error as to the substance of the thing, or even an obstacle error; in other words, a defect in consent. In fact, the Arbitral Tribunal is convinced from its examination of all of the evidence presented in the proceedings that both parties gave their consent to the return of the BN2 to Mr [W], but that for a reason that probably stems from the incompetence of the drafters of the agreement, the latter mistakenly referred to the Beechcraft 300.

Consequently, the agreement is not vitiated by a defect in consent in respect of the aircraft to be returned to Mr [W] as part of the liquidation of the joint venture; the parties exchanged their consent in respect of the BN2. However, the agreement is vitiated by a clerical error, namely the erroneous reference to the Beechcraft 300 instead of the BN2, which the Arbitral Tribunal must therefore rectify in accordance with the Claimants’ request.

The Arbitral Tribunal agrees with the Claimants’ comments on the power and freedom of international arbitrators to interpret the agreement (see Statement of Reply, no. 0234 et seq.). In this case, the interpretation is quite simple, i.e. the rectification of a clerical error”.

38. In so doing, the tribunal resolved the disagreement on the merits between the parties, which concerned their consent to the terms of the liquidation, and found that there had been a clerical error, which it is not for the reviewing court to assess.

39. It does not follow from these elements that the arbitral tribunal infringed the parties’ freedom of contract.

40. Under the guise of an alleged breach of Article 1520, 5° of the Code of Civil Procedure, the legal argument in fact seeks only to call into question the arbitrators’ reasoning, arguing that they committed an error of assessment, which amounts to seeking a review of the merits of the arbitral award and not to proving a clear breach of international public policy, a review which in any event does not fall within the powers of the setting aside court.

41. It cannot therefore be accepted.

B) The legal argument that the arbitral tribunal failed to comply with its terms of reference (1520, 3°)

42. Mr [W] and Ultragold and World Aircraft Leasing argue that the arbitral tribunal ruled without complying with the terms of reference entrusted to it. In essence, they argue that:

- the arbitration clause gave the arbitral tribunal the task of settling disputes arising in connection with the amendment and its consequences, as stated in the terms of reference signed by the parties;
- the task given to the arbitral tribunal could include interpreting the agreement, but the arbitrators could not give binding force between the parties to a version of the liquidation agreement on which the parties had never agreed,
- by rectifying the agreement, the tribunal did not comply with its terms of reference.

43. The respondents argue in reply that:

- this new legal argument merely raises the same complaint, alleging that the arbitral tribunal corrected a clerical error, and seeks to have the arbitral award set aside;
- examination of the arbitral tribunal's compliance with its terms of reference requires a precise definition of the scope of the arbitration in the light of the arbitration clause and the terms of reference, as well as the claims submitted by the parties;
- the interpretation and rectification of the liquidation agreement fell within the scope of the task of the arbitral tribunal.
- the question of the erroneous mention of the aircraft was submitted to the arbitral tribunal.

On this matter,

44. It follows from Article 1520, 3° of the Code of Civil Procedure that an action for setting aside may be brought if the tribunal has ruled without complying with the task entrusted to it.

45. The arbitrators' task, as defined by the arbitration agreement, are determined mainly by the subject matter of the dispute, as determined by the parties' claims and the statement of issues in the terms of reference, and are thus determined in relation to the compliance with their will.

46. It is not the role of the setting aside court to call into question the limits of the powers that the parties have thus conferred on the arbitrators, or the claims submitted by the parties to the arbitral tribunal.

47. In this case, it is clear from the terms of reference signed on 26 February 2021 that the subject matter of the dispute is expressly defined by reference to the respective claims of the parties set out in their submissions, that according to Annex 1 to the terms of reference, the respective positions of the parties have been summarised, and that the claimants to the arbitration were asking the arbitral tribunal to rectify the clerical error asserted with regard to the substitution of aircraft, as the parties disagreed on the meaning to be given to the terms of the agreement.

48. The arbitral tribunal, in a reasoning whose merits do not fall within the power of assessment of the setting aside court, decided that:

“the Liquidation Agreement dated 9 April 2019 is vitiated by a clerical error in that it refers to the King Air Beechcraft 300 aircraft instead of the Britten Norman BN2A-21 aircraft, and therefore does not reflect the common will of the parties at the time it was signed;

Consequently,

- Rectified the clerical error and ruled that the relevant parts of the Liquidation Agreement should read as follows:

In the preamble:

“[...]

