

Polish Supreme Court judgment
dated 3 September 1998
Case No. I CKN 822/97

Summary by arbitraz.laszczuk.pl:

In 1992 RPPD SA entered into an agreement with P. sp. z o.o. with its registered office in the city of W. The agreement included a clause calling for arbitration before the Court of Arbitration at the Polish Chamber of Commerce and also included a clause providing that P. sp. z o.o. could transfer all of its rights and obligations under the agreement to another company upon notice to RPPD SA but without the consent of RPPD SA.

In February 1993, in a letter signed by one person who was the CEO of both P. sp. z o.o. in the city of W. and P. sp. z o.o. in the city of R., RPPD SA was notified that the rights and obligations under the 1992 agreement had been transferred from P. sp. z o.o. in W. to P. sp. z o.o. in R. The letterhead referred to P. sp. z o.o. in W., but the stamp under the CEO's signature referred to P. sp. z o.o. in R.

(In April 1993, RPPD SA entered into an agreement to supply wood veneer to P. sp. z o.o. in W. In 1994, RPPD SA filed a claim before the Court of Arbitration at the Polish Chamber of Commerce against P. sp. z o.o. in R. for payment for the veneer (apparently based on the assignment from P. sp. z o.o. in W. to P. sp. z o.o. in R.), but the claim was denied because it was for veneer supplied to P. sp. z o.o. in W. under the April 1993 contract, which was made after the assignment from P. sp. z o.o. in W. to P. sp. z o.o. in R. and therefore could not have covered by the assignment.)

In the present dispute, P. sp. z o.o. in R. filed a claim against RPPD SA before the Court of Arbitration at the Polish Chamber of Commerce. RPPD SA sought to dismiss the claim on the grounds that there was no arbitration clause because the rights and obligations under the agreement had not been effectively transferred from P. sp. z o.o. in W. to P. sp. z o.o. in R. The arbitration court overruled the objection to its jurisdiction and RPPD SA thereafter refused to participate in the proceeding before the arbitration court.

The arbitration court issued an award in favour of P. sp. z o.o. in R. against RPPD SA for about PLN 50,000, providing in the alternative that the respondent could be released from the duty to pay such amount by delivering to the claimant some 37,000 m² of a specific type of wood veneer.

RPPD SA filed a petition with the Warsaw Province Court to set aside the award on public policy grounds. RPPD SA alleged that due to the discrepancy in names used in the notice of assignment, the agreement between RPPD SA and P. sp. z o.o. in W. was never effectively assigned to P. sp. z o.o. in R. RPPD SA alleged that the award violated public policy primarily because the veneer referred to in the award had been seized by RPPD SA as security for receivables.

The province court denied the petition and the appellate court denied the appeal.

On cassation appeal, RPPD SA alleged that there was no arbitration clause and that the award violated public policy (particularly because it was inconsistent with the findings in the prior award). The Supreme Court held that it could not review the substance of the arbitration court's determination that the rights and obligations under the 1992 agreement were effectively transferred to the claimant (P. sp. z o.o. in R.), but by that transfer the claimant became a party to the arbitration clause with the respondent. The court distinguished the present award from the previous award and concluded that if there were any discrepancy it rather concerned the possible lack of an arbitration clause with respect to the prior award, but that issue was not before the court in the present case. The court denied the cassation appeal accordingly.

Excerpts from the text of the court's ruling:

1. An assignee enters into the legal position of the assignor. The flip side of this rule, as it were, is the permissibility of the debtor's asserting against the assignee any defences that it had against the assignor as of the time it received notice of the assignment (Civil Code Art. 513 §1). The debtor of a claim under an agreement containing an arbitration clause who is sued before the state court may thus assert the arbitration clause as a defence (Civil Procedure Code Art. 697 §2 in connection with Art. 202) against the assignee as well.

2. The effectiveness of an arbitration clause against an assignee excludes assertion of the lack of an arbitration clause, as the plaintiff appears as an assignee who acquired the claim subject to the clause.

3. It is accepted that a conclusion of violation of the rule of law is justified when the result of the arbitration award conflicts with fundamental principles of the legal order of the state..., for example, the ruling by the arbitration court is clearly inconsistent with the established facts.

4. With respect to the criterion indicated in Civil Procedure Code Art. 712 §1(4) of principles of social coexistence, it is necessary to indicate specific principles of social coexistence that are irreconcilable with which the effects of the arbitration award.