Unofficial translation

FEDERAL ARBITRAZH COURT FOR THE MOSCOW DISTRICT

9 Seleznevskaya street., GSP-4, Moscow, 127994, official web-site: http://fasmo.arbitr.ru

e-mail: info@fasmo.arbitr.ru

DP

RESOLUTION

No. KG-A40/8155-09

Moscow Case No. A40-51596/09-68-437
27 August 2009

Operative part of the resolution was announced on 20 August 2009.
Full text of the resolution was prepared on 27 August 2009.

The Federal Arbitrazh Court for the Moscow District composed of:

Presiding Judge I.A. Belozertseva,
Judges E.A. Bragina,
S.G. Nuzhnov,

On behalf of the Claimant, the company Erick Van Egeraat Associated Architects BV: M.A. Kulkov (under Power of Attorney No. 1-1571 of 24 April 2009), E.A. Trusova (under Power of Attorney No. 1-1571 of 24 April 2009),

On behalf of the Respondent, OOO Capital Group: N.V. Batalova (under Power of Attorney No. 73 of 29 July 2009),

Having examined in a court hearing of 20 August 2009 the cassation complaint by OOO Capital Group against the ruling of the Moscow Arbitrazh Court of 30 June 2009 in the case No. A40-51596/09-68-437, rendered by the Judge O.M. Popova

Upon the application of the company Erick Van Egeraat Associated Architects BV to OOO Capital Group for recognition and enforcement of an award of the Arbitration Institute of the Stockholm Chamber of Commerce,

ESTABLISHED:

The company Erick Van Egeraat Associated Architects BV filed, with the Moscow Arbitrazh Court an application for recognition and enforcement of an award by the Arbitration Institute of the Stockholm Chamber of Commerce of 17 March 2008 in the case No. 087/2006 initiated upon request of the company Erick Van Egeraat Associated Architects BV to OOO Capital Group.

By its ruling of 30 June 2009 in the case No. A40-51596/09-68-437, the Moscow Arbitrazh Court granted the application of the company Erick Van Egeraat Associated Architects BV for recognition and enforcement of the award of the Arbitration Institute of the Stockholm Chamber of Commerce of 17 March 2008 on the territory of the Russian Federation.

OOO Capital Group objected to the adopted ruling, alleging that the ruling of the first instance court is illegitimate, unfounded and rendered with an incorrect application of the norms of procedural law. Thus, the Respondent seeks to annul the ruling of the Moscow Arbitrazh Court of 30 June 2009 in the case No. A40-51596/09-68-437 and to render a new judicial act dismissed the application.

At a court hearing of the court of cassation, the representative of OOO Capital Group supported the reasoning set forth in the cassation complaint.

The representative of the company Erick Van Egeraat Associated Architects BV objected to the

granting of the cassation complaint.

Having discussed the reasons of the cassation complaint, examined the accuracy of the application by the first instance court of the norms of procedural law pursuant to Articles 284, 286, 287 of the Arbitrazh Procedure Code of the Russian Federation, as well as compliance of the conclusions in the first instance ruling with the evidence included in the case materials, the court of cassation instance concluded that the challenged ruling shall be upheld and that the cassation complaint be dismissed.

As it follows from the case materials and as was established by the First Instance Court, a tribunal of the Arbitration Institute of the Stockholm Chamber of Commerce, located at the address: 3 Jakobs Torg, Stockholm, 10321, Sweden, composed of the chairman Jeffrey M. Hertzfeld and arbitrators N. Vilkova and M. Bardina, rendered an award of 17 March 2008 ordering OOO Capital Group to pay to the company Erick Van Egeraat Associated Architects BV a contractual payment arrears for the first phase (1 and 3 stages) in the amount of EUR 380,807; arrears for additional works in the amount of EUR 136,386; lost profit in the amount of EUR 1,469,387; compensation for copyright infringement of RUB 12,500,000; reimbursement of the Claimant's arbitration expenses, namely administrative fee and arbitrators fees, in the amount of EUR 40,000; reimbursement of the Claimant's expenses which arose in connection with the arbitration in the amount of EUR 225,000.

According to Article 241(1) of the Arbitrazh Procedure Code of the Russian Federation, decisions of the courts of foreign states rendered on disputes and on other matters arising in the exercise of business or other economic activity (foreign courts), awards of courts of arbitration and international commercial arbitral tribunals adopted on the territories of foreign states in disputes and other matters arising in the exercise of business or other economic activity (foreign arbitral awards), shall be recognized and enforced in the Russian Federation by arbitrazh courts, if the recognition and enforcement of such decision (awards) is envisaged by an international treaty of the Russian Federation and by federal legislation.

According to Article III of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, to which the Russian Federation and the Netherlands are the parties, each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.

