

Court of Appeal decision No. 2184/2015, rendered on 20 May 2015

Headnote

The Court of Appeal rules on the limit of its revision of an arbitral award and on public policy.

Summary

Facts of the case

The parties (on one side Multipartner, an Italian company, and on the other side Mr Pierre Cardin and Gestion Pierre Cardin S.a.r.l. – hereinafter, Cardin - from France) signed an agreement containing an arbitration clause for a Sole Arbitrator under the Rules of the Chamber of Arbitration of Milan, providing for the seat of the arbitration to be in Milan and for Italian law to be applied to the merits. The scope of the agreement was for Multipartner to act as agent on behalf of Cardin and sell the other party's company. Multipartner filed a request for arbitration arguing that Cardin did not perform the agreement in good faith and it claimed for damages for its loss of profit and the expenses it suffered along the contract. In particular, Claimant argued that its counterparty unlawfully bought a data room through the illicit assistance of a partner of Multipartner itself, and then it terminated the contract before its end without any justified reason. The Sole Arbitrator qualified the agreement between the parties as a brokering agreement according to Art. 1754 of the Italian Civil Code (ICC), then found that Cardin did not perform it in good faith and that Claimant suffered consequential damages. Therefore, the Arbitrator awarded a given amount of money in favor of Claimant.

Arguments of the Parties

Cardin filed a recourse for nullity against the arbitral award before the Court of Appeal of Milan on the ground that it was contrary to public policy, as the Arbitrator based its decision to award damages in favor of Multipartner on a contract which was null according to Art. 1418, Para. 1, ICC (providing that a contract is null when contrary to mandatory laws covering general interests). Cardin argued that the Arbitrator first qualified the contract wrongfully and then did not declare it to be null since Multipartner was not enrolled in any broker bar, therefore awarding damages on the basis of a contract that was null. Multipartner opposed the recourse.

Judgment of the Court

The Court of Appeal dismissed the recourse as ill-founded.

First, the Court considered that any error of law allegedly made by the Arbitrator fell outside its exam: both parties argued on the juridical qualification of their contract, but the Court was prevented from revising the Arbitrator's decision on the merits. Regardless of any alleged error of law of the Arbitrator, while the Court shall examine whether the actual content of the arbitral award was contrary to public policy.

The Court of Appeal considered that the Arbitrator's decision to award damages on the ground of Cardin's bad faith performance of the contract was not contrary to any public policy principle. In the case at hand, the Court underlined that any alleged violation of public policy is deemed to arise out of a strictly technical prejudicial issue (i.e. the juridical qualification of the contract), that is to say an issue that the Arbitrator decided incidentally only, and without any *res judicata* effect.

Conversely, the Court acknowledged that the Arbitrator found that Cardin did not perform the contract in good faith (irrespective of the denomination of the said contract) and consequently ordered it to pay for damages: the Arbitrator's decision did not rely on the identification of contract, while on ascertaining Cardin's conduct.

Furthermore, the Court found that any lack of bar enrollment of Multipartner did not entail a violation of public policy. The Court made reference to EU Directive 2006/123/CE, Art. 41, according to which "The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety." The Court of Appeal considered that the case at hand did not lead to such a situation.