

Hadiachsyrr LLC v. Credit Agricole Bank PJSC, Supreme Commercial Court of Ukraine, 917/735/17, 19 September 2017

A contribution by the ITA Board of Reporters

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Headnote

Ukrainian High Commercial Court issued a decision on jurisdiction regarding arbitration clause validity assessment.

Summary

Facts of the case

Limited Liability Company “Hadiachsyrr” (“Hadiachsyrr”) and Public Joint Stock Company “Credit Agricole Bank” (“Credit Agricole”) entered into a loan agreement dated 21 November 2011 (the “Agreement”). On 25 December 2014, Hadiachsyrr and Credit Agricole concluded the Amendment to the Agreement including an arbitration clause. The amended Article 12 of the Agreement provides for submission of disputes to International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (“ICAC”).

Hadiachsyrr applied to the Commercial Court of Poltava region (court of first instance) seeking to recognize as null and void the amended Article 12 of the Agreement. The court of first instance suspended the court proceedings based on the arbitration clause existence.

Hadiachsyrr filed an appeal. The Appeal Court of Kharkiv City (court of appeal) reversed the decision of the court of first instance. Credit Agricole applied to the High Commercial Court of Ukraine (court of cassation, “the Court”).

Arguments of the Parties

Hadiachsyrr asked the Court to recognize as null and void the amended Article 12 of the Agreement (i.e. arbitration clause). Credit Agricole argued that the arbitration clause was in place, consequently the Court should suspend the court proceedings based on Article 8 of the Arbitration Law (regarding transfer of the case from the court to arbitration due to existence of an arbitration clause) and paragraph 5 part 1 of Article 80 of the Civil Procedure Code of Ukraine No. 1618-IV dated 18 March 2004 (obligation of commercial court to suspend proceedings in case of arbitration agreement existence).

Judgment of the Court

The Court focused on the analysis of part 1 of Article 8 of the Law of Ukraine “On International Commercial Arbitration” No.4002-XII dated 24 February 1994 (the “Arbitration Law”): A court in which an action is brought in a matter which is the subject of an arbitration agreement shall, if any of the parties so requests not later than when submitting its first statement on the substance of the dispute, stay its proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

In addition, the Court analyzed Article 2 (3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the “New York Convention”) which includes similar provision.

The Court upheld the decision of the court of appeal. The Court and the court of appeal analyzed part 1 of Article 8 of the Arbitration Law and Article 2 (3) of the New York Convention confirming

that a national court should terminate proceedings only if there is a combination of the following conditions:

- existence of an arbitration agreement according to which a matter raised in a court falls within the competence of the ICAC;
- a request from one of the parties, submitted no later than the submission of its first statement on the substance of the dispute, regarding the termination of the proceedings and transfer of the case to arbitration; and
- assessment by the court of the arbitration agreement validity.

Part 3 of Article 215 of the Civil Code of Ukraine No. 435-IV dated 16 January 2003 stipulates that if law does not directly prescribe the invalidity of the arbitration agreement, but one of the parties or other interested person denies its validity on the grounds established by law, such arbitration agreement may be declared invalid by a court. At the same time, according to conclusions of the Court, the arbitral tribunal is not a court in understanding of the current legislation of Ukraine; a court here means a national court.

The Court determined that the responsibilities of the national commercial court includes the conduction of a legal assessment of the content of the arbitration agreement for the subject of its compliance with the law, with rendering of a subsequent opinion on its validity or invalidity. Consequently, in this case the commercial court has a procedural obligation to investigate the arbitration clause validity. Instead, the court of the first instance terminated court proceedings based only on the fact of existence of the arbitration clause.

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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-18-4-001?jurisdiction=Ukraine&type=Court%20Decisions>