According to Article V(1) of the Convention of 1958, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes, to the competent authority where the recognition and enforcement is sought, proof that:

1) The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

2) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator, of the arbitration proceedings or was otherwise unable to present his case; or

3) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, the decisions on matters submitted to arbitration can be separated from those not so submitted; that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

1) the award has not yet entered in force under the law of the country where the award was made;

2) the party against whom the award is invoked was not given proper notice of the time and place of the arbitration proceeding or was otherwise unable to present his case;

3) the case falls under the exclusive jurisdiction of a court of the Russian Federation according to an international treaty of the Russian Federation or a federal law;

4) there exists an effective decision of a court of the Russian Federation rendered on a dispute between the same parties, on the same object and on the same cause of action;

5) there is a dispute between the same parties pending before the courts of the Russian Federation, on the same object and on the same cause of action, the proceedings which were initiated prior to the institution of the proceedings in a foreign court, or a court in the Russian Federation, was the first seized of the proceedings on an application regarding the dispute between the same parties, on the same object and on the same cause of action;

6) the statute of limitations for a coercive enforcement of a decision of a foreign court has expired, and this period was not revived by an arbitrazh court;

7) the enforcement of a decision of a foreign court would violate the public order of the Russian Federation.

Granting the application of the company Erick Van Egeraat Associated Architects BV for recognition and enforcement of the award of the Arbitration Institute of the Stockholm Chamber of Commerce of 17 March 2008 in the case No. 087/2006, the first instance court rightly held that in this particular case there were no legal grounds for refusal pursuant to the Convention of 1958, Article 244(2), 239(4) of the Arbitrazh Procedure Code of the Russian Federation.

The panel of cassation judges agrees with the conclusions of the first instance court.

The arguments of OOO Capital Group set forth in the cassation complaint are groundless and cannot be accepted by the court of cassation for the following reasons:

1. The interest of one of the arbitrators –Marina Petrovna Bardina – in the outcome of the case as result of her participation in the academic and practice conference "United Nations Convention on Contracts for the International Sale of Goods: 25 Years of Application Practice, Achievements and Perspectives", which took place on 7-8 December 2005 in Moscow.

One of the spokespersons at this Conference was a partner of the law firm Pepyeliayev, Goltsblat and Partners, Maxim Anatolyevich Kulkov, who later represented the interests of the Claimant in the dispute with Respondent.

Furthermore, in the opinion of the Respondent, the company Pepeliaev, Goltsblat and Partners was one of the organizers of this Conference in 2005.

However, neither Maxim Anatolyevich Kulkov personally nor the company Pepeliaev, Goltsblat and Partners, organized or paid the Conference, they could not influence its program or the participants, including the participation of M.P. Bardina in the Conference.

The company Pepeliaev, Goltsblat and Partners was an information sponsor of the said Conference.

As a result of the participation in this scientific-academic Conference, no legal relationship, mutual dependency, or commercial interest arose between the company Pepeliaev, Goltsblat and Partners or its employee, the representative of the Claimant, and M.P. Bardina.

Therefore, M.P. Bardina, as an arbitrator, fully conforms to the requirements of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce and to international legal acts.

2. Consideration by the Arbitration Institute, when rendering the award, of a number of issues which are not covered by the arbitral clause.

This argument of OOO Capital Group does not comply with the content of the arbitral clause specified in clause 8 of the Agreement of 5 September 2003, according to which any dispute, conflict or claim arising out of or in connection with this Agreement, or violations, termination, or validity of this Agreement shall be subject to a final resolution by the parties through an arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

The Agreement contains a so-called "broad" arbitration clause, which purports that the parties reached an agreement to refer to arbitration for a wide range of issues arising out of or in connection with the Agreement. The arbitration clause covers the Claimant's claims for payment of additional works on the basis of the obvious and close link of this claim with the Agreement of 5 September 2003. Therefore, the Institute of the SCC had the jurisdiction to consider the Claimant's claims for payment of additional works.

The additional works were performed within the framework of the Agreement.

3. The amount of the awarded compensation does not correspond to the principle of proportionality between the civil liability and consequences of this fault.

This argument concerns the merits of the dispute and is not related to the list of the grounds for refusal of recognition and enforcement of a decision of a foreign court or of an arbitral award, the exhaustive list of which is provided for in Article 244(1) of the Arbitrazh Procedure Code of the Russian Federation.

Further, the copyright issues are connected to the performance of the Agreement.

The first instance court fully and comprehensively examined the circumstances of the case and accurately applied the norms of procedural law. The cassation complaint does not contain arguments overturning the conclusions specified in the challenged judicial act.

The reasoning of the cassation complaint resolved into re-evaluation of the evidence of the case, what is inadmissible in the court of cassation according to Articles 286, 287(2) of the Arbitrazh Procedure Code of the Russian Federation.

There are no grounds, specified in Article 288 of the Arbitrazh Procedure Code of the Russian Federation, under which the court of cassation can annul the challenged judicial act, thus the cassation complaint shall be dismissed.

Based on Articles 274, 284, 286, 287(1)(1), 289 of the Arbitrazh Procedure Code, the Federal Arbitrazh Court for the Moscow District

RESOLVED:

The ruling of the Moscow Arbitrazh Court of 30 June 2009, No. A40-51596/09-68-437 shall be upheld and the cassation complaint of OOO Capital Group shall be dismissed.

The stay of enforcement of the judicial act of the first instance court ordered by the Federal Arbitrazh Court for the Moscow District of 28 July 2009, No. KG-A40/8155-09 shall be lifted.

Presiding Judge: I.A. Belozertseva

Judges: E.A. Bragina

S.G. Nuzhnov