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Svea Appeal Court

Division 02

Judgment

15/06/2005
Stockholm

Docket number

T 525-03

Decision on Appeal

Judgment of Stockholm City Court, Division 6, of 18 December 2002 docketed under T 6-583-98, see Attachment A.

Claimant

The Russian Federation, Embassy of the Russian Federation
Gjörwellsgatan 31, 112 60 Stockholm

Authorised counsel: Attorney Per Magnusson, Biblioteksgatan 6-8, 111 46 Stockholm

Adversarial Party

Franz J Sedelmayer, Wendelsteinstrasse 2,
D-82049 Pullach am Isartal, Germany

Authorised counsel: Attorney Dag Wersén, Grev Turegatan 13 B, 114 46 Stockholm. and
Attorney Jonas Löttiger, Andrén Bratt Partners Advokatburå AB, Norrlandsgatan 16, 11 43 Stockholm

Case

Voiding of an arbitration decision

Operative part of a judgment

1. The Court of Appeal dismisses the motion of Franz J Sedelmayer while also dismissing the suit of the Russian Federation.

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2. The Court of Appeal confirms points 1 and 3 of the operative part of the judgment of the City Court.

3. The Russian Federation is to pay Franz J Sedelmayer Appeal Court process costs, firstly in the amount of SEK 820,000 (eight-hundred-twenty-thousand crowns) for attorney's fees, secondly EUR 32,065 (thirty-two-thousand-and-sixty-five euro) and thirdly USD 11,990 (eleven-thousand-nine-hundred-ninety US dollars) as well as interest on the relevant amounts in accordance with section 6 of the Interest Act from the date of the Appeal Court judgment onwards.

Doc. ID 599038

Postal address: Box 2290, 103 17 Stockholm

Office address: Birger Jarls Torg 5

Telephone: 08-700 34 00

Fax: 08-21 93 27

Email address: svea.hovrätt@dom.se, www.svea.se

Visiting hours: Monday-Friday 9 - 11:30 a.m., 12:30 - 3:00 p.m.

Svea Appeal Court
Division 02

JUDGMENT

T 525-03

The motions before the Court of Appeal

The Russian Federation filed motion for confirmation of its lawsuit brought before the City Court as well as exemption from the obligation to pay for Franz J Sedelmayer's process costs there.

Franz J Sedelmayer has opposed any change. He has secondly moved to have the Russian Federation's action dismissed.

The Russian Federation has moved to have Franz J Sedelmayer's motion for dismissal of the suit dismissed.

The parties have applied for compensation for their process costs in the Appeal Court.

The parties' lawsuit before the Court of Appeal

The Russian Federation has, in accordance with the ultimate findings of the Russian Federation in its lawsuit, based its case on the same circumstances as argued before the City Court and has argued its suit as emerges from the judgment of the City Court.

Franz J Sedelmayer has also based his case on the same circumstances as argued before the City Court. In doing so he has in support of his motion for dismissal of the Russian Federation's motion filed secondarily argued before the Appeal Court that Swedish courts have no jurisdiction in the lawsuit brought.

The Russian Federation has argued in opposition to the motion filed by Franz J Sedelmayer for dismissal of the lawsuit that the motion was filed too late since Franz J Sedelmayer had not filed any appeal against the judgment of the City Court and since this judgment had accordingly taken legal effect as far as Swedish jurisdiction was concerned.

Examination by the Court of Appeal

The Court of Appeal has in its decisions of 27 October 2004, 4 April 2005 and 4 May 2005 declined to hear evidence regarding the grounds argued primarily and secondarily by the Russian Federation. Before the Court of Appeal evidence was only heard in regard to the Russian Federation's tertiary argued grounds as well as in regard to the objection by Franz J Sedelmayer that there was no Swedish jurisdiction in the case.

Witness testimony given by Alexei Zhiltov, Rüdiger Wolfrum, Stephanie Solotych and Wolfgang Heinicke was reviewed by playback of tape recordings from the City Court. The parties based their cases on written evidence.

Assessment by the Court of Appeal

The Court of Appeal first of all finds that the objection raised by Franz J Sedelmayer to the effect that Sweden lacked jurisdiction to take up the Russian Federation's action was an objection referring to a procedural impediment. The City Court examined this objection in its judgment and came to the conclusion that it had jurisdiction in this case. Franz J Sedelmayer has not appealed against that judgment. Therefore in regard to the issue of Swedish jurisdiction the City Court's judgment has taken legal effect. Accordingly, Franz J Sedelmayer's motion for dismissal of the Russian Federation's lawsuit must be dismissed.

In regard to the issue of the grounds advanced in primary and secondary argumentation by the Russian Federation the Court of Appeal is of the view, for the reasons already advanced by the City Court, that the Russian Federation's motion for voiding the arbitration decision cannot be granted on any of these grounds.

Nor does that which has emerged in proceedings before the Court of Appeal in regard to the tertiary grounds on which the Russian Federation has based its case prompt the Court of Appeal to undertake any assessment than that already undertaken by the City Court.

It follows from what has been said above that points 1 and 3 of the operative part of the City Court's judgment are to be confirmed.

16/06/2005 1:26 p.m. From: Andrén Bratt Partners T-338 p.004/005 F-850
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As a result of this the Russian Federation must compensate Franz J Sedelmayer for the costs of process before the Court of Appeal. Franz J Sedelmayer has filed motion for compensation, inter alia for costs incurred in connection with consultations with, firstly an American law firm, secondly an American firm of auditors. The Russian Federation has questioned such costs. However the Court of Appeal is of the view that such costs were appropriate for defending Franz J Sedelmayer's rights in this case. Beyond that, the amount of costs applied for was not in dispute.

Franz J Sedelmayer has raised the issue of an obligation on the part of the Russian Federation's attorney, on the basis of negligence in its proceedings, to compensate him jointly and singly with the Russian Federation for costs of process before the Court of Appeal (see Chapter 18, sections 6 and 7 of the Code of Procedure). The Court of Appeal finds no grounds to impose such a payment obligation on the authorised counsel.

See Attachment B **for how to appeal**

Appeal at the latest by 13 July 2005.

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Participating in the decision were: Appeal Court Judges Kristina Boutz and Ingela Perklev, Rapporteur former Appeal Court Division Head Olof Forsberg as well as acting Associate Appeal Court Judge Magdalena Wikstrand Danelius. The decision was unanimous.