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Contents

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Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on Court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.3). CLOUT documents are available on the UNCITRAL website (www.uncitral.org/clout/showSearchDocument.do).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the Court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available, in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

The abstracts are prepared by National Correspondents designated by their Governments, or by individual contributors; exceptionally they might be prepared by the UNCITRAL Secretariat itself. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

Cases relating to the UNCITRAL Model Law on International Commercial Arbitration (MAL)

Case 1788: MAL 1(3); 36(1)(a)
Spain: High Court of Justice of Valencia (Civil and Criminal Division, Section 1)
Grupo Ros Casares S.L. and Ros Casares Centro del Acero S.A. v. Thyssenkrupp AG
5 May 2015
Full text: http://www.poderjudicial.es/search

Abstract prepared by Pilar Perales Viscasillas[1]

[**Keywords**: *internationality*; *arbitration agreement*; *arbitral award*; *recourse against award*]

An application for the setting aside of an arbitral award was made in relation to a contractual relationship between two Spanish companies and two German companies.

The application was based primarily on article 41(1)(a) of the Arbitration Act (Act No. 60/2003) of 23 December 2003 (that article being in line with article 36(1)(a) of the UNCITRAL Model Law on International Commercial Arbitration), and on the fact that the company that applied for the award to be set aside was not a party to the arbitration agreement because it had neither consented to nor signed it. In other words, it was claimed that it was invalid to extend the arbitration agreement to the parent company of the two companies in the group that were parties to that agreement, since: the theory of "piercing the corporate veil" was inapplicable; it was inadmissible to extend the arbitration clause on the basis of the existence of a group of companies; and the concept of "company" used in Community law was inapplicable, as were the International Institute for the Unification of Private Law (Unidroit) Principles of International Commercial Contracts and the concept of "third party" as referred to in the contested award.

The proven facts indicated that the parent company of the group held a position of dominance over the other two respondents. Furthermore, the parent company had taken over one of the subsidiary companies that had signed the agreement.

The Court examined in detail the legal issue to be resolved, namely, the subjective extension of an arbitration clause, and found that article 1(3) of the UNCITRAL Model Arbitration Law, regarding the internationality of the arbitration, was applicable.

In the arbitration agreement, which was a contract, the principle of the relativity of contracts applied and bound those who signed it. However, a frequently occurring problem in arbitral proceedings is the issue of extension *ratione personae*, which is the linking to an arbitration clause of a non-signatory company that is part of the corporate structure in which the contract containing the arbitration clause was signed by the parent company. Such extension has been admitted in the context of international commercial arbitration and in the legislation of certain States, on the basis of such theories as the "group of companies", "piercing the corporate veil" or "alter ego", and is also provided for in the rules of certain arbitral institutions. However, Act No. 60/2003 does not address that issue and there was no case law on the subjective extension of an arbitration clause to third parties or non-signatory companies that are part of the same group, which is why a ruling on the matter was justified.

Arbitral practice favours subjective extension when certain conditions are met and does not necessarily imply an extension of liability, but simply that arbitral tribunals, rather than State courts, have jurisdiction over the matter.

As a basis for the subjective extension of the arbitration clause, the Court referred to the doctrinal article "International commercial arbitration and groups of companies", written by Ms. Hilda Aguilar Griedes and published in *Cuadernos de Derecho Transnacional*, 2009, vol. 1, No. 2. The article examined the subjective extension of

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the arbitration clause from a legal perspective, and summarized the following as the factors giving rise to subjective extension:

1. Membership of the non-signatory company in a group of companies. As national legislations diverge widely with regard to the degree and type of control necessary to warrant use of the term “group of companies”, Community legislation must be applied.

2. Effective participation of the non-signatory company in the litigious contractual legal relationship. In order for the subjective extension of the arbitration clause to a non-signatory company to occur, the doctrine of the economic unity of the group requires, with certain isolated exceptions, the effective participation of that company in the litigious contractual relationship to which the arbitration clause in question relates. Such participation can occur during any phase or stage of the contract, i.e., during its negotiation, performance and/or termination.

3. Legal concepts that support the applicability *ratione personae* of the arbitration clause to a non-signatory company in the group.

