

X v. Y, Award, CAM Case No. 6210, 4 May 2011

Benedetta Coppo, Chamber of Arbitration of Milan;
Stefano Azzali, Chamber of Arbitration of Milan

Headnote

In X v. Y, the arbitral tribunal applied the *in favorem validitatis* principle when interpreting the will of the parties (May 2011)

Digest

Claimant (Italy) and Respondent (Czech Republic) signed an agreement (the “Development Agreement”) in 2007 containing an arbitration clause under the Rules of the Milan Chamber of Arbitration. A dispute arose, mainly concerning the right of the Italian company to back out of the contract. The Claimant filed a request for arbitration. At first, the respondent objected to the arbitration arguing that the arbitration agreement is inoperative, and/or the arbitration agreement was invalid. All the grounds were dismissed by the arbitral tribunal.

Firstly, the Respondent submitted that the exact wording of the arbitration clause referred to arbitration as “Any disputes in connection with this Option Agreement or the sale and purchase of the Optional Shares” and did not mention the Development Agreement itself. Consequently, in the Respondent's view, the arbitration clause was unable to identify which dispute would fall within the arbitrators' competence, as the language in the arbitration clause did not refer to the Development Agreement but to other agreements. Claimant, however, submitted that the arbitration clause was perfectly operative and it only contained a purely material mistake by making reference to non existing contracts. In order to support its view, Claimant filed a draft version of the Development Agreement that was originally sent by the Respondent itself, which contained a reference to an option agreement as well as to a sale and purchase agreement. He argued that such a typo was corrected elsewhere in the final version of the Development Agreement, but in the arbitration clause.

The arbitral tribunal interpreted the will of the parties under the Italian law applicable to the case at hand, since the seat of the arbitration was Milan. Under the Italian Civil Code (ICC, art. 1362 and 1367), the will of the parties is the interpretation of their common intention, and not only the interpretation of the literal meaning of the words they used. Consequently, the arbitral tribunal acknowledged that both parties considered the Development Agreement to be fully effective and valid. Furthermore, it took into consideration that the first version of the Agreement was drafted by Respondent itself. The tribunal applied the *in favorem validitatis* principle and considered that there was a mere material mistake, as the arbitration clause is part of a single document that is the contract, which the parties had signed and labeled “Development Agreement”. Finally, the arbitrators ruled that there was no doubt that the intention of the parties was to refer any dispute arising out of the said agreement to arbitration, and therefore, it dismissed the Respondent's objection and declared the arbitration clause fully valid and operative.

Secondly, Respondent submitted that the request for arbitration fell outside the scope of the arbitration agreement, since it was based on single sales that followed the Development Agreement, rather than on the Agreement itself. Claimant considered Respondent's argument to be groundless. The arbitral tribunal interpreted the will of the parties by applying art. 808-quarter of the Italian Code of Civil Procedure (ICCP), which provides that, in case of doubt, the arbitration agreement shall be interpreted in the sense that the arbitral jurisdiction extends to all disputes arising out of the contract or from the relationship to which it refers. Therefore, the tribunal retained its jurisdiction on the request for arbitration, since its *causa petendi* was the Agreement containing the arbitration clause.

Finally, Respondent objected that the arbitration clause was invalid since it should have been expressly undersigned by the parties, according to art. 1341 and 1342 of the ICC. Claimant argued that those provisions shall not apply, since the Agreement had not been concluded *per relationem*, while the parties directly negotiated it. The arbitral tribunal rejected Respondent's argument, since Claimant was able to prove that the Agreement had been negotiated between the parties as it had not been drafted by one of them only and had not been concluded by way of any standard form. Consequently, in the tribunal's view,

the ICC provisions referred to by the Respondent shall not apply. Parties: unknown, case no: unknown, Arbitral Tribunal under the Rules of the Milan Chamber of Arbitration, Italy.