For the purposes of its business, UMS Aviation currently operates a fleet of aircraft owned by Ultragold:

-3X-AAL / Eurocopter BO105 (Trustee World Aircraft Leasing Inc.)

-N282DB / King Air C90 (Trustee World Aircraft Leasing Inc.)

-N64BX / Eurocopter BO105 (Trustee ...)

-N59BX / Eurocopter BO105 (Trustee World Aircraft Leasing Inc.)

-3X-GEF / Britten Norman BN2A-21 (Trustee World Aircraft Leasing Inc.)

UMS manages the back office”.

Article 2:

“Article 2. Winding up of operational activities

The parties have decided to wind up their operating activities in the joint venture without drawing up liquidation accounts but on the following terms:

*-The 3 BO105 helicopters, **the Britten Norman BN2A-21 aircraft**, their administrative and technical documentation, their spare parts and their equipment and tools will be returned to World Aircraft Leasing Inc. and will be delivered to the USA at UMS’s expense to an address to be determined. This return will be made “as is” and without any guarantee as to the proper functioning of the aircraft or any liability on the part of UMS”.*

Terms in bold are corrected terms.

- Held that the Liquidation Agreement dated 9 April 2019, both in its defective version and in its corrected version, does not transfer ownership of the Beechcraft 300 aircraft to Mr [W] or any of his companies;

- Held therefore that the Beechcraft 300 aircraft must be returned to its owner”.

49. In so doing, the arbitral tribunal interpreted the contractual provisions, as it had been asked to do, in respect of which the setting aside court has no power of review, and ordered the rectification that it considered justified, without such rectification, which consists precisely in respecting the will of the parties as it results from said interpretation, constituting a violation of freedom of contract.

50. For the same reasons as those set out above, it follows from these elements that, under the guise of the complaint that the arbitral tribunal failed to comply with its task, the applicants are in fact challenging the arbitral tribunal’s interpretation of the will of the parties, which does not fall within the power of the setting aside court.

51. This legal argument will therefore be rejected.

C) Abusive recourse

52. The respondents request that the applicants be condemned to pay a fine and damages on the ground of the action, which they consider abusive.

53. They state that the reprehensible frivolity arises from the fact that the action for setting aside is not connected to any of the grounds for which an action for setting aside is available and seeks only to reform the award on the merits, in order in particular to delay the enforcement of the award since the Beechcraft 300 aircraft has been stuck in Canada for more than three years, which can be characterised as a fault.

54. They are seeking damages for the loss suffered and for the costs of caretaking of the aircraft and the various charges invoiced every month.

55. The applicants reply that the action is neither dilatory nor abusive since it puts forward two well-founded grounds for setting aside.

On this matter,

56. In principle, taking legal action is a right, and only in the event of a fault that could give rise to civil liability of the person bringing the action does it degenerate into an abuse that could give rise to damages.

57. Under article 32-1 of the Code of Civil Procedure, anyone who brings an action before the courts in a dilatory or abusive manner may be ordered to pay a civil fine of up to 10,000 euros, without prejudice to any damages that may be claimed.

58. In this case, it is clear from the elements set out above that the action brought by Mr [W], Ultragold and World Aircraft Leasing cannot be regarded as abusive, and the court notes that the claims made in the context of its action for setting aside do not constitute a mere repetition of the pleas and arguments developed before the arbitral tribunal but are based on the applicable legal provisions. The dismissal of the legal arguments put forward in this case is not sufficient to characterise the lack of seriousness necessary to turn the exercise of the right to act into abuse.

59. The request on this ground shall be dismissed.

D) Irrecoverable costs and expenses

60. The applicants, the losing party, will be ordered to pay the costs of the proceedings and a total sum of 60,000 euros to the respondents under Article 700 of the Code of Civil Procedure.

IV/ DECISION

On these grounds, the Court hereby:

- 1) Dismisses the action for setting aside brought by Mr [C] [W] and the companies World Aircraft Leasing Inc and Ultragold against the International Award rendered on 9 December 2021;**
- 2) Dismisses Mr [C] [W] and the companies World Aircraft Leasing Inc and Ultragold of all their claims,**
- 3) Dismisses the request for condemnation against the companies United Mining Supply and Specter Aviation Limited for abuse of process,**
- 4) Order Mr [C] [W] and the companies World Aircraft Leasing Inc and Ultragold in solidum to pay the companies United Mining Supply and Specter Aviation Limited the total sum of 60,000 euros under Article 700 of the Code of Civil Procedure, and to pay all costs.**

THE CLERK,

THE PRESIDENT,