

Polish Supreme Court judgment
dated 6 May 2016
Case No. I CSK 305/15

Summary by arbitraz.laszczuk.pl:

A limited-liability company entered into currency option hedging contracts with a bank in 2008. Subsequently the company filed a claim against the bank in arbitration, seeking a declaration that the options contracts were invalid on grounds of exploitation and seeking reimbursement of amounts paid to the bank on the basis of the contracts. The bank counterclaimed for amounts owed under the contracts. The arbitral tribunal found that the claimant had failed to pay the arbitration fee on its claim for invalidation of the contracts and issued an award denying both of the claimant's claims. The award also granted the bank's counterclaims in part, in an amount of over PLN 24 million.

The claimant applied to the regional court to set aside the award on the grounds that it violated public policy. The court found that the award on the main claim violated the principle of the equality of the parties and the right to a fair trial because the arbitral tribunal had refused to consider the claims due to non-payment of the arbitration fee but nonetheless proceeded to issue an award denying the claims on the merits. The court set aside the award in that part. However, the court refused to set aside the part of the award granting the counterclaim for payment.

On appeal, the court of appeal found that the entire award had to be set aside because the parts of the award could not be separated without distorting the whole, and furthermore because the court was bound by the petitioner's application seeking to set aside the award in its entirety. The court of appeal issued a judgment amending the judgment of the regional court accordingly to set aside the entire award.

On cassation appeal by the bank, the Supreme Court of Poland held that the court of appeal had properly set aside the entire award because the claimant had sought to set aside only the entire award, not part of the award, and setting aside the award was justified by the arbitral tribunal's ruling denying the claim to invalidate the options contracts on the merits even though the basis for the ruling was the claimant's failure to pay

the arbitration fee on that claim. And because the bank's right to payment allegedly due under the options contracts would be affected by a future separate ruling on the customer's claim seeking to invalidate the contracts, the claims were so interconnected that the award on the bank's counterclaim could not stand separately, which also justified setting aside the entire award. The court denied the cassation appeal accordingly.

Excerpts from the text of the court's ruling:

1. A petition to set aside an arbitration award is a claim to establish a legal relationship, in which the plaintiff (the petitioner) demands that the state court issue a judgment setting aside (vacating) the existing legal relationship established by the arbitration award. A judgment by the state court granting the petition is of a quashing nature, as in such situation the state court can only set aside the arbitration award, and only insofar as demanded by the petitioner.

2. Even though the relief stated in a petition to set aside an arbitration award may involve setting aside the entirety of the arbitration award or part of the award, the state court is bound by the scope of the petition against by the award by the petitioner, and thus the bounds of the petitioner's application.

3. Exceptionally, it is possible to grant a demand to set aside an arbitration court in part, but only when the challenged part of the ruling can be entirely separated from the rest of the award.