

X v. Y, Award, CAM Case No. 6807, 20 June 2008

Stefano Azzali, Chamber of Arbitration of Milan;

Benedetta Coppo, Chamber of National and International Arbitration of Milan

In this case, the arbitrators held that extending the arbitration clause to include non-contractual disputes would go beyond the original intent of the parties.

In the case at hand a dispute arose out of a supply contract. Claimant, a company from the British Virgin Islands, requested the arbitral tribunal to ascertain and declare the Respondent, an Italian constructor, liable in contract and/or in tort.

Respondent objected and argued that the arbitral tribunal lacked jurisdiction to hold on liabilities in tort because the arbitration agreement referred expressly to “all disputes arising out of the contract including those concerning its validity, interpretation, performance and termination”, therefore the arbitrators' jurisdiction was limited to disputes under the contract.

In Claimant's view, the wording of the arbitration clause was the widest possible as to demonstrate that the parties had clearly agreed on including all kinds of disputes, irrespective of their contractual or non-contractual basis. Also, Claimant underlined that Article 808-quarter of the Italian Code of Civil Procedure (CCP), as amended in 2006 (Law No. 40/2006) states that, in case of doubt, arbitration clauses must be interpreted extensively. On this point, Respondent objected that the agreement was signed in 2000 and consequently that Article 808-quarter CCP was not applicable because Law No. 40/2006 applies to arbitration clauses drawn up after the date of its entry into force (March 2, 2006). Prior to that date, Italian case law stated that arbitration clauses had to be interpreted strictly, since they exclude State courts' jurisdiction.

The arbitral tribunal acknowledged that, today, Italian case law providing for strict interpretation of the arbitration agreement should be revised in consideration of the new Article 808-quarter CCP. Nevertheless, the tribunal ruled that the 2006 Arbitration reform does not apply to the case at hand. Furthermore, the new law provides for the parties to agree to submit to arbitration disputes concerning a non-contractual relationship (Article 808-bis), but through a specific agreement determining the object of the dispute. In the present case, however, the parties did not sign such an agreement. In the arbitrators' view, a dispute arising from a non-contractual relationship between the parties could not be seen as a dispute arising either from the contract or from the relationship to which the clause refers to (“disputes arising out of the present contract”). The arbitrators ruled that the word “contract” is clear and unambiguous and that extending this clause to non-contractual disputes would go beyond the original intent of the parties. Therefore, Respondent's objection was sustained.