id: 20375

Polish Supreme Court judgment
dated 13 April 2012
Case No. I CSK 416/11

Summary by arbitraz.laszczuk.pl:

In 2000, the legal predecessors of T. sp. z o.o. (lessor) and E. SA (lessee) entered into a lease for a building for 5 years. The lease included a clause calling for arbitration before the Court of Arbitration at the Polish Chamber of Commerce. Under a subsequent annex, the lease term was extended to 10 years, through July 2010. A dispute arose between the parties over whether the annex was valid. In November 2005, the arbitration court issued an award declaring that the lease was binding through July 2010. A petition to set aside the award was denied with legal finality and the award was recognized by a judgment that became legally final in May 2007.

In September 2007, T. sp. z o.o. filed a claim in arbitration against E. SA for over PLN 4m in rent for the second half of 2005, and in 2009 filed another claim in arbitration against E. SA for over PLN 20m for breach of the lease agreement. In a pair of awards issued in July 2009, the arbitration court denied both claims, finding that the 2005 award was based on erroneous factual findings. The arbitration court relied on new evidence, arising out of a criminal investigation, demonstrating that the annex was invalid.

T. sp. z o.o. applied to the regional court to set aside the 2009 awards. The petitions were joined for consideration and denied by the regional court. The appellate court denied the appeal on the grounds that the 2005 award finding that the lease annex was valid did not preclude the arbitration court from issuing a conflicting award in 2009 finding that the lease annex was invalid, because the rules of *res judicata* applied only to state court judgments, not arbitration awards.

On cassation appeal, the Supreme Court of Poland held that the 2005 award did exert *res judicata* effect once it was recognized in a legally final judgment of the state court. It would generally violate public policy in Poland to have two arbitration awards in force between the same parties that were contradictory on the same issue. Therefore, when considering the petition to set aside the subsequent awards, the lower court was required

to examine the justification for the arbitration awards to determine whether there were sufficient grounds to depart from the policy of *res judicata.* The principles that should be considered by the court in this respect are similar to those that would apply in a proceeding to reopen a legally final state court judgment, even though no such proceeding is expressly provided for with respect to arbitration awards.

The Supreme Court vacated the judgment of the appellate court accordingly and remanded the case for reconsideration.

Excerpts from the text of the court's ruling:

1. The rule of the binding force of legally final judicial rulings, as an element of the values protected under the Constitution and in the international order making up a state governed by the rule of law, which the Republic of Poland is, is included among the fundamental principles of the legal order of the Republic of Poland.

2. The state judicial system and arbitration are not identical. The lack of identity does not mean, however, that arbitration courts, and particularly their rulings, are irrelevant for the judicial system. While it is true that under Art. 175 of the Constitution, justice is dispensed by the state courts, it should be clearly stressed that as part of the dispensation of justice, the state courts oversee the activity of arbitration courts, and more precisely the rulings issued by them.

3. A ruling by a state court on recognition or enforcement of an arbitration award results in ascribing to the award the same force that rulings of state courts have, which is clearly confirmed by Civil Procedure Code Art. 1212 §1. This means that such a ruling, thanks to the state court ruling connected with it, must be treated in legal dealings the same as any other ruling of a state court. … If an arbitration ruling has the same force as a ruling of a state court, this means that Civil Procedure Code Art. 365 §1 [i.e. preclusive effect] applies to it. Civil Procedure Code Art. 1212 does not provide for any exceptions from the equivalence of the effects of the arbitration court ruling to a state court ruling.

4. If the parties and the arbitration court appointed by them wish the ruling of the arbitration court to be equivalent in its effects to a state court ruling, they must take into consideration that the arbitration court has already

ruled preclusively in the same matter between the same parties. If the prior ruling by the arbitration court has already been recognized or enforced by the state court, this has fundamental significance for the ability to recognize a further ruling issued between the same parties. A state court which is ruling on recognition or enforcement of a further ruling may not ignore the fact that the state court has already spoken on the same matter. In other words, the court will be bound by the ruling of the state court that recognized or enforced the prior arbitration court ruling.

5. It follows from Civil Procedure Code Art. 365 §1 that a court ruling on recognition of a second arbitration ruling, being bound by the prior ruling also by a state court, should not permit two rulings to be found in legal circulation which decided the same preclusive issue differently in the same matter between the same parties.

6. The lack of a basis to apply the regulations on a proceeding upon a petition to reopen [a legally final judgment] directly to assessment of an arbitration award, and on the other hand the lack in Polish law of a regulation for reopening a proceeding with respect to arbitration awards, cannot result in the unfettered discretion of an arbitration court in determining whether to take into consideration an earlier award in which a certain issue was already preclusively ruled on between the same parties. … If the arbitration court expects its award to be recognized, it should take into consideration the prior resolution of the preclusive issue in the award that was already recognized with legal finality by the state court. When examining the permissibility of a departure from this rule, the court in a proceeding to set aside an arbitration award may not rely on the mere assertion by the arbitration court that new facts or evidence has appeared in the case, but should determine, applying as relevant the criteria for assessment developed in the context of the legal regulations for reopening of a proceeding concluded in a legally final judgment, whether they are truly new facts and evidence, and whether the party could have asserted them in the prior proceeding.