In order for the extension to occur, it is necessary to carry out a detailed assessment of the factual elements and whether they fall within the scope of a particular legal concept that supports the solution adopted by the arbitrators on the basis of the facts in each specific case. The concepts in question are those of representation, stipulation in favour of a third party (*stipulation pour autrui*), and the doctrines of estoppel and of piercing the corporate veil.

Among the above-mentioned concepts, the one that should be highlighted as underpinning the subjective extension of the arbitration clause is estoppel, the general legal principle that neither party is entitled to take a position contrary to its earlier positions, either expressly or implicitly. That concept is based on the need to protect the party that has relied on a particular situation. Consequently, in all of its manifestations, that legal concept is based on the principle of good faith, which is well established in arbitral practice.

With regard to the doctrine of piercing the corporate veil, the division of the group into different legal persons, i.e. isolated units, is the general rule. However, in specific cases, that separate legal personality is superseded, the companies in the group that are affected by the piercing of the corporate veil being regarded as a single subject of law. In fact, although the establishment of a group does not necessarily denote fraudulent intent, it is increasingly common for a group to use its own legal persons that are independent from its constituent companies to infringe the law through a fraudulent act, specifically evasive action to avoid liability.

In light of the above, the Court considered that in the case in question, with respect to both the parent company and the other two respondent companies in the group, all the requirements established in arbitral practice for the subjective extension of an arbitration clause were met.

The Court therefore dismissed the action for setting aside the arbitral award.

Case 1789: MAL 34(2)(b)(ii)
Spain: Madrid Provincial High Court (Section 28)
Puma AG Rudolf Dassler Sport v. Estudio 2000, S.A.
10 June 2011
Original in Spanish
Full text: http://www.poderjudicial.es/search/indexAN.jsp

Abstract prepared by Pilar Perales Viscasillas[2]

[**Keywords**: *arbitral award; arbitral tribunal; recourse against award; public policy principles of the applicable law*]

The central question with respect to the setting aside of an arbitral award issued in relation to an international ad hoc arbitration concerning various related contracts was whether one of the arbitrators had been excluded from the process leading to the decision reflected in the award of which the parties were given notice; and, if that were the case, whether the improper decision-making process had left one of the parties unable to defend itself and, as a consequence, that constituted a violation of public policy. In that regard, the party that had applied for the award to be set aside claimed that the "principle of collegiality" had been violated, in contravention of public policy, and that the award should be set aside under article 41 (1) (f) of the Arbitration Act (Act No. 60/2003) of 23 December 2003 (that article being consistent with article 34 (2) (b) (ii) of the UNCITRAL Model Arbitration Law).

The Court considered that while the application for the setting aside of the award must be based on one of the limited grounds set out in article 41 (1) of Act No. 60/2003, that fact did not preclude — given the general manner in which those grounds were formulated — the consideration, as grounds for setting aside, of other situations which, while not expressly covered by the aforementioned provision, were subsumable under or deducible from the grounds listed therein (a matter that is entirely separate from the possibility of extending the list of grounds for setting aside by analogical interpretation, which had been ruled out). Furthermore, within the framework of the regime established by Act No. 60/2003, the ground set out in article 41 (1) (f) functioned as a final clause, encompassing all situations that involved violation of the fundamental rights or principles recognized in the Constitution and therefore could not be subsumed under any of the other grounds listed in article 41 of Act No. 60/2003. Consequently, the Court considered that if the decision-making process of the arbitral tribunal had been conducted improperly, the award would be liable to be set aside.

The Court found that the arbitrator in question had indeed been excluded from the process of deliberation, voting and issuance of the award, having established the following facts: following intensive deliberations over the course of several meetings held as part of the arbitration process, the arbitrators had come close to reaching a unanimous decision. However, at the final meeting, which was attended by all three arbitrators, they failed to reach agreement. Subsequently, two of the arbitrators met without the presence or knowledge of the third and at that meeting decided on the award, of which the parties and the third arbitrator were then informed.

The Court found that while it would have been possible for the award to have been issued without the presence of the third arbitrator if a majority decision had been reached at the meeting in which all three arbitrators were present and that decision had been reflected in the text that resulted from the subsequent meeting between the two other arbitrators, it was clear from the communications between the members of the arbitral tribunal that at the point at which the third arbitrator was excluded, no clear solution had yet been reached by the arbitral tribunal, as a number of possibilities remained open. Nevertheless, the third arbitrator was excluded from the final stage of the deliberations and from the decision to issue the award of which the

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parties were given notice. Consequently, the Court rejected the claim that that situation could have been remedied by the issuance of a separate opinion.

