Warsaw Court of Appeal judgment
dated 25 January 2017
Case No. VI ACa 1468/16

Summary by arbitraz.laszczuk.pl:

In a long-running dispute arising out of the lease of an office building, the Court of Arbitration at the Polish Chamber of Commerce issued an award in 2016 in favour of the landlord ordering the former tenant to pay about PLN 67 million in rent, damages and interest.

The lease was signed in 2000 for 5 years (August 2000–July 2005), with a clause automatically extending the lease by a further 5 years unless notice of non-extension were given at least 6 months before the end of the lease term. In January 2005 the tenant gave notice that it was not extending the lease. The landlord responded that the notice was moot because the parties had agreed to an annex to the lease in 2001 extending the lease term to 10 years.

In the first arbitration, the landlord obtained an award in 2005 declaring that the lease was in force through July 2010. A petition to set aside the 2005 award was denied with legal finality, and in 2007 the Warsaw Regional Court issued an order recognizing the 2005 award. But in 2009 the arbitration court issued awards denying two new claims by the landlord for rent and damages. There the arbitral tribunal found on the basis of new allegations that the annex from 2001 extending the lease was invalid because the corporate resolution and power of attorney authorizing conclusion of the annex by the landlord did not exist in 2001 but were created in 2004 for purposes of the dispute and backdated to 2001. The 2009 awards were upheld by the Warsaw Regional Court in 2010 and the Warsaw Court of Appeal in 2011, but on cassation appeal, in 2012 the Supreme Court of Poland set aside the order of the court of appeal and remanded the case for reconsideration, holding that the arbitral tribunal in 2009 could be bound by the holding in the 2005 award that the lease had been validly extended by the 2001 annex, when that award had subsequently been recognized by the state court with legal finality (Case no. I CSK 416/11). On remand, in 2014 the court of appeal modified the order of the regional court and set aside the arbitration

awards from 2009. A cassation appeal against the 2014 judgment of the court of appeal was denied by the Supreme Court of Poland in February 2016 (Case no. I CSK 173/15).

Meanwhile, in 2011 the landlord summoned the tenant to attempt to reach a settlement with respect to claims dating from April 2008 and later. In 2013 the landlord commenced the present arbitration, in which it won an award in its favour in June 2016.

The tenant challenged the award on multiple grounds based on the claim that the arbitral tribunal should not have given *res judicata* effect to the earlier finding that the lease was validly extended through July 2010 by the 2001 annex, refusing to admit evidence offered by the tenant to show that the 2001 annex was invalid because the documents underlying it were backdated. The tenant alleged that the award violated public policy because of the arbitral tribunal's failure to uphold its defence that the landlord's claims were time-barred. The tenant also disputed the landlord's recovery of expenses for hiring real estate brokers to find new tenants and refitting the premises, where it claimed that the landlord had not suffered any injury in this respect.

The court of appeal held that the tenant had not demonstrated that the award had violated public policy because of the arbitral tribunal's decision to give *res judicata* effect to the earlier ruling that the parties had effectively concluded the annex extending the lease through July 2010. This issue was controlled by the earlier judicial rulings in cases arising out of the same lease between the parties. Indeed, it would be more likely to violate public policy to allow the coexistence of conflicting awards on this issue.

On the other issues raised in the petition, the court found that the arbitral tribunal had thoroughly weighed the parties' contentions and there were no grounds for setting aside the award in this respect. In particular, the arbitral tribunal's denial of the defence of the statute of limitations was justified, as the tenant's defence erroneously assumed that all of the landlord's claims for future rent arose in 2006. The claims for rent for specific periods did not mature until later because they required indexation and recalculation of the rent depending on the future exchange rates of euro and Polish zloty. The running of the statute of limitations on earlier claims was interrupted by filing of arbitration claims in 2009, and again by filing of a petition to set aside the arbitration awards denying those claims. In the case of later claims, the running of the statute of limitations was interrupted in 2011 by filing of the summons to reach a settlement.

Consequently, the court of appeal issued a judgment denying the tenant's petition to set aside the award.

Excerpt from the text of the court's ruling:

Filing of a petition to set aside an arbitration award is an action immediately aimed at enforcement of a claim and consequently interrupts the running of the statute of limitations on the claim.