

Court enforces foreign arbitration award

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Introduction

Facts

Decision

Introduction

In a recent Nicosia District Court case, the applicants applied to register and enforce a Russian International Commercial Arbitration Court arbitral award from September 5 2014, issued in their favour for \$39,454,573.09 and \$109,946 in expenses.⁽¹⁾

The Nicosia District Court found that the facts surrounding the case were the same as in 50 other applications that had been filed with the court by the applicants against various companies.

Facts

The applicants had granted loans to various companies that later defaulted on their repayment. Thus, pursuant to an arbitration clause in the loan agreements, the applicants applied to the Russian International Commercial Arbitration Court and were granted arbitral awards. Subsequently, the applicants applied to the Cyprus courts for those arbitral awards to be recognised and enforced.

The respondents objected to the registration and enforcement of the arbitral award arguing that the application did not satisfy the requirements of Article V of the New York Convention.

The court commenced by re-stating the legal framework through which an arbitral award may be enforced in Cyprus, namely through the operation of the International Commercial Arbitration Law (101/1987) and Law 84/1979, which incorporates the New York Convention into Cypriot Law.⁽²⁾

Further, the court emphasised the fact that:

- the Law in Relation to Foreign Court Judgments (Recognition, Registration and Enforcement on the Basis of Treaty of 2000 (121(I)/2000) applied to the procedural aspect only;⁽³⁾ and
- the treaty between Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters (Ratification Law 172/1986) did not apply in the present case, as it concerned an arbitral award and not a court judgment.

The court then examined whether the applicants had complied with the requirements of Article IV of the New York Convention, namely that the application contained:

- an authenticated original or certified copy of the arbitral award; and
- a certified original or certified copy of the arbitration agreement.

The court also assessed the application's compliance with the grounds for non-enforcement under Article V of the New York Convention, which are that:

- one of the parties to the arbitration agreement lacked the legal capacity to do so or that the agreement is not valid under:
 - the law to which the parties have subjected it; or

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- the law of the country in which the award was issued, in the absence of such an agreement;
- the parties have been deprived of the opportunity to appear and present their case or have not been given proper and timely notice of:
 - the appointment of an arbitrator; or
 - the arbitral proceedings;
- the award deals with a dispute not contemplated by or not falling under the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters that have been referred to arbitration can be separated from the decisions on matters that have not been separated, it is possible to recognise and enforce only that part of the arbitral award that refers to matters so referred;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, if no such agreement exists, was carried out in breach of the law of the country in which the arbitration took place; or
- the arbitral award has not yet been rendered binding on the parties or that it was annulled or suspended by a competent court of the country in which it was issued or according to the law of which it was issued.

The respondents argued that the recognition of the arbitral award was contrary to public policy in Cyprus. The court dismissed this argument and held that the court in this type of proceedings does not embark on a diagnosis of the substance or wisdom of the award.

Further, the respondents alleged that the application had to be dismissed because the loan agreement used as evidence in the arbitration proceedings was not duly stamped, as required by Cypriot legislation. This omission was held not to invalidate the agreement. The court cited the recently issued judgment in *Bank of Moscow*, where it was held that:

"given the fact that the law applicable in the procedure of recognition and enforcement is domestic law, there is nothing improper in the decision of the first instance judge to order the stamping of the two loan agreements. Firstly, the stamping requirement did not constitute an additional condition for the registration of the arbitral award, but it arose under domestic law in relation to a procedural issue. The stamping of a document is imperative before it is lodged as evidence in court proceedings."(4)

The court, exercising the powers conferred on it by Article 35(2) of the Stamp Duty Law ordered the applicant to print all necessary documentation.

Decision

Having established that the requirements in Article IV were satisfied and that there was no ground for refusing enforcement, the court allowed the application for recognition and enforcement of the Russian arbitral award in Cyprus.

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Endnotes

(1) *Joint-Stock Commercial Bank (Open Joint-Stock Company) v Chroia Holdings Limited* (423/2015).

(2) *Beogradska Banka DD* (1995), 1 AAD 737.

(3) *Minister of Justice v Karampatakis* (2007), 1 AAD 503.

(4) *Joint Stock Commercial Bank (Open Joint Stock Company)*, Civ App 151/2015, November 23 2015.

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