Warsaw Court of Appeal judgment
dated 13 May 2013
Case No. I ACa 1298/12

Summary by arbitraz.laszczuk.pl:

The landowner (P.) commenced arbitration at the Court of Arbitration at the Polish Chamber of Commerce in 2009 against the possessor of the land (C.) for a fixed term, pursuant to cooperation agreements of 1997 and 2007, apparently seeking, among other relief, a declaration that the possessor's interest was one of lease (*najem*) rather than tenancy (*dzierżawa*), and thus under applicable law was automatically converted after 10 years into a lease for an indefinite term which could be terminated upon notice by either party.

In the meantime, the landlord had sold an interest in the property to a third party, who was not a party to the arbitration. Previously, in a separate case in 2005, the tenant had won an arbitration award against the landlord involving billboards at the property.

The tenant objected to the jurisdiction of the arbitration court.

The arbitral tribunal held that the objection to its jurisdiction was filed late, and its jurisdiction was properly based on an arbitration clause in the parties' cooperation agreement, which was undisputed by the parties and moreover was relied on by the tenant when it won its earlier arbitration award against the landlord in 2005.

On the merits, the tribunal held that the relationship between the parties was one of lease rather than tenancy, and thus after 10 years the lease became terminable upon notice. The intervening sale of an interest in the property to a third party did not make that party the landlord by operation of law because it did not acquire the entirety of the ownership. Consequently, the acquirer was not a necessary party to the proceeding.

The tenant filed an application with the Warsaw Regional Court to set aside the award, alleging *inter alia* that the award was invalid because it was based on a copy of the arbitration agreement, and the tribunal had not required the original to be submitted; the operative portion of the award was not signed by the arbitrators; and the award violated

public policy in holding that there was no tenancy agreement between the parties and because the acquirer of the property was not a party to the arbitration.

The regional court held that a copy of the cooperation agreement containing the arbitration clause was sufficient to prove that the arbitration agreement was made in writing, and it was irrelevant for purposes of issuing the award or ruling on the application to set aside the award that failure to produce the original arbitration agreement might be a barrier in proceedings to enforce the award. The award was properly signed at the end of the justification and did not have to be signed immediately below the operative wording of the award. The finding that there was a lease in force between the parties did not violate public policy, and the earlier arbitration award did not establish a binding determination that the agreement was one of tenancy rather than lease. The regional court denied the application to set aside the award accordingly.

On appeal, the Warsaw Court of Appeal adopted the findings of the regional court. It further stressed that the operative portion of the award and the justification for the award are integral parts of the award, and it was entirely proper for the arbitrators to sign the award once at the very end. Submission of the original arbitration agreement may be a requirement in proceedings to enforce the award, but submission of a copy of the arbitration agreement to the arbitral tribunal instead of the original could not be regarded as grounds to setting aside the award because would impermissibly establish a new basis for setting aside the award beyond the grounds exhaustively set forth in the arbitration law.

The court of appeal denied the appeal accordingly.

Excerpts from the text of the court's ruling:

1. The proceeding on a petition to set aside an arbitration award is not a "review" proceeding, by instances, of a state court. No ordinary means of appeal lies against an arbitration award, but only a petition to set aside the arbitration award. Such petition, as stressed in the literature, is not a means of appeal but an extraordinary means of judicial oversight by the state court of the activity of the arbitration court.

2. It does not appear warranted to conclude from the wording of Art. 1213 of the Civil Procedure Code (referring to a proceeding for recognition or enforcement of an arbitration award) that it is necessary to present

the original of the [arbitration agreement] or a certified copy thereof in the arbitration proceeding. This is primarily because it would extend the grounds for the petition under Art. 1206 of the Civil Procedure Code.

3. Art. 1197 §§ 1 and 2 of the Civil Procedure Code should be read together, meaning that the arbitration award must contain both the operative wording and the grounds, as necessary elements; the award must be signed and then served on the parties (Civil Procedure Code Art. 1197 §4).

4. Violation of the public policy clause must refer to the operative wording of [the award], which will function in legal circulation, and not to the level of the grounds.

5. Only if the state court finds that the [evidentiary] procedure was not conducted at all, or was conducted incompletely, or in an obviously defective way, violating principles of logical reasoning connecting facts in a chain of cause and effect, selective admission of evidence in the case, admitting evidence only from one party, unjustifiably ignoring evidence submitted by the opposing party, and the like, can it be found that the requirements referred to in Art. 1206 §1(4) of the Civil Procedure Code were not met.