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| Armada Holland BV Schiedman Denmark v. Inter Fruit S.A.  |  |  | | --- | --- | | Court | National Supreme Court of Justice | | Date | 24 November 2011 | | Summary | In 18 March 1998, Armada Holland BV (Armada), through its broker Oceanic Navigation S.A. (Oceanic), sent a telefax to Inter Fruit S.A. (Inter Fruit) confirming a charter party for the vessel ICE SEA to carry a cargo of fruit from Argentina to Russia. The charter party referred to the GENCON standard form, which provides for arbitration of disputes in London.  A dispute arose between the parties. A sole arbitrator in London rendered an award in favor of Armada, which then sought enforcement of the award in Argentina.  The Civil and Commercial National Court of First Instance no. 11 denied enforcement, holding that the award was not based on a valid arbitration clause as no charter party had been concluded between the parties. On 8 May 2007, the Federal Court of Appeal in Civil and Commercial Matters confirmed the lower court's decision, holding that under the 1958 New York Convention, an examination of the existence of a valid arbitration agreement is a specific task of the enforcement court, and that some review of the award is necessary as states cannot be expected to accept all foreign decisions without a minimum of control. In the present case, the only arbitration agreement in writing in the sense of the New York Convention was contained in the original agreement for the carriage of the cargo by the vessel ICE SEA.  The National Supreme Court of Justice by majority revoked the Federal Court of Appeal decision and ordered to issue a new judgment pursuant to its ruling [see Excerpts]. | |

**Excerpts**

(…)

[2] “This Extraordinary Appeal is formally admissible, since the interpretation and scope of federal rules (Arts. II, IV and V of [the 1958 New York Convention], ratified by Act no. 23.619) are in dispute, and the interpretation given by the lower court led to a decision that is alleged to be contrary to said norms, on which appellant grounded its cause of action (Art. 14(3) of Act no. 48). It should be recalled that this Court, in its task of interpreting norms of this nature, is bound neither by the positions of the parties nor by the grounds given by the Court of Appeal; rather, it is competent to rule upon the issue at hand according to its own understanding”.

[3] “Law no. 23.619 ratifying the [New York Convention], opened for signature in New York on 10 June 1958, and signed by Argentina on 26 August 1958, provides that the text of said Convention forms an integral part of the above-mentioned Act (Art. 1)”.

[4] “The above Convention sets forth that in order to obtain the recognition and enforcement of an award, the party applying for those measures shall, at the time of the application, supply the duly authenticated original award or a duly certified copy (…).”

[5] “The Court of Appeal, in upholding the first instance judgment, found that in the case at hand the above-mentioned legal conditions necessary for the enforcement of the award had not been met. In so deciding, the Court of Appeal considered the arguments put forward by the Defendant (…); and concluded that there was no evidence that the Defendant had accepted the appointment of the vessel designated by the shipowner, ‘either in a signed document or through an exchange of letters, telegrams or similar instruments, as required by the provision applicable in this case’”.

[6] “As it appears from the award whose enforcement is being sought, the arbitrator carried out an in-depth and reasoned analysis of the objections raised against his jurisdiction (…) which he finally confirmed, (…) Thus, in the operative part of the award, the arbitrator decided: “(…) (1) that a contract was agreed upon on 2 April 1998, based on the terms of a GENCON charterparty insurance policy dated 18 March 1997 which contained an arbitration clause (…); (2) he had jurisdiction as sole arbitrator, given that the Defendant had failed to appoint an arbitrator within fourteen days of notice to make such an appointment, as provided for in the arbitration clause; (3) the Defendant had breached the Charterparty by not loading the goods, with the shipowners having suffered losses as a result thereof, which were estimated at a sum of US$ 113,925 (…)”.

[7] “The verification of compliance with the conditions provided for in Law No. 23.619 regarding enforcement of an arbitral award does not warrant any revision or modification of the decision on the merits made by the arbitrator, the court being competent only to verify the fulfillment the above-mentioned conditions”.

[8] “In the case at hand, the lower court wrongly interpreted and applied the federal rules concerned, because by invoking said norms, it reviewed issues that had been definitely ruled upon by the arbitrator, concerning the existence of the charterparty between the parties. By admitting, in that way, the objection raised by the Defendant – which argued that no charterparty had ever come into existence, and thus, no arbitration clause was ever agreed upon – [the lower court] did not comply with the applicable norms and rendered a new decision on issues already decided by the arbitrator, in the framework of an arbitral proceeding in which the Defendant deliberately refrained from participating”.

[9] “(…) review of compliance with the legal requirements should be made based on the evidence produced in the court file, according to the effects of said evidence as construed in the court's ruling, since [the lower court] lacks jurisdiction to rule upon issues finally decided by the arbitrator”.

“Therefore, and the General Prosecutor having been heard, this Extraordinary Appeal is granted and the judgment of the Court of Appeal is reversed, with an order to the Appellant to pay the costs. The record shall be resent to the lower court for it to render a new judgment, following the guidelines established in this decision (…)”.

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