

Litigation - Cyprus

Scrutinizing and supporting arbitration proceedings before Cypriot courts

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Introduction

"Arbitration constitutes an alternative dispute resolution method...It constitutes a characteristic supplement of every modern legal system. The method survives without judicial means. Only in specified instances may [judicial means] be used against an arbitration award. In our internal legal system, these rules, as well as the wider rules on arbitration, are stipulated within specialised legislation namely, the Arbitration Law, Cap.4

The frequent and successful use of this method worldwide forced the United Nations to create in the interest of completeness and uniformity a complete model law which was adopted on 21/06/85 by UNCITRAL. Its conclusion was the result of systematic review of relevant rules of various countries...The Cyprus International Commercial Arbitration Law 101 of 1987 clearly reflects the central ideas and the whole of the provisions of this code."⁽¹⁾

On February 19 2010 the Supreme Court of Cyprus delivered its decision in *Re an Arbitration Decision between DI.MA.RO LTD and Lakis Gergious Construction Limited*, reaffirming the Cypriot courts' support of the arbitration process in accordance with the principles set out above in the extract from the Supreme Court judgment in *Attorney General of Kenya v Bank Für Arbeit und Wirtschaft AG*

The litigants in the latest case had contractually agreed to refer any dispute to arbitration in accordance with the Arbitration Law (Cap 4). When a dispute arose, the matter was referred to arbitration as agreed. Having heard the testimony of the 15 witnesses, the sole arbitrator issued its decision that the appellants were required to pay the respondents a total of approximately C£34,000 (approximately €58,000). This amount was payable within seven days of the arbitration award being issued and any delay in payment would attract interest at 11.25% per annum.

The appellants disagreed with the arbitrator's decision and applied to the court to set aside the arbitration award "as a product of misconduct and/or as having been issued irregularly and biased and/or following defective execution of the obligations of the arbitrator".

First instance decision

The district judge determined that there was nothing wrong with the procedure or the arbitrator's decision, except for the award of interest at a rate of 11.25% per annum. Section 22 of the Arbitration Law provides that interest is applied on any arbitration award amount at the same rate that the debt would carry if it were awarded on the basis of a court decision. The relevant rate at the time was 8%. The arbitrator gave no explanation as to why the rate of 11.25% had been used instead.

On the basis of case law, the district judge decided that the incorrect interest award should be set aside, but that the rest of the arbitration award should stand and would automatically bear interest at 8% under Section 22 of the Arbitration Law.

Appeal decision

The appellants disagreed with the district judge's decision and appealed to the Supreme Court. The appellants referred to Section 20(2) of the Arbitration Law, which

provides that:

"Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside."

The Supreme Court noted that the first instance court had determined that it could segregate the improper award of interest from the rest of the decision in line with the guidance given by *Russell on Arbitration*(2) and the decision of *AN Stasis Estates Co Ltd v GMP Katsambas Ltd* ((2001) 1 CLR 2006). Accordingly, and with reference to the decision in *Charalambos Galatis v Sofronis Savvides* ((1965) 1 CLR 87), the Supreme Court affirmed the district court's decision.

Moreover, the Supreme Court reaffirmed the district court's conclusion that while the arbitrator could deem all of the evidence of all witnesses as credible, he nevertheless had the right not to accept part of the evidence of certain of the witnesses for the reasons explained each time. The Supreme Court affirmed that selective acceptance of a witness's evidence is not objectionable.

Comment

The Supreme Court's decision adds clarity to the powers and obligations of arbitrators and further demonstrates that the Cypriot courts will respect and support arbitration proceedings and the function of arbitrators. The decision itself was cited in the Supreme Court's later decision of May 19 2010 in *Neofitos Solomou v Laiki Cypria Life*, wherein it reaffirmed by a majority a district court decision not to set aside an arbitration award on alleged grounds of misconduct. In *Neofitos Solomou* the Supreme Court had the opportunity to examine in depth the notion of 'misconduct' and found as follows:

"It is therefore clear that the case-law has progressively (with reference to the new English legislation) restricted, instead of expanding, the circumstances that could constitute 'misconduct' (see Russell on Arbitration 23rd edition page 375, para. 7-056). Moreover, as it is stated in the Civil Procedure Vol. 2: The White Book Service 2006, page 470 at para. 2E-78:

'The Act further specifies the grounds on which an award may be set aside or remitted or an arbitration removed thus removing the general discretion available under 'the old law'.'

The above decided in so far as to the legal scope of the term 'misconduct' does not include the legal interpretation of a document, which seals the fate of this appeal. However, in the interest of completeness it can be briefly said that the finding of the first instance Court that no grounds existed to set aside the decision of the arbitrator was correct...because his [the arbitrator's] interpretation of the disputed term of the insurance contract was reasonable and complied with the usual interpretation rules."

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Endnotes

(1) Supreme Court Judge Nikitas in *Attorney General of Kenya v Bank Für Arbeit und Wirtschaft AG* ((1999) 1(A) CLR 585) at p 590.

(2) 16th Edition pp 291-292.

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