

Court applies *res judicata* in dismissing objection to recognition and enforcement of arbitral award

September 28 2017 | Contributed by [George Z Georgiou & Associates LLC](#)

Facts

Decision

Comment

In a recent case before the Limassol District Court,⁽¹⁾ the applicants applied for the recognition and enforcement of a November 11 2015 arbitral award issued by the Chamber of Commerce and Industry. The respondents opposed the registration of the arbitral award in Cyprus for numerous reasons.

Facts

An arbitration award may be enforced in Cyprus in accordance with the International Commercial Arbitration Law 101/1987, which covers the majority of disputes relating to international commercial arbitration.

The respondents had previously applied to the Cypriot courts to set aside and annul the arbitral award pursuant to Article 34 of Law 101/87.⁽²⁾ Articles 34 and 36 of Law 101/87 are mirror provisions of Article V of the New York Convention, which stipulate the same grounds for which the recognition and enforcement of an arbitral award may be annulled or refused, respectively. The court dismissed the respondent's application to set aside the award with respect to the grounds raised through Article 34 and concluded that the application was unfounded in relation to all of the issues argued.

In their objection to the application for the recognition of the award, the respondents advanced additional grounds to those raised in their earlier application to annul the award. The applicants argued that in light of the Cypriot court's earlier judgment, which had dismissed the application to set aside the arbitral award, the respondents were estopped from objecting to the recognition of the award by operation of the doctrine of issue estoppel, notwithstanding that the respondents had included additional grounds in their objection.

Decision

The court proceeded to examine the arguments advanced by both parties, referring to the judgment in *Flecha Constructing Limited v Escalade Priority Developments Ltd*,⁽³⁾ which dealt with a similar scenario. The court adopted the analysis of the learned judge, who had accepted the argument that if an application to set aside an arbitral award has been adjudicated and dismissed, then an objection to the registration of the award creates *res judicata* (issue estoppel) with regard to the disputed issues.

Further, the court, in reaffirming the above, applied the judgments of the Cypriot Supreme Court in *Michael v Skoutella*⁽⁴⁾ and *Charalambous v Charalambous*.⁽⁵⁾ In these cases, it was explained that the doctrine of *res judicata* operates even where the issues at hand are technically different, but the facts at issue and the supporting evidence are identical to those that would have arisen had the issues been raised in the context of the original dispute. The Supreme Court identified that the public policy aims underlying this reasoning were to:

AUTHOR

[Constantinos Pashiardis](#)



- avoid the filing of multiple claims;
- avoid conflicting judgments on substantially identical matters and events; and
- ensure the finality of litigation in cases where the litigating party could have brought an issue before the courts in the original proceedings.

The court accepted the applicant's submissions and concluded that all of the requirements for the application of the *res judicata* principle were present, given that the court judgment in the application to set aside the award is final (notwithstanding any intention to appeal) and was granted by a court of competent jurisdiction. Further, the parties and the substantive issues were the same, as the grounds on which the court could reject an application for recognition or enforcement of an arbitral award pursuant to Article 36 of Law 101/87 are identical to the grounds for which the court may annul an award pursuant to Article 34 of Law 101/87.

The court also determined that the central issue in the present application was the same as that which had been raised, examined and decided during the application to set aside the award. The court made a conclusive finding that the respondent could, and ought to have, raised the additional grounds for objecting to the registration of the award in the context of the application to set aside the award which was pending before the courts when the objection was filed. The court further stated that:

"One might assume - as is the applicant's suggestion with which I agree - that the Respondent deliberately and consciously chose not to raise the relevant grounds and allegations in the Application for annulling the award, but chose to raise them only within this application."

In light of the above, the court conclusively sealed the fate of all of the grounds for objecting to the recognition of the award, as the required backdrop of the objection was decisively removed by the court's judgment, which dismissed the application to set aside the arbitral award.

Comment

As the courts are weary of attempts by litigants to have a second opportunity in raising legal issues which could have been presented in earlier proceedings, practitioners should adequately and carefully consider their litigation strategies.

For further information on this topic please contact [Constantinos Pashiardis](#) at George Z Georgiou & Associates LLC by telephone (+357 22 763 340) or email (constantinos.pashiardis@gzg.com.cy). The George Z Georgiou & Associates website can be accessed at www.gzg.com.cy.

Endnotes

(1) *Active Export Technologies Limited v AAS Advanced Automation Systems Limited* (Petition 19/2016, February 14 2017).

(2) *AAS Advanced Automation Systems Limited* (Application 3/2016, Petition 3/2016, November 18 2016).

(3) Application 673/2012, February 20 2015.

(4) (2008) 1 AAD 599.

(5) (2008) 1AAD 1298.