Case 1790: MAL 33(1)(a)
Zimbabwe: High Court of Zimbabwe, HH 497-17, HC 10430/15
26 July 2017
Original in English
Available on the Internet: https://zimlii.org/

[**Keywords:** *arbitral tribunal; procedure; jurisdiction; award and correction-additional*]

An employment dispute between the applicant and the respondent was referred for arbitration. The arbitrator issued an arbitral award in favour of the applicant for amounts due to the applicant as salary and severance package. The applicant was also awarded cash in lieu of leave, however the amount due was not quantified in the arbitral award. The applicant filed an application seeking registration of the arbitral award. The application was dismissed with costs due to the lack of quantification of the cash in lieu of leave in the arbitral award. The court held that the award was not severable and therefore not capable of registration. The applicant referred the court ruling to the arbitrator who then amended the award to reflect the amount due as cash-in-lieu of leave.

The respondent opposed the application claiming it was contrary to public policy. The respondent pleaded that the arbitrator did not have jurisdiction to render the arbitral award. Citing Article 33 MAL, the respondent argued that the arbitrator could only interfere with the award upon request by either party within 30 days of issuance of the award, failing which it could only do so with the consent of both parties. The award was handed down on 28 June 2012 and the amendment was effected over three years later. The respondent further claimed no consent was given and the arbitrator was *functus officio*. In response, the applicant submitted that it had met the requirements for registration of the award.

The court discussed the requirements for registration of an arbitral award. Referring to past decisions, it reiterated that an applicant is "automatically as a matter of right entitled to register an award upon satisfying the conditions specified in s 98(14) of the [Arbitration] Act": (a) the applicants is a party to the arbitral proceedings; (b) the award relates to the applicant; and (c) the copy of the award presented by the applicant for registration has been duly certified by the arbitrator. Based on this reasoning, any opposition to registration is therefore limited to showing that the applicant has not satisfied the prescribed requirements for registration. The court held that the three requirements for registration mentioned above, with an additional requirement that the award be in existence, had been met in the present application. It thus ordered that the arbitral award issued on the 28 June 2012 and fully quantified on the 13 October 2015 be registered as an award.

Case 1791: MAL 7(2); 8(1)
Zimbabwe: High Court of Zimbabwe, HH 26-16, HC 3651/13
13 January 2016
Original in English
Available on the Internet: https://zimlii.org

[**Keywords**: *arbitration clause; arbitration agreement; courts; form of arbitration agreement; signatures; writing*]

The subject of the dispute was a tender between the plaintiff and the defendant for the provision of insurance cover. In the absence of a contract, duly signed and attested, the parties proceeded to purport to perform their respective obligations. Dispute arose when the defendant withdrew from the risk on the basis that there was never an agreement between the defendant and the plaintiff. The plaintiff subsequently sued the defendant for the sum of 458,176 USD which arose from the deaths of their staff which were unsecured and thus could not be indemnified.

During the proceedings, the defendant claimed that the court had no jurisdiction as "there was an undoubted exchange of documents, though unsigned, and letters between the parties in which an arbitration clause was clearly spelt out." The defendant cited Article 7(2) MAL, contained in the schedule to the Arbitration Act, and claimed that an arbitration agreement is in writing if it is contained in an exchange of letters, telex, telegrams or other means of communication which provide a record of the agreement. The plaintiff, however, argued that since the draft contract was never signed, it is irregular and unsustainable in law to claim recourse to arbitration as it is not a binding and valid contract until signed. The court cited Article 8(1) MAL, contained in the Arbitration Act, which requires a court, where a dispute is subject to an arbitration clause, to stay the proceedings and refer the matter to arbitration where "a party so requests, not later than when submitting its first statement on the substance of the dispute" as long as the arbitration is not null and void, inoperative or incapable of being performed. The court set out to determine whether a signed binding contract is required to satisfy the requirements of the Arbitration Act. The court stated that in interpreting the Act, and model law therein, reference must be made to s 3(2) of the Arbitration Act which requires in its interpretation and application to have regard to the international origins of the model law and the desirability of achieving uniformity. For this reason, the court considered the commentary in the Arbitration Sourcebook and the interpretation rendered in other jurisdictions to be relevant. The commentary notes that the writing requirement under Article 7(2) MAL can be met in one of four ways: (1) agreement in a document signed by the parties; (2) exchange of letters, telex, telegrams or other means of communication which provide a record of agreement; (3) exchange of statements of claim and defence alleging the existence of an agreement which is not denied by the other party; and (4) reference in a contract to a document containing an arbitration agreement so long as the agreement is in writing and the reference makes it a part of the contract.

