

Company Pelagia AS (Norway) v. Laran 07 Limited Liability Company (Ukraine), Supreme Court of Ukraine, 796/41/2018, 14 February 2019

A contribution by the ITA Board of Reporters

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Headnote

The handwriting amendments to the arbitration clause can be recognized valid.

Summary

Facts of the case

The Arbitration and Dispute Resolution institute of the Oslo Chamber of Commerce (hereinafter - "Arbitral Institution"): On 7 December 2018, the Arbitral Institution rendered an arbitral award in case No. 98/17 between Pelagia and Laran on the payment under a surety agreement ("Award"). The arbitral tribunal awarded Laran to pay the debt, interest based on a surety agreement to Pelagia.

Ukrainian courts: Pelagia applied to the court of first instance seeking recognition and enforcement of the Award. On 21 May 2018, the Appeal Court of Kyiv City as the court of first instance satisfied the petition and rendered a writ for collection of debt and interest.

In July 2018, Laran submitted the appeal petition against the resolution on recognition and enforcement of the Award. The Supreme Court of Ukraine carefully reviewed the appeal and granted recognition and enforcement of the Award.

Question in Dispute

The Supreme Court of Ukraine reviewed whether the handwriting amendments to the arbitration clause were valid and whether the pathological arbitration clause could be cured.

Arguments of the Parties

Laran argued that the resolution on recognition and enforcement of the Award was rendered with violations of due process and with wrong application of substantive law. Pelagia unilaterally amended the arbitration clause without agreement of Laran.

Pelagia argued that the handwriting amendments to the arbitration clause were added during the negotiations on a surety agreement and could not be considered as amendments to the arbitration clause. In addition, Laran never expressed any objections on the arbitration clause text.

Judgment of the Court

The Supreme Court of Ukraine checked the objections of Laran and concluded that the handwriting amendments were introduced in the arbitration clause before actual signature of it. The Supreme Court of Ukraine checked all available versions of the surety agreement with the arbitration clause and did not find version without mentioned amendments.

The Supreme Court of Ukraine agreed that the arbitration clause contained the pathological arbitral institution name. The Supreme Court of Ukraine took into account that Oslo city was foreseen as a place of arbitration, thus the Arbitral Institution was undoubtedly the agreed arbitral institution.

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The summary of the case file and full text of summarized court decision are available on:
<https://www.kluwerarbitration.com/document/kli-ka-ons-19-26-002?jurisdiction=Ukraine&type=Court%20Decisions>