

Court rules that pending appeal does not suspend arbitral award

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Facts

Decision

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The Limassol District Court recently ruled in *Arricano Real Estate Plc v Stockman Interhold SA*. On October 31 2016 the applicants applied to the court for the recognition and enforcement of an arbitral award issued against the respondents by the London Court of International Arbitration (LCIA) on May 5 2016.

The respondents filed an application before the court requesting that the application be set aside. Their main arguments were that:

- the arbitral award issued by the LCIA was not binding nor considered final due to the fact that an appeal was filed by the respondents before the Court of Appeal of England and Wales, which was pending trial; and
- the applicants had filed – as well as the application for the recognition of the award – an application 266/2016 before the Nicosia District Court, by which they requested prohibitive orders against the respondents. According to the respondents, this constituted an abuse of the court's process.

Following the application, the applicants filed an objection by which they disputed all of the respondents' assertions. Subsequently, both parties proceeded with written submissions before the court, which issued its judgment on August 28 2017.

Decision

The court's judgment mainly dealt with the above arguments. Regarding whether the arbitral award was binding and final, the court referred to *Michalakis Raftopoulos v The Republic* (1998) and *Charalampous v Panayides Contracting Ltd* (2001). In *Raftopoulos* it was explained that the court's rulings are binding when they relate to the essential facts of a case. Further, in *Charalampous* it was held that an order issued by a court of first instance is binding and final, even if an appeal is pending trial.

The court specified that pursuant to Article 36(1)(v) of the International Commercial Arbitration Law 101/1987, an application for recognition or execution of an arbitral award may be rejected if it is not yet binding or has been annulled or revoked by a competent court of the country in which it was issued.

As a result, the court concluded that the appeal pending before the English courts did not suspend the order's enforcement, or diminish the validity of the arbitral award. In other words, the LCIA's decision was considered to be final and eligible for recognition since the proceedings in the court of appeal were not concluded.

Regarding the second argument, the court ruled that there was no abuse of process due to the fact

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that this application requested the recognition and enforcement of the LCIA award, whereas the 266/2016 application requested prohibitive orders against the respondents. Since the purpose and remedies requested through the two applications were not identical, the court concluded that there was no abuse of process. Further, the court referred to *Michalakis Charalampides v Nicolaou Komodromou* (2002) and held that the respondents' rights were not suppressed by the two different applications.

The court therefore rejected the respondents' request that the application be set aside. The court obiter pointed out that the application could have been successful if the enforcement of the LCIA's award was suspended until the court of appeal's judgment.

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