The court concluded that an arbitration clause may be presumed to exist in the absence of a written and signed arbitral clause where an undoubted exchange of letters, faxes, documents or other communication provides a record of an agreement to arbitrate. The court further referred to CLOUT case 44 and stated that an agreement to arbitrate in accordance with Article 7(2) MAL was reached, the jurisdiction of the court was ousted, the matter stayed and referred to arbitration.

Case 1792: MAL 26; 34 (2)(b)(ii)

Zimbabwe: High Court of Zimbabwe, HH 103-15, HC 3274/12
11 February 2015
Original in English
Available on the Internet: https://zimlii.org

[**Keywords:** *arbitral tribunal; experts; public policy; arbitral award; award-setting aside*]

An application was filed to set aside an arbitral award under Article 34 of the schedule to the Arbitration Act. The award was rendered by the first respondent (in his capacity as an arbitrator) in a dispute between the applicant, the second and third respondents. The prequel to the application involved a dispute as to how the losses incurred by the companies owned by a trust were to be apportioned among the applicant and the second and third respondents, and the extent of the losses. The trust, originally established on behalf of the applicant and its children, had been later on amended to include the second and third respondents and it was the sole shareholder in a group of four companies. An agreement between the applicant and the second and third respondents provided for these latter to progressively assume the control of the companies over a period of three years. When the dispute on the losses arose, the arbitrator determined that the losses should be shared in the same proportions as the risk in the companies and that the risk should pass in the same proportions and on the same dates as the control of the companies.

The applicant objected to this approach and claimed that the arbitral award was contrary to the public policy of Zimbabwe, thus filing the application to set aside the award. The court referred to Article 34 (2) (b) (ii) MAL, contained in the schedule to the Arbitration Act, as well as to Article 34 (5) of the Arbitration Act which provides that: "… an award conflicts with the public policy of Zimbabwe if a breach of the rules of natural justice occurred in connection with the making of the award." The court highlighted the importance of interpreting restrictively those provisions to give efficacy to the need of finality in arbitrations. It further stated that not every mistake warrants the setting aside of an arbitral award. For the award to merit intervention of the court, the incorrectness must be so serious as to constitute a subversion and negation of justice and fairness. The court opined that the conclusion of the first respondent on how to apportion the losses emanating from the trust did not constitute a palpable inequity as to warrant the setting aside of the award.

In its application, the applicant also objected to the arbitrator's decision to defer the quantification of the losses to an expert to be appointed by the Institute of Chartered Accountants in the event of the parties failing to reach an agreement. The court referred to Article 26 MAL which provides that with the consent of the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. The court emphasized that it is important to afford the parties an opportunity to cross examine the expert on the subject of its appointment and to present their own evidence to support or contradict the expert appointed by the arbitral tribunal. This ensures that the proceedings comply with the principles of natural justice and particularly the *audi alteram partem.* However, the court held that when the arbitral tribunal leaves it to a third party to appoint an expert it loses control of the matter, and this would be contrary to the provisions of the law. Furthermore, in the case at hand, by delegating the Institute of Chartered Accountants to appoint the expert and making no provision for that expert to report back to the arbitrator, the arbitrator failed to afford the parties the opportunity to cross-examine the expert or to bring their own evidence from other experts. Finally, since the appointment of an expert was for the purpose of determining the quantum of the losses, such determination was meant to be binding on the parties. The court concluded that such an approach elevated the expert to the position of an arbitrator. For these reasons the court determined that the award was contrary to the public policy of Zimbabwe and ruled that it be set aside.

