Unofficial Translation

Case No. a-492-sh-11-2012 6 July 2012

Tbilisi

Supreme Court of Georgia

Chamber of Civil Cases

With the following composition:

Mr. Teimuraz Todria (Presiding Judge and Rapporteur)

Mr. Vasil Roinishvili

Ms. Maia Sulkhanishvili

Secretary of the hearing: Lela Sanikidze

Applicant: JSC "P" (AS "P")

Represented by: I. D.

Opposing party: "L" LLC

Decision that the party seeks to have recognized and enforced on the territory of Georgia: arbitral award of United Mediation Court of Riga dated 14 September 2011

Matter of dispute: imposition of payment obligation

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

By the award of the United Mediation Court of Riga dated 14 September 2011, "L" LLC was ordered to make a compulsory payment; in case of impossibility of making such payment, V.L. would be jointly liable to pay JSC "P" the following:

1. The principal amount of the loan that was granted but not reimbursed (outstanding amount): USD 525,000 (five hundred twenty-five thousand United States Dollars), i.e. LVL 258,300 (two hundred fifty-eight thousand and three hundred Latvian Lat);
2. The calculated and outstanding interest for the use of the loan: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

3. A penalty for late payment of the principal amount of the credit: USD 186,375 (one hundred eighty-six thousand three hundred and seventy-five United States Dollars and fifty cents), i.e. LVL 91,696.50;

4. A penalty for late payment of interest under the credit: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

5. Mediation Court fees, including reimbursement of fees incurred in the proceedings: LVL 3,185.74.

The decision entered into force upon its release – 14 September 2011.

I.D., the representative of JSC "P", filed a motion with the Supreme Court of Georgia requesting the recognition and enforcement of a decision of the United Mediation Court of Riga dated 14 September 2011 on the territory of Georgia.

By Order dated 17 February 2012, the Chamber of Civil Cases of the Supreme Court of Georgia declared I.D.'s motion on behalf of JSC "P" requesting the recognition and enforcement of the Riga Mediation Court decision of 14 September 2011 admissible.

R e a s o n i n g :

The Cassation Chamber studied the case materials and is of the opinion that I.D.'s motion on behalf of JSC "P" shall be granted for the following reasons:

It is determined that, by decision of the United Mediation Court of Riga dated 14 September 2011, LLC "L" was ordered to make a compulsory payment; in case of impossibility of making such payment, V.L. would be jointly liable to pay to JSC "P" the following:

1. The principal amount of the loan that was granted but not reimbursed (outstanding amount): USD 525,000 (five hundred twenty-five thousand United States Dollars), i.e. LVL 258,300 (two hundred fifty-eight thousand and three hundred Latvian Lat);

2. The calculated and outstanding interest for the use of the loan: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

3. A penalty for late payment of the principal amount of the credit: USD 186,375 (one hundred eighty-six thousand three hundred and seventy-five United States Dollars and fifty cents), i.e. LVL 91,696.50;

4. A penalty for late payment of interest under the credit: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

5. Mediation Court fees, including reimbursements of fees incurred in the proceedings: LVL 3,185.74.

The decision entered into force upon its release – 14 September 2011 – and has not been enforced on the territory of Latvia.

According to Article 73^1 of the Law of Georgia on Private International Law, recognition and enforcement of arbitral awards rendered outside of Georgia is subject to the rules prescribed by the Law of Georgia on Arbitration.

According to part 1 of Article 44 of the Law of Georgia on Arbitration, the Supreme Court of Georgia is the competent court [to decide on recognition and enforcement] of a decision rendered outside of Georgia.

In the Supreme Court of Georgia, the representative of LLC "L" stated that the request for recognition and enforcement of the arbitral award must be refused because [the respondent] was not informed of the arbitration proceedings and the arbitral award went beyond the scope of the arbitration agreement because mortgage contract no. 1 (dated 24 June 2008), mentioned in the decision, has no connection with the subject matter of the arbitration dispute and resulted in a breach of paragraphs "a.c" and "a.d" of Article 45 of the Law of Georgia on Arbitration.

