

Supreme Court of Georgia
Chamber of Civil, Entrepreneurial and Bankruptcy Cases

With the following composition:

M. Sulkhanishvili (President)

R. Nadiriani (judge – rapporteur)

T. Todria (judge)

Secretary of the hearing: V. Bokuchava

Applicant: “S.F.M.” LLC

Represented by: E.Z.

Opposing party: Batumi Town Hall

Represented by: I.S.

Subject matter of the dispute: recognition and enforcement of the award of International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry dated 24 May 2007

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

By award rendered by the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry on 24 May 2007, Batumi City Hall was ordered to pay “S.F.M.” LLC USD 61,020 as well as USD 7,592 to reimburse the plaintiff for the incurred arbitration fees. The award immediately entered into force.

In his motion addressed to the Supreme Court of Georgia, E.Z., the representative of “S.F.M.” LLC, requested the recognition and enforcement in the territory of Georgia of the award rendered by International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry of the Russian Federation dated 24 May 2007.

By its Order dated 23 March 2009, the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia declared admissible the motion by “S.F.M.” LLC to have the award of International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry dated 24 May 2007 recognized and enforced on the territory of Georgia.

The representative of the Batumi City Hall considers that the Supreme Court should reject the motion of LLC “S.F.M.” in accordance with subparagraphs (b) and (d) of Article 68(2) of the Law of Georgia on Private International Law and Article 5(2)(a) of the Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Reasoning:

The Cassation Chamber studied the case materials, heard the parties’ positions and deems that the motion of E.Z., the representative of “S.F.M.” LLC, should be granted for the following reasons:

The Supreme Court of Georgia is not authorized to review the lawfulness and appropriateness of the reasoning of foreign judicial (arbitral) awards. Pursuant to Article 3 of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (to which Georgia acceded in 1994), each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where recognition and enforcement of the award is sought. Pursuant to Article 5(1)(b) of the same Convention, recognition and enforcement of the award will be refused if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.

According to Article 68(2)(b) of the Law of Georgia on Private International Law, recognition of a decision will be refused if the party was not summoned to the court with a proper notice in accordance with the law of the country in which the court decision was rendered or if other procedural violations took place.

The Chamber disagrees with the assertion of the Batumi City Hall representative that it was not served the statement of claim of “S.F.M.” LLC together with its supporting documents and that Batumi City Hall was unaware of the dispute adjudicated by the Arbitration Court because, according to the case file, the Arbitration Court forwarded the statement of claim and supporting documents to the respondent, which were served to respondent on 8 December 2006 (case file pages 63 – 69). The respondent had also been notified about the appointment of the arbitrator and was offered to appoint its arbitrator within 15 days. In the same notification, the respondent was given 30 days to provide its written submission and its supporting evidence. It is also ascertained that the respondent was notified about the time and date of the hearing (case file pages 20 – 21). It follows that the arbitration court took all the measures possible to ensure the respondent’s participation in the proceedings, but without success. Batumi City Hall neither appointed its arbitrator nor defended itself in the dispute.

The Cassation Chamber also disagrees with the position of Batumi City Hall that the award of the arbitration court must not be recognized on the territory of Georgia pursuant to paragraphs (b) and (d) of Article 68(2) of the Law of Georgia on Private International Law and Article 5(2)(a) of the Convention on Recognition and Enforcement of Foreign Arbitral Awards. In particular, the City Hall representative asserted that the arbitration court was not authorized to adjudicate the dispute between the parties and that, under the laws of this country, the dispute is not capable of settlement by arbitration.

Pursuant to Article 2(1) of the Convention on Recognition and Enforcement of Foreign Arbitral Awards, each Contracting State shall recognize an agreement in writing under which the

parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. According to Clause 13.1 of the Sales Contract concluded between the disputing parties, the disputes arising from the contract that are not amicably resolved, shall be referred to arbitration at International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry, pursuant to its rules; the jurisdiction of the courts of general jurisdiction is completely excluded. The decision shall be final for both parties. Therefore, by entering into the contract, the parties agreed to submit their disputes to arbitration in Russia.

Pursuant to Article 5(1)(a) of the Convention on Recognition and Enforcement of Foreign Arbitral Awards, the recognition and enforcement of the award may be refused if the party against whom it is invoked furnishes proof to the competent authority that the arbitration agreement concluded between the parties 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.

The party has not furnished the Supreme Court with any evidence to prove that the arbitration agreement concluded between the parties in writing has [sic] been declared void or ineffective.

Consequently, there are no grounds envisaged by either Article 5 of the Convention or Article 68 of the Law of Georgia on Private International Law not to recognize a foreign arbitral award; in particular, according to the arbitration agreement entered into by the parties, the dispute was subject to arbitral proceedings, the arbitration agreement has not been declared ineffective, the defendant had been duly informed about the arbitral proceedings, and the decision has entered into force. It follows that, pursuant to Article 3 of the Convention, the award of International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry dated 24 May 2007, shall be recognized as binding and enforceable in the territory of Georgia.

R e s o l u t i o n :

Pursuant to Article 68 of the Law of Georgia on Private International Law,

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

The motion of E.Z., the representative of “S.F.M.” LLC shall be upheld.

The award of International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry dated 24 May 2007, ordering the Batumi City Hall to pay “S.F.M.” LLC the sum in the amount of USD 61,020 as well as USD 7,592 as reimbursement for arbitration costs incurred by the plaintiff, shall be recognized and be enforceable in the territory of Georgia.

The Order of the Cassation Chamber is final and not subject to appeal.