

CAM award No. 12512, rendered on 23 May 2014

Headnote

Arbitrators are entitled to examine the authenticity of a contract incidentally.

Summary

Facts of the case

In 2010 an Italian company - as supplier - and a Rumanian company - as agent - entered into an agency Contract. The Contract contained an arbitration agreement for any dispute to be settled by a Sole Arbitrator under the Rules of the Chamber of Arbitration of Milan, the seat of the arbitration was Milan, and Italian law applied to the merits. A dispute arose on the termination of the Contract by the agent, which brought the case to arbitration in 2012.

Arguments of the Parties

Claimant sought for a declaration of its legitimate termination of the Contract on the ground of the supplier's serious breach, and claimed for damages. Claimant argued that Respondent had not been cooperating in good faith since the end of 2011 and performed the Contract poorly, consequently affecting the performance from the agent's side. Furthermore, Claimant argued that the supplier refused to make a proper investment in advertising, thus preventing the agent to reach any of its sales targets. As for the above, the agent terminated the Contract. Respondent challenged - *inter alia* - the validity of the Contract, on the ground that the stamps and signature thereto were not those of the company and of its legal representative: in Respondent's view, the Contract did not exist and the arbitration agreement was invalid, therefore the Sole Arbitrator was in lack of any power to decide the case.

The Sole Arbitrator first ordered Claimant to submit the original copy of the Contract promptly, and then - upon Claimant's request - appointed a graphology Expert to determine the authenticity of Respondent's representative's signature on the contract and of Respondent's stamps printed thereto.

Respondent objected that the Sole Arbitrator could not examine the authenticity of the Contract, since any verification was to be referred to a State Court exclusively: in fact, Respondent had filed a fraud complaint before an Italian criminal Court grounded on the counterfeit Contract. As a result, it was Respondent's position that the Arbitrator should have had ordered a stay of the arbitral proceedings pending the criminal Court's decision.

Judgment of the Court

The Sole Arbitrator preliminary examined Respondent's objection to his jurisdiction, which he found that he had on the basis of Art. 808, Para. 2 of the Italian Code of Civil Procedure (ICCP), according to which the separability principle applies, as the validity of the arbitration agreement must be evaluated independently of its underlying contract.

As for the examination of the authenticity of the Contract, the Arbitrator found that he had the power to proceed incidentally on the ground of Art. 819, Para. 1, ICCP, which provides that arbitrators shall decide all issues relevant for the decision of the dispute without force of *res judicata*, even if they relate to matters that may not be subject of an arbitration agreement, and unless such issues have to be decided by law with force of *res judicata*. The Sole Arbitrator ruled in accordance with eminent scholars and made a distinction between the

examination of the authenticity of the contract (as per Art. 216 ICCP) and a complaint for forgery (as per Art. 221 ICCP), as only the latter shall be decided with force of *res judicata*, while arbitrators' general powers to conduct the case imply the first one. Consequently, the Sole Arbitrator incidentally ordered the examination requested by Claimant, whose outcome is directed to decide the case at hand exclusively, and not to become final. The Arbitrator added that any other conclusion would lead to dilatory tactics that would keep any arbitration in a deadlock.

The Expert ascertained the authenticity of both the signature and the stamps on the Contract, so that the Sole Arbitrator dismissed Respondent's objections, and proceeded with the merits.