The Cassation Chamber wishes to clarify that, pursuant to paragraph "a.c" of Article 45 of the Law of Georgia on Arbitration, irrespective of the country in which the arbitral award was rendered, a party's request for having such an award recognized and enforced may be refused if the party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or for other good reason was unable to participate in the arbitral proceedings.

The Cassation Chamber states that the case materials, parties' submissions and the award of the United Mediation Court of Riga dated 14 September 2011 provide that "L" LLC was aware of the arbitration proceedings in question; this is confirmed by the fact that "L" LLC submitted its statement of defense, together with its supporting materials. The hearing scheduled on 26 August 2011 at 16:30 was adjourned to 14 September 2011 at 16:30 because the defendant ("L" LLC) did not appear at the hearing. "L" LLC was notified about the adjournment by registered mail (the return receipt was signed by an authorized representative). It should also be noted that "L" LLC has two directors (V.L. - General Director and Sh.A. - Director) both of whom were notified of the hearing as indicated in the award of the United Mediation Court of Riga dated 14 September 2011. While notification of the arbitral hearing might not have been handed to Sh.A. in person, the representatives of "L" LLC do not dispute (neither in written submissions nor in oral pleadings) that the second director (V.L.) was notified of the scheduled hearing.

The Cassation Chamber therefore holds that there are no grounds under paragraphs "a.c." of Article 45 of the Law of Georgia on Arbitration to refuse the recognition and enforcement of the award in question.

The Cassation Chamber also clarifies that, pursuant to paragraph "a.d." of Article 45 of the Law of Georgia on Arbitration, irrespective of the country in which an arbitral award was rendered, a party's request to recognize and enforce an award may be refused if the award

concerns a dispute not contemplated by an arbitration agreement, or that it contains issues beyond the scope of the arbitration agreement. A party's request to have an award recognized and enforced may be rejected in whole or partially to the extent it goes beyond the scope of the arbitration agreement.

The Cassation Chamber clarifies that, in the present case, grounds for refusing recognition and enforcement of the arbitral award are absent as indicated in the above-mentioned provision.

It should be noted that the award of the United Mediation Court of Riga dated 14 September 2011 mentions mortgage contract no. 1 (dated 24 June 2008). In addition, based on the parties' submissions and case materials, the Cassation Court finds that the mortgage contract was not subject to an arbitration agreement. Furthermore, the parties do not dispute that the contract was neither performed nor that the preconditions for its performance existed.

Despite this, the Cassation Chamber finds that the award of the United Mediation Court of Riga dated 14 September 2011 does not concern the disputed mortgage contract, since the Award does not concern mortgage contract no. 1 (dated 24 June 2008) or the property subject to that mortgage contract. The Cassation Chamber draws attention to the dispositive part of the award of the United Mediation Court of Riga dated 14 September 2011 to note that it does not order the sale of the collateral pledged under mortgage contract no. 1 (dated 24 June 2008). The Arbitration Court only ruled on matters falling within the scope of the arbitration agreement.

Paragraph "a.d." of Article 45 of the Law of Georgia on Arbitration relates only to an arbitral award that concerns the dispute not envisaged by an arbitration agreement or on a matter that goes beyond the scope of the arbitration agreement. In other words, the above-mentioned provision only applies when a court deals with an issue that goes beyond the scope of the arbitration agreement. This is not the case here.

Also, the Cassation Chamber deems that the Award of the United Mediation Court of Riga dated 14 September 2011 is not contrary to public policy (paragraph "b.b." of Article 45 of the Law of Georgia on Arbitration). Public policy is a fundamental principle in relationships governed by civil law and is applied as one of the important factors limiting the use of conflict rules.

In this particular case, the Cassation Court focuses on examining whether the Award of the United Mediation Court of Riga dated 14 September 2011 contradicts the provisions of Article 276(2) and Article $301(1^1)$ of the Civil Code of Georgia.

