

Limited Liability Company “Restoransnab” (Ukraine) v. Company “Mikoshi Trading Hawaii Inc” (USA), Supreme Commercial Court of Ukraine, 910/17708/15, 06 December 2017

A contribution by the ITA Board of Reporters

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Headnote

Ukrainian cassation court decides on the territorial jurisdiction of courts for determination of the validity of the pathological arbitration clause.

Summary

Facts of the case

Limited Liability Company “Restoransnab” (“Restoransnab”) and company “Mikoshi Trading Hawaii Inc” (“Mikoshi Trading”) entered into Contract No.1-K dated 19 November 2014 (the “Contract”). The Contract contained an arbitration clause, allegedly without an express indication of a name of arbitration institution.

In July 2015, Restoransnab submitted a claim against Mikoshi Trading to Kyiv City Commercial Court (court of first instance). Restoransnab sought collection of a down payment it had made for the Contract performance.

On 13 July 2015, Kyiv City Commercial Court issued a Ruling whereby it rejected the claim (“Ruling”). The Court concluded that commercial courts of Ukraine could not consider the claim as according to the Contract, arguing that the parties thereunder intended to submit their disputes to the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (“ICAC”).

On 23 February 2016, Kyiv City Court of Appeal issued a Resolution whereby it overturned the Ruling based on the lack of an accurate name of the arbitration institution in the Contract’s arbitration clause. Also, Kyiv City Court of Appeal stated that the claim was submitted in violation of the territorial jurisdiction and passed the case to Kyiv City Commercial Court, which by a separate ruling passed the case to Kharkiv Region Commercial Court (court of first instance).

On 13 June 2017, Kharkiv Region Commercial Court rejected the claim, which was subsequently upheld by Kharkiv Region Court of Appeal. The latter Court reasoned its ruling by (i) lack of authority to consider the case and (ii) the case being outside of its jurisdiction.

Question in Dispute

The court of first instance should analyze the arbitration clause and decide on its validity. The Ukrainian procedural law requires the court of first instance to determine the validity of the arbitration clause.

Arguments of the Parties

Restoransnab argued that the first instance commercial courts and courts of appeal breached the Ukrainian procedural rules. Restoransnab requested the Cassation Court to set aside the rulings of the courts of lower instances.

Judgment of the Court

The Cassation Court took into consideration that the Contract was executed in Kharkiv City. Therefore, it concluded that Kharkiv Region Commercial Court should be the proper forum to

decide on this case. The Cassation Court set aside the decisions of lower instances and remanded the dispute to Kharkiv Region Commercial Court.

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The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-ons-18-15-011?jurisdiction=Ukraine&type=Court%20Decisions>