UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on the 26th day of May, two thousand and nine.

Present:

HON. JOHN M. WALKER, JR.,
HON. SONIA SOTOMAYOR,
HON. J. CLIFFORD WALLACE,[*]
Circuit Judges.

Macromex Srl,
Petitioner-Appellee,

v. No. 08-2255-cv

Globex International Inc.,
Respondent-Appellant.

For Petitioner-Appellee: JAMES F. SWEENEY, III, Nicoletti Hornig & Sweeney, New York, New York.

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[*] The Honorable J. Clifford Wallace, United States Court of Appeals for the Ninth Circuit, sitting by designation.

For Respondent-Appellant: STANLEY McDERMOTT III, DLA Piper US LLP, New York, New York.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED AND DECREED that the judgment of the United States District Court for the Southern District of New York is AFFIRMED.

Respondent-appellant Globex International Inc. ("Globex") appeals from an April 16, 2008 judgment of the United States District Court for the Southern District of New York (Scheindlin, J.) granting petitioner-appellee Macromex Srl's ("Macromex") petition for confirmation of an arbitral award and denying Globex's cross-petition to vacate that award. We assume the parties' familiarity with the underlying facts and procedural history of the case, as well as the issues presented on appeal.

We agree with the district court there was at least a "barely colorable justification" for the arbitrator's finding that Globex breached its contract with Macromex. *See Wallace v. Buttar*, 378 F.3d 182, 190 (2d Cir. 2004) ("[An arbitration] award should be enforced . . . if there is a *barely colorable justification* for the outcome reached." (internal quotation marks omitted)). As the district court concluded, it is possible to read U.C.C. § 2-614(1)'s reference to "facilities" to include a facility that becomes unavailable as a result of an importation ban imposed by that facility's country. Thus, read this way, § 2-614(1) could impose a duty to tender commercially reasonable substitute performance once the Romanian importation ban made delivery in Romania impossible. Further, Globex cites no authority or convincing analysis in support of its contention that, pursuant to the Official Comment, the Romanian importation ban went "to the very heart of the agreement," and therefore § 2-614(1) did not apply to the contract. *See Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.,* 548 F.3d 85, 92 (2d Cir. 2008) ("In the context of contract interpretation, we are required to confirm arbitration awards [even if we have] serious reservations about the soundness of the arbitrator's reading of the contract." (internal quotation marks and brackets omitted)).

With respect to damages, Globex argues that a proper reading of CISG Article 74 imposes liability for damages suffered as a consequence of the particularly identified breach, "with foreseeable damages . . . simply as a cap on actual damages." *See* CISG Art. 74 ("Damages for breach of contract by one party consist of [the damages] . . . suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw . . . at the time of the conclusion of the contract."). Even if this argument were correct, and the arbitrator interpreted Article 74 erroneously by awarding the foreseeable damages in full, our precedent is clear that an arbitrator does not manifestly disregard the law in such circumstances. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir. 1986) ("Manifest disregard of the law . . . clearly means more than error or misunderstanding with respect to the law." (internal quotation marks omitted)); *Wallace*, 378 F.3d at 190 ("Our cases demonstrate that we have used the manifest disregard of law doctrine to

vacate arbitral awards only in the most egregious instances of misapplication of legal principles.”).

We have considered Globex’s remaining arguments and hold them to be without merit.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk
By:

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