Cases relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) (NYC) and the UNCITRAL Model Law on International Commercial Arbitration (MAL)

Case 1793: MAL 16(1); NYC II; II(2); II(3); UNCITRAL recommendation regarding the interpretation of the 1958 New York Convention (2006)

Spain: A Coruña Provincial High Court (Section 3)
Union Invivo — Union de Coopératives Agricoles v. Ecoagrícola S.A.
19 March 2015
Original in Spanish
Full text: http://www.poderjudicial.es/search/indexAN.jsp

Abstract prepared by Pilar Perales Viscasillas[3]

[**Keywords**: *arbitration agreement*; *arbitration clause; jurisdiction; contract*]

The parties disagreed over which body had jurisdiction to settle the dispute between them, which had arisen in relation to a contract for the sale of grains. The Spanish party (buyer) brought a claim before the Court of First Instance of A Coruña, claiming that there was a contract but no agreement to settle any dispute by arbitration, while the French party (seller) considered that there was no contract but that the parties had agreed to submit any dispute to arbitration. The judge of that Court found that as the

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general conditions, which included a clause on submission to arbitration by the Grain and Feed Trade Association (GAFTA) in London, had not been signed, the unambiguous will of the parties to refer the matter to arbitration could not be determined. The French party then lodged an appeal before GAFTA, which ruled that, by application of Regulation No. 44/2001 of the Council of the European Union on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, it did not have jurisdiction. GAFTA concurred with the Spanish judgment, although it considered that "the failure of the sellers to sign the contractual terms does not invalidate the arbitration agreement, and the buyers, by taking the matter directly to the Spanish court before engaging in arbitration, violated the arbitration agreement".

Following an appeal by the French party against the judgment, the Provincial High Court found the submission to arbitration to be beyond question. It based its decision on the principles of separability and of *Kompetenz-Kompetenz* (MAL, art. 16, para. 1, and art. 22 of the Arbitration Act (Act No. 60/2003) of 23 December 2003) as well as of estoppel, as it was the Spanish party that always incorporated into its contracts a general condition containing a clause on submission to arbitration by GAFTA in London.

Furthermore, the Court considered the application of the 1958 New York Convention, as it was dealing with a case of international arbitration, which did not require the signature of the arbitration agreement, and therefore invoked article II, paragraph 3, on the negative effects of the arbitration agreement, and article II, paragraph 2, which indicates that the mere exchange of correspondence is sufficient to prove the existence of the arbitration agreement.

Ultimately, the Court found that the non-formalist approach prevailed, and that it was therefore unnecessary for the arbitration agreement to establish the unambiguous will of the parties to refer the dispute to arbitration, or to use established formulas in order to express that will; consequently, it was necessary to rely on the will of the parties. With regard to the requirement of the 1958 New York Convention (art. II (2)) for a written agreement, the Court found that the requirement was merely for the purpose of there being a record of the existence of an arbitration agreement, invoking for the purposes of interpretation the UNCITRAL recommendation of 7 July 2006, in the sense that that provision extended to electronic media, the use of which was recognized, furthermore, by article 9 (3) of Arbitration Act 60/2003 of 23 December.

In addition, and with reference to Spanish case law, the Court considered the validity of the clauses on submission to arbitration in accession contracts concluded between business owners, as such clauses were usual in maritime trade and, while the 1958 New York Convention did not explicitly address the issue, precedence should be given to submission to arbitration by virtue of the *pacta sunt servanda* principle.

Cases relating to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards — The "New York" Convention (NYC)

Case 1794: NYC V

Brazil: Superior Tribunal de Justiça (Superior Court of Justice), SEC 831[4]
Spie Enertrans S/A v. Inepar S/A Indústria e Construções
3 October 2007
Available at: http://www.stj.jus.br

Abstract published on www.newyorkconvention1958.org[5]

[4] This case is cited in the UNCITRAL Secretariat Guide on the Convention on Recognition and Enforcement of Foreign Arbitral Awards available at: www.uncitral.org.

[5] The website www.newyorkconvention1958.org is a project supported by UNCITRAL that provides information on the application of the "New York Convention" (1958) and supplements the cases collected in the CLOUT system. The following abstract is reproduced as part of the CLOUT documentation so that it can be officially translated into the six official languages of the United Nations. In order to ensure consistency with the website

Sade Vigesa S/A (Sade) entered into a consortium agreement with Spie Enertrans S/A (SET) to supply and construct energy transmission lines in Ethiopia. Sade Vigesa Industrial e Serviços S/A (Sade Industrial), a subsidiary of Inepar S/A Indústria e Contruções (Inepar), was assigned all of Sade's rights and obligations under the consortium agreement, which included an arbitration agreement providing for arbitration in accordance with the Rules of the International Chamber of Commerce (ICC). A dispute arose and an award was rendered in Paris under the auspices of ICC. During the proceedings, Inepar acquired complete ownership of Sade Industrial and became a party to the arbitration.

