

**Carpatsky Petroleum Corporation v. Ukrnafta,
Court of Appeals of the City of Kiev, 22 -ц /796/164632013 Case Date 12
December 2013**

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Headnote

The Kyiv Court of Appeals upheld the first instance court decision to dismiss the request filed by CARPATSKY PETROLEUM CORPORATION to recognize and enforce an arbitral award issued under the rules of the Arbitration Institute of the Stockholm Chamber of Commerce in the case No. 124/2007.

Summary

Facts of the case

On 14 September 1995 CARPATSKY PETROLEUM CORPORATION (Texas, USA) and PJSC "UKRNAFTA" entered into the joint activity agreement No. 410/95 (hereinafter –Agreement). On 26 August 1998, the Parties to the Agreement introduced amendments thereto, namely they included an arbitration clause for all controversies and disputes to be submitted to the Arbitration Institute of Stockholm Chamber of Commerce (hereinafter – Arbitration).

CARPATSKY PETROLEUM CORPORATION (Delaware, USA), a company that considers itself a successor of CARPATSKY PETROLEUM CORPORATION (Texas, USA) under the Agreement, deemed its rights and interests under the Agreement to be violated and resorted to arbitration. On 24 September 2010, the arbitral tribunal issued an award in favour of CARPATSKY PETROLEUM CORPORATION (Delaware, USA) (hereinafter – Award).

Question in Dispute

PJSC "UKRNAFTA" did not recognize the Award as binding and failed to comply with it. CARPATSKY PETROLEUM CORPORATION (Delaware, USA) applied to Ukrainian courts in order to seek recognition and enforcement of the Award under the 1958 New York Convention.

Judgment of the Court

First instance court judgment

On 13 November 2013 Shevchenkovskiy District Court of the City of Kyiv having considered the application of CARPATSKY PETROLEUM CORPORATION (Delaware, USA) and written objections filed by PJSC "UKRNAFTA" (Ukraine), ruled to dismiss the application on recognition and enforcement of the Award

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Jurisdiction

- Ukraine

Court

- Court of Appeals of the City of Kiev

Arbitrators/Judges

- A.O. Chobitok, Chair
- O.V. Nemirovska, Judge
- T.I. Yaschuk, Judge

Case date

- 12 December 2013

Case number

- 22 -ц /796/164632013

Parties

- Appellant, Carpatsky Petroleum Corporation
 - Appellee, PJSC "Ukrnafta"

Key words

- foreign arbitral award
- recognition and enforcement
- validity of arbitration clause
- translation into official language

Source

- and , **Carpatsky Petroleum Corporation (Delaware, USA) v. PJSC "Ukrnafta"(Ukraine), recognition and enforcement of a foreign arbitral award, Court of Appeals of the City of Kiev, 22 -? /796/164632013 Case Date 12 December 2013**, A contribution by the ITA Board of Reporters, (© Kluwer Law International; Kluwer Law International)

(hereinafter – Ruling).

The Court's Ruling contended that:

- there was no arbitration clause between CARPATSKY PETROLEUM CORPORATION (Delaware, USA) and PJSC "UKRNAFTA"; and

- the arbitration clause attached to the application for the recognition and enforcement of the Award was presented in Russian, which is not the official language of Ukraine.

Court of Appeals decision

CARPATSKY PETROLEUM CORPORATION (Delaware, USA) filed an appeal. The Kyiv Court of Appeals upheld the Ruling.

With respect to the existence of arbitration agreement, the Court of Appeals stated that in a different case between the same parties it had been established that amendments to the Agreement were not duly executed. This is because at that moment one of the parties to the Agreement –CARPATSKY PETROLEUM CORPORATION (Texas, USA)– had ceased to exist (Case No. 32/125 between the Deputy General Prosecutor of Ukraine on behalf of Ukraine against PJSC "UKRNAFTA", CARPATSKY PETROLEUM CORPORATION (Texas, USA) acting through its Ukrainian agency, CARPATSKY PETROLEUM CORPORATION (Delaware, USA) on invalidation of amendments to the Agreement. The decision by the Commercial Court of the City of Kyiv was issued on 27 May 2009 and confirmed by Kyiv Commercial Court of Appeals on 26 August 2009 and by the Higher Commercial Court of Ukraine on 14 October 2009). In that case it was deemed that CARPATSKY PETROLEUM CORPORATION (Delaware, USA) failed to prove that amendments to the Agreement were executed in its capacity as a successor of CARPATSKY PETROLEUM CORPORATION (Texas, USA).

Given that the facts established in a judicial decision in a dispute between the same parties have a pre-judicial meaning in subsequent cases, the Court decided that no valid agreement between CARPATSKY PETROLEUM CORPORATION (Delaware, USA) and PJSC "UKRNAFTA" had been executed.

On the other hand, CARPATSKY PETROLEUM CORPORATION (Delaware, USA) alleged that pursuant to Ukrainian Law "On International Commercial Arbitration", an arbitration agreement could be submitted before national courts either in Ukrainian or in Russian language. However, the Court decided that rules of international treaty should prevail. The 1958 New York Convention requires an arbitration agreement drafted in a foreign language to be submitted with a translation into an official language of the country. In that particular case, that would have required a

translation into Ukrainian. The Court concluded that the submission of the arbitration agreement in Russian language did not comply with that requirement of the New York Convention.

Original source:

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The summary of the case file and full text of summarized court decision are available on:

<http://www.kluwerarbitration.com/CommonUI/print.aspx?ids=KLI-KA-143009>