

Supreme Court decides that assignee is bound by arbitration agreement

June 21 2018 | Contributed by [Kubas Kos Gałkowski](#)

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The assignment of rights and obligations stemming from an agreement forms part of everyday business. This issue can become complicated if a transferred claim is covered by an arbitration agreement. A recent Supreme Court decision shows that in such a case, the assignee and the debtor must resolve their disputes through arbitration.⁽¹⁾

Facts

The defendants in the present case and another Polish company entered into a consortium agreement for major construction work in Poland. The Polish consortium member assigned its claims against the Irish consortium leader to a Polish bank to secure the credit agreement. The bank decided to pursue these claims against the Irish parties before a Polish state court.

The defendants motioned to reject the statement of claim invoking the arbitration agreement contained in the consortium agreement based on Article 1165(1) of the Code of Civil Procedure, which is based on Article 8(1) of the United Nations Commission on International Trade Law (UNCITRAL) Model Law 1985.

Decisions

The regional court agreed with the defendants and rejected the statement of claim. It found that the assignee's position was equal to that of the assignor. Consequently, if a claim that falls within the scope of an arbitration agreement is assigned, its debtor can also invoke an arbitration agreement against the assignee. The court also found that the assignor's subsequent insolvency did not in any way affect the arbitration agreement (under the insolvency law in force prior to 2016, an arbitration agreement concluded by a party that declared insolvency became ineffective – for further information please see "[Elektrim case era comes to an end](#)").

The claimant appealed the regional court decision, invoking several arguments (ie, the nature of the assignment only to secure a claim and the fact that the arbitration agreement did not specify a legal relationship or cover tort claims).

The Court of Appeals dismissed the appeal and confirmed that the case should be brought to arbitration. In particular, the court did not agree with the arguments pertaining to the arbitration agreement's scope, finding that the case was a typical contractual dispute covered by an arbitration agreement contained in the contract.

The claimant pursued the case before the Supreme Court, which also dismissed the appeal. The Supreme Court agreed with the position confirmed by scholars and case law that an arbitration agreement can be invoked against the assignee of a claim that it covers. Events after the assignment and pertaining to the assignor (eg, insolvency in the present case) are irrelevant in this regard. The nature of the assignment (its fiduciary and securing nature) may affect only the issue of which parties

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can make a claim (ie, the insolvency administrator or assignee), which is a substantive issue under Polish law, and not whether the case should be brought to arbitration at all.

As to the scope of the arbitration agreement, the Supreme Court confirmed its position that agreements should be interpreted to allow their effectiveness to be maintained and, broadly, to keep all disputes in one forum. Even if an arbitration agreement contained in a contract vaguely refers to 'disputes', in context, this can be understood as the parties' intent to refer all contractual disputes to arbitration. Moreover, the claim brought by the claimant in the case at hand was not a claim in tort, but a contractual one. As such, it fell within the scope of the arbitration agreement.

Comment

The Supreme Court's decision confirms the arbitration-friendly approach of the Polish courts, especially regarding the validity and scope of arbitration agreements, which should be commended.

However, the court's position on the assignment arguably deserves a more extensive discussion.⁽²⁾ The general position in Poland is that the assignment of a claim automatically entails the assignment of an arbitration agreement. A more appropriate approach is that the assignment of a claim can entail the assignment of an arbitration agreement, but this issue must be examined in each case. The will of all parties (ie, the assignee, assigner and debtor) and especially the content of the assignment agreement must be verified to establish the arbitration clause's subjective scope. This approach is particularly found in common law jurisdictions.⁽³⁾ The content of the Supreme Court's decision does not signify that the court performed such a verification. However, this does not change the fact that parties planning to assign or acquire a claim covered by an arbitration agreement must still be careful when deciding in which forum the claim should be decided.

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Endnotes

(1) Decision of the Supreme Court of 1 December 2017, I CSK 170/17, available in Polish [here](#).

(2) R Kos, "Comment on the Supreme Court's Judgment of 3 September 1998", I CKN 822/97, Comment 4/2013, available in Polish [here](#).

(3) See G Born, *International commercial arbitration*, Wolters Kluwer 2009, 1189-1190.

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