Pursuant to Article 276(2) of the Civil Code of Georgia, a claim is deemed to be satisfied even if the money recovered from the sale of the mortgaged property is insufficient to cover the mortgage-secured claim or if the value of the mortgaged property does not fully cover the amount of the claim, unless the parties have agreed otherwise. In addition, pursuant to Article $301(1^1)$ of the Civil Code [of Georgia], a claim that is secured by mortgage shall be deemed to be

satisfied even if the money recovered from the sale of mortgaged property is insufficient to cover the mortgage-secured claim, unless otherwise determined by law or by agreement of the parties.

The essence of the above-mentioned provisions is that a creditor will be deemed to be satisfied even when the money recovered from the sale of mortgaged property does not suffice to extinguish the claim secured by the mortgage. These provisions determine the extent of property liability of the debtor and, consequently, the preconditions for satisfying the creditor's claims. It should be noted that the provisions are of discretionary nature which can be amended by agreement of the parties.

The Cassation Chamber wishes to emphasize, in the first place, that representatives of "L" LLC have never claimed, in either their written pleadings or oral arguments, that their liability would be limited to the scope of collateral agreements; "L" LLC bears the burden of proving this. Their property-related claim is limited solely to mortgage contract no. 1 (dated 24 June 2008) that the Court has already discussed above.

The Cassation Chamber reiterates that the dispositive part of the award of the United Mediation Court of Riga dated 14 September 2011 does not concern the satisfaction of the claim as a result of selling the property under the pledge contracts executed on 11 March 2008; the award therefore does not relate to the collateral contracts.

In addition, it should be noted that the rules of Article 276(2) and Article 301(1^1) of the Civil Code of Georgia apply when the money recovered as a result of sale of the collateral is insufficient to settle a claim. In other words, for the abovementioned rules to apply there should be, one, an event of sale of the collateral (which is not the case in this instance) and, two, the recovered amount of money should be insufficient to satisfy the claim (something that is not argued by "L" LLC).

Consequently, it can be concluded that the award of the United Mediation Court of Riga dated 14 September 2011 does not provide the satisfaction of the claim by using the collateral; the Award does not contradict the rules of Article 276(2) and Article 301(1^1) of the Civil Code of Georgia since there is no event of sale of collateral and, in view of the discretionary character of the mentioned provisions, representatives of LLC "L" are not arguing that the credit contract dated 11 March 2008 only envisaged satisfaction of the claim by using the collateral. Also, the party's right to participate in an oral hearing was not violated in the course of the arbitral proceedings.

The Cassation Court holds that there are no obstacles for recognition and enforcement of the award. Therefore, the Chamber of Civil Cases of the Supreme Court of Georgia should recognize the award of the United Mediation Court of Riga dated 14 September 2011 and declare it enforceable in the territory of Georgia.

R e s o l u t i o n :

In accordance with Article 73^1 of the Law of Georgia on Private International Law, Article 44 of the Law of Georgia on Arbitration and Article 284 of the Civil Procedure Code of Georgia,

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

1. The motion of I.D. representing JSC "P" seeking the recognition and enforcement on Georgian territory of the award of the United Mediation Court of Riga dated 14 September 2011 shall be upheld partially, i.e. the part of the award that concerns reimbursement of damages.

2. The Supreme Court hereby recognizes and declares enforceable the award of the United Mediation Court of Riga dated 14 September 2011, determining compulsory payment method for LLC "L" and, in case of impossibility of making such payment, V.L. would be jointly liable to pay to JSC "P" the following:

1. The principal amount of the loan that was granted but not reimbursed (outstanding amount): USD 525,000 (five hundred twenty-five thousand United States Dollars), i.e. LVL 258,300 (two hundred fifty-eight thousand and three hundred Latvian Lat);

2. The calculated and outstanding interest for the use of the loan: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

3. A penalty for late payment of the principal amount of the credit: USD 186,375 (one hundred eighty-six thousand three hundred and seventy-five United States Dollars and fifty cents), i.e. LVL 91,696.50;

4. A penalty for late payment of interest under the credit: USD 82,669.82 (eighty-two thousand six hundred and sixty-nine United States Dollars and eighty-two cents), i.e. LVL 40,673.55;

5. Mediation Court fees, including reimbursements of fees incurred in the proceedings: LVL 3,185.74.

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