

Unofficial translation

O r d e r

IN THE NAME OF UKRAINE

Kyiv 11 February 2013 the High Specialised Court of Ukraine for Civil and Criminal Cases sitting as a Panel of Civil Chamber Judges composed of:

M. A. Makarchuk, A. O. Levanchuk, T. O. Pysana,

Having considered in a pre-trial hearing the case relating to the application of Rangedale Limited seeking the recognition and enforcement of the Award of the International Commercial Arbitration Tribunal at the Ukrainian Chamber of Commerce and Industry delivered in relation to the claim of Rangedale Limited against South Airline Limited Liability Company, as requested for in the cassation appeal of Rangedale Limited, represented by Taras Stepanovych Nesteryshyn, against the order of Prymorskyi District Court of Odessa City dated 16 August 2012 and the order of the Court of Appeal of Odessa Region dated 24 October 2012,

E S T A B L I S H E D :

In July 2012, Rangedale Limited filed with the court the said application submitting that, by the Award of the International Commercial Arbitration Tribunal at the Ukrainian Chamber of Commerce and Industry delivered in case No. AC No. 397 y\2011 dated 22 May 2012, South Airlines was bound to return to the claimant the aircraft YaK-42 D, SN 4520423016269, manufacturer's serial number 0612 and pay to the claimant the amount of EUR 292,024 representing the debt under the lease agreements and the amount of EUR 16,583.46 representing the indemnification of the arbitration fees.

The application of Rangedale Limited was dismissed by the Order of the Prymorskyi District Court of Odessa City dated 16 August 2012. The Order of the Prymorskyi District Court of Odessa City was upheld by the Order of the Court of Appeal of Odessa Region dated 24 October 2012.

In the cassation appeal, the representative of Rangedale Limited is seeking to set aside said judgments, alleging that the courts incorrectly applied the rules of substantive law and violated of the rules of procedural law. The representative of Rangedale Limited also seeks satisfaction of the company's application.

According to Article 324(2) of the Ukrainian Code of Civil Procedure, the grounds for a cassation appeal are an incorrect application by the court of the rules of substantive law or a violation of procedural rules.

According to the requirements of Article 335 of the Ukrainian Code of Civil Procedure, in the course of consideration of the case in the cassation procedure, the court should check, within the scope of the cassation appeal, the correctness of the application by the courts of first instance or the courts of appeal of the rules of substantive law and rules of procedural law, and may not establish or consider to be established any circumstances unless they have been established in the judgment or rejected by it, or take any decisions on any matters concerning the reliability or unreliability of any evidence, or the priority of certain evidence over other evidence.

The arguments submitted in the cassation appeal by the representative of Rangedale Limited do not provide for any reasons to conclude that the courts violated any rules of substantive or procedural law, which resulted or could have resulted in the delivery of an erroneous judgment in the case.

By dismissing the application of Rangedale Limited, the court of first instance, whose conclusion was upheld by the Court of Appeal, correctly concluded that South Airlines Limited Liability Company was not given proper notice of the arbitration proceedings in the case and, therefore, subject to Article 5 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, the recognition and enforcement of the arbitral award should be refused.

The arguments set out in the cassation appeal do not refute the conclusions of the court.

Thus, the challenged decisions were delivered in compliance with the rules of substantive and procedural laws and, therefore, they should be upheld and the cassation appeal should be dismissed.

In reliance on Article 332 of the Ukrainian Code of Civil Procedure, the panel of Civil Chamber judges of the High Specialised Court of Ukraine for Civil and Criminal Cases

ORDERED :

The cassation appeal of Rangedale Limited, represented by its representative Taras Stepanovych Nesteryshyn, shall be dismissed.

The Order of the Prymorskyi District Court of Odessa City dated 16 August 2012 and the Order of the Court of Appeal of Odessa Region dated 24 October 2012 shall be upheld.

The Order is not subject to appeal.

Judges:

M. A. Makarchuk, A. O. Levanchuk, T. O. Pysana