Unofficial Translation

No. 3a-17-02 17 March 2003
Tbilisi

Supreme Court of Georgia

Chamber of Civil, Entrepreneurial and Bankruptcy Cases

With the following composition:

M. Gogishvili (President)

L. Gochelashvili

M. Tsikvadze

Without an oral hearing, the court reviewed a motion of P. K., the Director of the Kiev […] Institute for the recognition and enforcement of the award of the Kiev Arbitration Court dated 22 May 2000 in the territory of Georgia.

D e s c r i p t i v e s e c t i o n :

The Kiev […] Institute filed a claim with Kiev Arbitration Court against "M", Scientific-Industrial Technological Institute of Tbilisi, requesting the payment of USD 5,457 on the basis of contract [No.] 313 concluded with the respondent on 25 September 1998. Pursuant to the Contract, the Kiev Institute (the contractor) performed the works to remove unauthorized parts of the construction in a residential building in Tbilisi. The principal (the respondent) was obliged to pay for the performed works by way of installments, within 10 days of signing the appropriate documents. The claimant requested the payment of USD 5,457, a debt existing by the date of submitting the claim as well as USD 982 as a penalty for failure to pay on time.

The respondent did not appear at the hearing and did not submit a response. Respondent's representative by proxy, lawyer D.P., appeared at the hearing. The tribunal considered the claim had a sufficient documentary basis (because the respondent failed to provide the tribunal with any evidence confirming its payment of the outstanding debt, it did not satisfy the claim of 17 September 1999 and left it unanswered). On these grounds, by its award dated 22 May 2000, the Kiev Arbitral Court decided the claim. "M", Scientific-Industrial Technological Institute of Tbilisi, was ordered to pay the Kiev […] Institute USD 5,457 as the outstanding debt, USD 982 in fines and USD 64.39 in State fees. The award entered into force immediately upon its announcement.

In its motion addressed to the Supreme Court of Georgia, P. K., Director of the Kiev […] Institute requested the recognition and enforcement of the above arbitral award on the territory of Georgia.

Representatives of “M” [sic] provided its response to the motion requesting that the Court reject the motion of P.K. for the following reasons:

Director of “M” [sic] states that they could submit to the tribunal a claim to the effect that the failure to complete the works on time according to the phases envisaged by the contract resulted in fines payable by the contractor in the amount of 0.1% of the value of the works for each delayed day, amounting to a total of USD 5,850. However, they were not able to refute this claim because they were not invited to participate in the hearing. They learned about the 22 May 2000 award from K’s motion that the Supreme Court forwarded them. At the same time, according to the introductory part of the arbitral award, they learned that they were represented by D.P., despite no power of attorney was given to D.P. by “M”. On these grounds, the director of “M” LLC [sic] requests that the court reject P. K.’s motion to have the award of the Kiev Arbitral Court dated 22 May 2000 recognized and enforced on the territory of Georgia because they did not participate in the proceedings and thus were deprived of the right to defend their case and submit their response to the tribunal.

R e a s o n i n g :

The Chamber studied the case materials and deems that the motion should be left without consideration for the following reasons:

Pursuant to Article V[(1)](b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, recognition and enforcement of an award may be refused if the party against whom the award is invoked furnishes the court documents demonstrating that such a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings and for this reason was unable to present his case.

Materials supporting the motion do not reveal that the respondent was informed about the appointment of the arbitrator or of the arbitration proceedings and that he was duly served the notice about the hearing.

The Supreme Court of Georgia requested that the Kiev Arbitration Court and the applicant furnish copies of documents confirming that the notice about the date of the hearing was sent to the respondent and that the notice was actually served on the respondent; in other words, the Court requested evidence to determine whether the date of the hearing was known to the party. The Court also requested a copy of the power of attorney allowing D.P. to represent “M” before the Kiev Tribunal.

The applicant failed to provide the Supreme Court with any documents confirming that “M” was aware of the proceedings against it before the Arbitral Tribunal, of the appointment of the arbitrator, or of the date and time of the hearing. Regarding the representation of “M” by lawyer D.P. during the hearing, P. K. stated that D.P. was representing the claimant’s interests and not those of the respondent as was erroneously stated in the award.

According to the case materials, the Arbitral Tribunal scheduled the hearing on 16 May 2000 at 9:40 AM. The letter No. 7/283 dated 18 October 2000 of the Kiev Arbitration Court states that the notice was sent to the respondent on 4 May 2000 without indicating whether the notice was actually served on the respondent. On this basis, the Chamber refers to Article 68(2)(b) of the Law of Georgia on Private International Law, which states that a court decision

of a foreign country will not be recognized in Georgia if the party was not summoned to the court with a proper notice in accordance with the laws of the country in which the court decision was rendered or if other procedural violations have taken place. The Chamber points out that the procedural violations must not place the parties in an unequal position. Equality of the parties is a fundamental procedural principle. It implies that each party must have the possibility to present its case under conditions that would not place the party in an unequal position as compared to its opponent. If a party was not invited to participate in the proceedings then his procedural rights would be clearly violated.

On the basis of the evidentiary record, the Chamber is of the view that the Arbitration Court has possibly violated the applicable legislative procedural requirements. Due to lack of evidence, the Court deems that the motion should be left without consideration.

The Chamber points out that P.K. is authorized to submit a new request to the Supreme Court of Georgia requesting the recognition and enforcement of the arbitral award if it obtains proper evidence; in particular, evidence proving that the party had been informed of the appointment of the arbitrator and of the arbitration proceedings as well as having been invited to the hearing according to the rules determined by law.

R e s o l u t i o n :

T h e C h a m b e r H o l d s t h a t :

The motion of P.K., director of the Kiev […] Institute shall be left without consideration.

This Order is final and not subject to appeal.

A copy of this Order shall be sent to the applicant.