

SVEA COURT OF APPEAL
Department 02

DECISION
8 October 2008

Case No.
Ö 1661-08

Division 0201

Stockholm

CLAIMANT

Fabryka Wyrobów Lnianych Swiebodzice Sp. z o.o.
ul. Strzegomska 17
58-160 Swiebodzice
Poland

Counsel: Robert Jenerowicz
Grupa Kapitalowa Blitz Profit Sp. z o.o.
ul. Jasielska 8 a
60-476 Poznan
Poland

RESPONDENT

Carbaque International Aktiebolag, Reg. No. 556473-9687
Sörmarksgatan 141
507 52 Borås

MATTER

Enforcement of foreign arbitral award

DECISION OF THE COURT OF APPEAL

The Court of Appeal decides that the arbitral award rendered at the Polish Chamber of Commerce, Warsaw, ul. Trebacka 4, on 25 November 2002 (see appendix A), between Fabryka Wyrobów Lnianych Swiebodzice Sp. z o.o. and Carbaque International AB may be enforced in Sweden as an unappealable judgment given by a Swedish court.

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MOTIONS BEFORE THE COURT OF APPEAL

Fabryka Wyrobów Lnianych Swiebodzice Sp. z o.o. (Fabryka Wyrobów) has applied that the Court of Appeal shall declare the arbitral award rendered at the Polish Chamber of Commerce, Warsaw, ul. Trebacka 4, on 25 November 2002 (see appendix A), between Fabryka Wyrobów Lnianych Swiebodzice Sp. z o.o. and Carbaque International AB (Carbaque) enforceable in Sweden as an unappealable judgment given by a Swedish court.

Carbaque has objected to the application and mainly referenced the following. Fabryka Wyrobów has not complied with an agency agreement between Carbaque and Fabryka Wyrobów, and terminated it on 11 September 2001. The arbitral tribunal did not, without any valid agreement, have jurisdiction to settle the dispute. Further, the disputed issue settled by the arbitral tribunal also fell outside the scope of the agreement since Carbaque acted “on its own behalf” and, as far as can be gathered, not under the agency agreement. Carbaque has appealed a decision for enforcement of the arbitral award given by the court of appeal in Swidnica on 18 July 2005 (see appendix B). In that matter, Carbaque has not been awarded the opportunity to present its case and have its appeal reviewed by a court.

Carbaque has referenced certain documentary evidence.

GROUND OF THE COURT OF APPEAL

Section 53 of the Swedish Arbitration Act (SFS 1999:116) provides that a foreign arbitral award, based on an arbitration agreement, shall be recognized and enforced in Sweden, unless otherwise provided by Sections 54-60.

The arbitral award rendered by the Polish Chamber of Commerce of 25 November 2002 provides that “based on the note of 13 November 2000 on the jurisdiction of the arbitral tribunal noted in the agency agreement of the same date, the arbitral tribunal decides as follows [...]”. Generally, the arbitral tribunal is best suited to review its own jurisdiction (see NJA 2003 p. 379). Against the background of the submissions in this matter, there is

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reason to assume that the interpretation and evaluation of the evidence carried out by the arbitral tribunal with respect to its jurisdiction were correct.

In order to nevertheless refuse enforcement, it falls upon Carbaque to prove that the arbitral tribunal's decision in this respect was incorrect. The Court of Appeal finds that Carbaque has failed to establish that such circumstances are at hand as would constitute an impediment preventing enforcement as set out in Section 54 of the Swedish Arbitration Act. Further, the Court of Appeal finds that no impediment as set out in Section 55 of the Swedish Arbitration Act is at hand. The Court of Appeal finds no other impediment preventing the enforcement of the arbitral award. Therefore, Fabryka WYROBÓW's application shall be granted.

HOW TO APPEAL, see appendix C

Appeals to submitted by 5 November 2008

[ILLEGIBLE SIGNATURES]

The decision has been made by: Judges of Appeal I.P. (reporting Judge of Appeal), R.H. and I.H. Unanimous.