

Supreme Court decision No. 17444, rendered on 31 July 2014

Headnote

Derogation from national substantive law does not require any specific acceptance.

Summary

Facts of the case

Luxury Goods International s.a. (a Swiss company, hereinafter Luxury Goods) and Swaili Diffusioni s.r.l. (an Italian company, hereinafter Swaili) were parties to a sub-supply Agreement. A dispute arose, and the latter filed a recourse for an injunction for payment (*decreto ingiuntivo*) before the President of the Court of First Instance (*Tribunale*) of Florence. Luxury Goods objected on the basis of the lack of jurisdiction of the Italian Court, since the Agreement provided for Swiss substantive rules of law to apply, and for any dispute to be settled by a panel of the arbitrators to be appointed according to the rules of Chamber of commerce, industry and handicraft of Canton of Ticino. Swaili sought for such an objection to be dismissed. Luxury Goods then filed a recourse for a jurisdictional regulation as per Art. 41 of the Italian Code of Civil Procedure (ICCP, *regolamento di giurisdizione*) before the Supreme Court (*Corte di Cassazione*) to ascertain the lack of jurisdiction of the Italian Court. Swaili resisted to such a recourse. The Supreme Court, by its order No. 24153 dated 25 October 2013, found the Italian Court to be in lack of jurisdiction. Swaili challenged the said order and filed a recourse to have it revoked (as per Art. 391-bis ICCP *ricorso per revocazione*), whilst Luxury Goods resisted the recourse.

Arguments of the Parties

Swaili's recourse was filed on the ground that the Agreement simultaneously derogated from Italian substantive law and referred any dispute to arbitration, while the derogation had not been prejudicially discussed by the parties: Swaili argued that such a derogation was unfair, and consequently invalid for lack of a specific acceptance, according to Art. 1341 of the Italian Civil Code.

Judgment of the Court

The Supreme Court dismissed the recourse. The Court stated that the hierarchy of the issues examined in the case at hand was consistent with its own case law. In fact, by its order No. 24153, the Court preliminary ascertained the parties' derogation from the Italian substantive law, and here the Supreme Court remarks that such a derogation does not entail an unfair clause and does not require any specific acceptance according to Art. 1341 of the Italian Civil Code. Consequently, the existence on any formal and specific condition had to be examined under the Swiss law and to be carried out by the arbitral tribunal, as such an issue falls outside the scope of the recourse as per Art. 41 ICCP.