SET sought recognition and enforcement ("homologação") before the Superior Tribunal de Justiça (Superior Court of Justice). Inepar opposed recognition and enforcement arguing that (i) the service of process had not been made properly; (ii) the arbitration agreement was invalid due to the fact that it was signed prior to the enactment of the Brazilian Arbitration Act (the Arbitration Act) and that the Claimant had failed to comply with the requirements then applicable. The requirements included the obligation to seek recognition and enforcement in the country where the award had been rendered before making the same request to the Brazilian courts; and (iii) there had been a violation of national sovereignty and public policy because, in particular, a specific declaration was required in order to assign consent to arbitration and there had been no declaration in this case. The Superior Tribunal de Justiça granted recognition and enforcement to the foreign award based on the Arbitration Act. It quoted from the opinion given by the Public Prosecutor's Office ("Subprocurador-Geral da República"), which stated that the Arbitration Act revoked the necessity of double recognition and enforcement proceedings. Further, the fact that the arbitration agreement was signed prior to the Arbitration Act was not detrimental because procedural laws, like the Arbitration Act, had immediate effect under Brazilian law. The opinion also stated that the party raising objections had the burden of showing that the exceptions in Article V NYC were applicable.

The Superior Tribunal de Justiça reiterated the findings made by the Public Prosecutor's Office and held that Inepar had validly assumed all of Sade's rights and obligations under the Consortium agreement. Lastly, the Superior Tribunal de Justiça dismissed the arguments that an invalid service of process had occurred which would have amounted to a violation of public policy and due process.

Case 1795: NYC VI

United States: U.S. Court of Appeals, District of Columbia Circuit, case nr. 10-7167[6]
Belize Social Development Limited v. Government of Belize
13 January 2012
Original in English

Abstract published on www.newyorkconvention1958.org[7]

A dispute arose in relation to an "accommodation agreement" concluded between Belize Telemedia Limited ("Telemedia") and the Appellee, the Government of Belize ("Belize"). Claiming breach of contract, Telemedia initiated arbitration proceedings in London and obtained an award against Belize, which it later assigned to the Appellant, Belize Social Development Limited ("BSDL"). In response, Belize filed a claim with the Belize Supreme Court seeking to block enforcement of the award, and

www.newyorkconvention1958.org, the editorial rules of that website have been maintained even when they differ from CLOUT editorial rules.

[6] This case is cited in the UNCITRAL Secretariat Guide on the Convention on Recognition and Enforcement of Foreign Arbitral Awards available at: www.uncitral.org.

[7] The website www.newyorkconvention1958.org is a project supported by UNCITRAL that provides information on the application of the "New York Convention" (1958) and supplements the cases collected in the CLOUT system. The following abstract is reproduced as part of the CLOUT documentation so that it can be officially translated into the six official languages of the United Nations. In order to ensure consistency with the website www.newyorkconvention1958.org, the editorial rules of that website have been maintained even when they differ from CLOUT editorial rules.

obtained an interim injunction prohibiting Telemedia and BSDL from pursuing enforcement of the award outside Belize.

BSDL filed a petition in the United States District Court for the District of Columbia to confirm and enforce the award pursuant to Section 207 of the Federal Arbitration Act ("FAA"), which requires a federal district court to confirm an arbitral award falling under the NYC. Belize, sought a stay of the proceedings in the District Court pending the outcome of the case before the Belize Supreme Court, which the Court granted. BSDL appealed the District Court's order staying enforcement proceedings to the United States Court of Appeals for the District of Columbia Circuit. The United States Court of Appeals for the District of Columbia Circuit granted BSDL's appeal and reversed the District Court's order staying enforcement proceedings. The Court held, inter alia, that the District Court erred in ordering a stay of enforcement proceedings because the stay was not based on the grounds set forth in Article VI NYC. The Court reasoned that under the NYC and the FAA, it could only suspend enforcement proceedings if proceedings to set aside or suspend the award were pending in England, but not otherwise.