

Szczecin Appellate Court judgment
dated 27 May 2009
(Case No. I ACa 177/09)

Summary by arbitraz.laszczuk.pl:

In 1999 M.T. Sp. z o.o. entered into an agreement with the municipality of Szczecin under which the parties would establish a professional sports club. The founders' agreement included an arbitration clause covering disputes that might arise under the agreement.

The parties established a joint-stock company to operate the sports club and took up registered shares in the company. Under the founders' agreement, M.T. bought out professional contracts and licenses and certain claims and assumed certain liabilities related to an earlier sports club.

In 2003, alleging that the municipality had not lived up to its obligations under the founders' agreement, M.T. obtained an arbitration award against the municipality including restoration of consideration M.T. had provided, together with the value of the shares it had taken up and other forms of consideration, plus lost profit, totalling some PLN 10 million.

The regional court set aside most of the award in 2004, finding that the award was unclear and violated public policy. It ruled on matters that were beyond the scope of the founders' agreement, which was regarded as a form of preliminary agreement, the court found, and thus it had ruled beyond the scope of the arbitration clause. In addition, the portion of the award purporting to unwind the claimant's taking up of shares in the company was unenforceable because this could be accomplished only pursuant to the provisions of the Commercial Companies Code.

After a first round of appeals, the Supreme Court issued a judgment dated 13 December 2006 ([Case No. II CSK 289/06](#)) remanding the case for clarification. On remand the appellate court reinstated the arbitration award and denied the petition to set aside the award.

Another cassation appeal followed, and by judgment dated 17 February 2009 (unpublished), the Supreme Court set aside the judgment below and remanded the case for

reconsideration because the appellate court had failed to give due consideration to the issue of whether the award violated public policy, which the court should consider on its own motion.

In the present case, the appellate court was reconsidering, on remand, the claimant's appeal from the regional court's original judgment setting aside the award. This time the appellate court amended the order concerning costs but otherwise denied the appeal. The court held that the award indeed violated public policy, particularly fundamental principles of contractual liability for damages, and the arbitration court also failed to follow the rules that the arbitration court itself had established, resulting in premature issuance of an award, without exploring all crucial aspects of the dispute or treating both parties fairly.

Excerpts from the text of the court's ruling:

1. By adopting an arbitration clause, the parties voluntarily restrict their own constitutional ... right to resort to the courts.... Matters are most often entrusted to arbitrators for resolution because of their specialized knowledge, e.g. in the field of construction (in construction cases) or concerning commercial practices (in matters related to international transactions), where specialized knowledge is more important than knowledge of the substantive legal norms of a given legal system. In cases of this type, the arbitrators' legal intuition may be sufficient. In such instances, it should be accepted that the arbitration court is not bound by regulations of substantive law, given the nature of the matters submitted to the jurisdiction of the arbitration court.

2. Pursuant to Civil Procedure Code Art. 714, the court is bound by the grounds for the petition to set aside the arbitration award, and additionally will consider on its own motion whether the award violates the rule of law or good practice. The allegation that the arbitration award violates the rule of law essentially concerns the issue of the permissible scope of review of the determination by the arbitration court by the common courts. ... Such review authority does not concern the issue of the correctness of the determination in terms of compliance with substantive law, or compliance with procedural regulations. The only basis for such review may be aggravated violations, of particular seriousness and weight, such that they also constitute a violation of the rule of law. The grounds for setting aside an arbitration award are formal in

nature, as it is impermissible to examine whether the arbitration court resolved the dispute correctly in factual and legal terms, but only whether there was a violation of the public policy clause.

3. Violation of the rule of law should be understood to mean an offence against fundamental legal institutions. A determination violating the rule of law would include one that offends overriding legal principles and is contrary to the commonly accepted legal order in force in the Republic of Poland. An arbitration award may violate the rule of law if it results in a determination violating the applicable principles of a state governed by the rule of law. It is essential in this respect that when considering the case and ruling, the arbitration court is not bound by provisions of substantive law, but only may not violate the applicable principles of a state governed by the rule of law.

4. There is no catalogue of fundamental principles of the legal order, but they must be inferred from the entirety of legal norms in force.

5. It is a general principle of civil law that damages are due only when the injured party has suffered a loss, the function of damages is to compensate for loss, and damages may not exceed the amount of the loss. It should thus be recognized that an arbitration award violates the public policy clause if the damages awarded do not correspond to the loss suffered.

6. In a situation where the parties failed to specify the rules of procedure, under Civil Procedure Code Art. 705 §2 the arbitration court will apply the rules of procedure it deems appropriate. It is generally not bound by the provisions of the Civil Procedure Code in this respect. For this reason as well, the arbitration court need not lay down a procedure in advance, i.e. at the outset of the proceeding. It may thus do so during the course of the proceeding, including by issuance of separate orders with respect to successive activities. This extensive discretion of the arbitration court is limited, however, by Civil Procedure Code Art. 705 §2, third sentence, by the requirement to thoroughly explore the circumstances necessary to resolve the case. It is clear in this respect that the arbitration court may not violate the principles of the rule of law or social coexistence.

7. The adversary principle, and the principle of the parties' availability, also apply in a proceeding before an arbitration court, and such court may not omit a thorough exploration of the circumstances necessary to resolve the case. ... The "inability to omit a thorough exploration of the circumstances of the case," as referred to in Civil Procedure Code Art. 705 §2, third sentence, should be understood primarily as a duty to conduct the proceeding before the arbitration court in a manner that assures the parties themselves of the ability to present any allegations and evidence, and, as an aspect of the equal treatment of the parties, to address the allegations and evidence presented by the opposing side.

8. The fundamental principles in force under Polish law with respect to liability for loss caused by non-performance or improper performance of an obligation, as expressed by the Civil Code provisions concerning the effects of non-performance of obligations, are a duty to redress loss by the party to a contract that failed to perform or improperly performed its obligation, and, significantly, an ordinary causal relationship between the party's action and the loss. The duty to redress loss in this respect may not be determined randomly or arbitrarily, but must correspond to the extent of the loss suffered (even if based on a consideration of all of the circumstances of the case), and default interest is due from the day following the date on which the debtor fell into delay. An arbitration award that was issued in violation of these principles is an award that violates the rule of law.