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Big-Money Haiti Radio Spat Kept in Court

By IULIA FILIP

(CN) - Haiti's bankrupt telecommunications company Haitel cannot arbitrate a multimillion-dollar dispute over radio wave rights it leased, a federal judge ruled.

New York-based Franck Cine launched Haitel in 1998 to operate the first mobile phone system in Haiti. Along with his immediate family, Cine, the president of the company, owned the majority of Haitel shares.

Haitel initially leased a radio frequency band from telecommunications company Les Télécommunications d'Haiti (Teleco) to provide mobile phone services. Signed in June 1998, the $14.5 million licensing agreement authorized Haitel to use Teleco's frequency band for 15 years. The parties agreed that Haitian courts would resolve any dispute, U.S. District Judge Jack Weinstein noted in a Dec. 19 ruling from Brooklyn.

Cine claims that the two companies signed another agreement in November 1998 that put Haitel shares in escrow to guarantee Haitel's debt to Teleco. That alleged deal required the two companies to settle any dispute through arbitration.

Teleco said Haitel used Teleco's frequency band between 1998 and 2007 without paying any licensing fees. When Teleco asked Haitel to pay its debt and royalties under the June 1998 agreement, Haitel allegedly claimed that it owed Teleco only $4.8 million.

While Haitel allegedly said Teleco had become a shareholder of Haitel under the November 1998 agreement, Teleco called the claim "a fiction concocted in order to not honor the contractual commitments, or to delay their application as long as possible, by offering a sort of virtual guarantee."

Teleco sued Haitel for breach of the licensing agreement in Haiti in July 2007. After failing to seek arbitration of the Haitian dispute under the November 1998 shareholders agreement, Cine submitted a September 2013 request to arbitrate the claims in Bermuda while he was in the United States.

In the federal complaint it filed in Brooklyn last year, Teleco claimed that Cine had fled Haiti to avoid questioning by Haitian authorities after spending two years in jail for his alleged involvement in the collapse of one of Haiti's largest banks.

Haitel was placed in receivership in 2012 after accumulating more than $80 million in debt and back taxes, according to the complaint.

Teleco argued that it was not a party to the shareholders agreement, and, thus, could not be bound by its arbitration clause. There is no evidence that Teleco's board authorized its general director, who was not a member of the board, to negotiate the November 1998 agreement, or that the director had authority to sign it, Teleco said.

Judge Weinstein denied Cine's request for arbitration earlier this month, agreeing that the shareholders agreement was invalid.

Under Haitian law, the board of directors of a corporation must give written authorization to non-board members to act on their behalf. Teleco's expert, who practices corporate law in Haiti, has testified that Teleco's board never authorized the director to sign the agreement for the company.

"There could be no more important matter for the Teleco board to consider than the lease of a major asset - a right to use a critical band of radio waves worth millions of dollars," Weinstein wrote. "Any modification of the right of Teleco to secure millions of dollars in cash would need to be approved and authorized by the board. ... Instead of cash, it received stocks of unknown worth through an alleged shareholder agreement it had never authorized anyone to sign on its behalf."

The president of the board, who was authorized to sign the June 1998 agreement with Haitel, did not delegate his authority to the signer of the shareholders agreement, who was not a member of the board, the 19-page order states.

Moreover, Teleco did not tacitly ratify the shareholders agreement because it never exercised its rights under it, according to the ruling.

The court refused to address Cine's claim regarding Teleco's evidence that Haitel had waived its right to arbitration under Haitian law by participating in the prolonged litigation in Haiti.

Teleco's lawsuit in Haiti was still pending before the country's highest court as of November 2013.

"This ruling is a testament to the rule of law," Teleco's Manhattan-based attorney Bertrand Madsen said in a statement. "Judge Weinstein's decision is a warning to those who purport to contract with corporations by dealing with rogue employees who act beyond their authority."

Madsen added: "This contract was signed under dubious circumstances by Teleco's general director in 1998, without any involvement from Teleco's board of directors and in contravention to Haitian law."

Cine had sought an award of more than $246 million, representing the value of his personal assets and Haitel's assets, which were seized in Haitel's bankruptcy proceedings, the attorney said.