

**Polish Supreme Court judgment dated
6 February 2014
Case No. I CSK 191/13**

Summary by arbitraz.laszczuk.pl:

In 2000, the legal predecessors of T.R. sp. z o.o. (lessor) and E. SA (lessee) entered into a lease for a building for 5 years, until mid-2005. The lease included a clause calling for arbitration before the Court of Arbitration at the Polish Chamber of Commerce. In an annex signed in 2001, the lease term was extended to 10 years, until July 2010. A dispute arose between the parties as the lessee claimed the annex was invalid. In 2005, the arbitration court issued an award in favour of the lessor declaring that the lease was binding until 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 2007.

Later in 2007, T.R. sp. z o.o. filed a claim in arbitration against E. SA for over PLN 4 million in rent for the second half of 2005, and in 2009 filed another claim in arbitration against E. SA for over PLN 20 million for breach of the lease agreement. In a pair of awards issued in 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 separate criminal investigation, demonstrating that the annex was invalid: a computer forensics expert report finding that the corporate resolution and power of attorney authorizing conclusion of the annex to the lease did not exist at the time the annex was signed in 2001, but were created after the fact, in 2004.

T.R. 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 court of appeal denied the appeal on the grounds that the 2005 award did not have *res judicata* effect (under Civil Procedure Code Art. 365) because it was not a state court judgment. In the first cassation appeal, by the lessor, the Supreme Court of Poland held that the earlier arbitration award could exert *res judicata* effect once it was recognized in a legally final judgment of the state court, and remanded the case for reconsideration in light of the *res judicata* rules ([judgment of 13 April 2012, Case No. I CSK 416/11](#)).

Upon reconsideration by the court of appeal, the court of appeal held that the arbitration court in 2009 was bound by the 2005 award recognizing the validity of the annex to the lease, and the lessee had not raised new factual circumstances or presented new evidence that would be sufficient to reopen civil proceedings (under Civil Procedure Code Art. 403) and consequently avoid the *res judicata* effect of the 2005 award. Specifically, the court of appeal did not regard the computer forensics expert report as new evidence that the lessee could not have asserted in the 2005 arbitration, because the expert report was prepared after the completion of the 2005 arbitration. Because the 2009 awards failed to recognize the *res judicata* effect of the 2005 award, the 2009 awards violated public policy. The court of appeal issued a judgment setting aside the 2009 awards accordingly.

On the second cassation appeal, this time by the lessee, the Supreme Court held that the court of appeal had erroneously interpreted the grounds for avoiding the *res judicata* effect of the 2005 award, in the form of the grounds that would justify reopening civil proceedings. Even though the computer forensics expert report in question was itself evidence that arose after the end of the 2005 arbitration and therefore for purposes of Civil Procedure Code Art. 403 did not constitute new evidence that the lessee could not have asserted in the 2005 arbitration, nonetheless the factual circumstances presented in the report—namely that the resolution and power of attorney required for signing of the annex in 2001 were created after the fact, in 2004—did exist prior to the end of the 2005 arbitration and therefore could justify avoidance of the *res judicata* effect of the 2005 award. If the arbitration court in 2009 properly denied the *res judicata* effect of the 2005 award based on these new factual circumstances, the award would not violate public policy and should not be set aside. Whether these factual circumstances were truly new and the lessee truly could not have asserted them in the 2005 arbitration had to be considered by the state court hearing the petition to set aside the 2009 awards.

Consequently, the Supreme Court vacated the judgment of the court of appeal and remanded the case for reconsideration.

Excerpt from the text of the court's ruling:

The state court hearing a petition to set aside an arbitration award may consider whether in the specific case there were valid grounds justifying a departure [by the arbitration court] from the rule of being bound by a legally final judgment, and reference to the circumstances permitting reopening

of proceedings before a state court should be helpful in this respect. ... From the point of view of the grounds for reopening proceedings, there is nothing preventing new factual circumstances from being disclosed as a result of actions conducted by an expert in a different case, after the end of the proceeding that would be reopened. It is essential that they be circumstances that already existed during the course of the completed proceeding.