

Wrocław Appellate Court order
dated 30 March 2012
Case No. I ACz 547/12

Summary by arbitraz.laszczuk.pl:

A bank with its registered office in Katowice filed a claim in arbitration against A.G., an individual residing in Wrocław. The arbitration court issued an award in favour of the bank.

A.G. filed an action in the Wrocław Regional Court to set aside the award. The bank, as the respondent, objected to venue in Wrocław, alleging that under general rules venue was proper in Katowice, where the bank, as the respondent in the action to set aside the award, had its registered office. The court found that it was not the proper court and transferred the case to the Katowice Regional Court. The Wrocław Regional Court held the proper venue was in Katowice because that was the domicile of the defendant, i.e. the respondent in the action to set aside the award.

The petitioner, A.G., filed an interlocutory appeal with the Wrocław Appellate Court. The court held that venue in an action to set aside an arbitration award is determined on the basis of which court would have been proper to hear the claim submitted to arbitration if not for the arbitration clause. As the claim was asserted by the bank against A.G., venue under general rules would be proper in Wrocław as the domicile of the defendant. Whether the bank, as the respondent in the action to set aside the award, could have asserted that venue was proper in Katowice on the basis of the rules for alternative venue (rather than the general venue rules) was irrelevant because this objection was waived by the bank's failure to raise it in its initial pleading, i.e. the response to the petition to set aside the award, where it relied solely on the general venue rules.

The court granted the appeal accordingly and vacated the order of the Wrocław Regional Court transferring the case to Katowice.

Excerpts from the text of the court's ruling:

1. Under Civil Procedure Code Art. 1158, the court proper to hear a case under a petition to set aside an arbitration award is the court that would be proper to hear the case if the parties had not made an arbitration clause. This would thus be the court indicated by the regulations on exclusive geographical jurisdiction, or if there are no grounds to apply such regulations, the regulations on general venue.

2. Assertion of alternative venue—even assuming that such possibility is permissible—must be made in the first pleading, i.e. the response to the petition [to set aside the arbitration award], under pain of loss of such option.