

Arbitration & ADR - Greece

Agreement to arbitrate prevents state courts from issuing payment order

Contributed by **IK Rokas & Partners Law Firm**

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A recent decision confirms that state courts lack jurisdiction to issue a payment order for an unpaid cheque in a dispute between the issuer and the recipient when the parties have agreed to resolve the underlying dispute through arbitration.

Facts

In 2010 a Greek trading company entered into an agreement with a Greek beer producer for the production, packaging and delivery of beer. The agreement contained an arbitration clause stipulating that:

"Any dispute or difference between the parties arising out of the present agreement, provided it is not settled amicably within 90 days, shall be finally resolved by three arbitrators pursuant to the provisions of the Code of Civil Procedure, to the exclusion of the jurisdiction of state courts."

The buyer issued cheques to pay for the beer, which were not paid within the time provided. As a result, at the seller's request a state court issued a payment order. The buyer filed an opposition claiming that the agreement of the parties to arbitrate prevented state courts from issuing a payment order, while in separate proceedings it sought to stay the enforcement of the payment order until the opposition hearing.

Decision

Regarding the request for a stay, the court held that the opposition ground was likely to succeed and granted the stay.⁽¹⁾ The court observed that this matter does not appear to have arisen in reported case law, considering this to be a *prima facie* indication that parties which have agreed to arbitrate do not consider a payment order to be an option. The court went on to say that the payment order issuance procedure is not isolated, but related to the opposition against the payment order, and both are an alternative to ordinary or special proceedings available to the parties in state courts. The court invoked Article 624 of the Code of Civil Procedure, which stipulates that a payment order cannot be issued if the underlying claim is subject to a condition. It further states that arbitration is such a condition, and thus an agreement to arbitrate the underlying dispute divests state courts of their jurisdiction to issue a payment order.

The court explained that arbitrators still have no jurisdiction to issue a payment order or hear an opposition against it; nevertheless, a state court, although it lacks jurisdiction to issue a payment order, cannot abstain from hearing an opposition against an already-issued payment order, as otherwise the claimant would have an absolute procedural weapon (ie, succeeding in issuing an enforceable title (the payment order) without the defendant having any possibility of defence through opposition). Finally, the court stated that subsequent bearers of a cheque were not bound by an arbitration agreement relating to the underlying relationship between the issuer and the recipient, unless a subsequent bearer knowingly acted to the detriment of the issuer. However, the issuer and the recipient are bound by their agreement to arbitrate.

Comment

The first-instance court dealt with this matter in exercising its jurisdiction over a request to stay the enforcement of a payment order that had already been issued. Although the issue of whether a state court has jurisdiction to issue a payment order when there is an arbitration agreement between the parties will again be addressed in the opposition judgment, the decision is significant as it appears to be the first reported judgment to have dealt with this problem. Although the parties are expected to appeal to the Court of Appeal and even the Supreme Court following the opposition judgment, the judgment at hand has undeniable value. Parties involved in similar relationships should bear in mind the following guiding principles:

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- Arbitration is considered as a condition under Article 624 of the Code of Civil Procedure, which stipulates that a payment order cannot be issued if the underlying claim is subject to a condition.
- The existence of an arbitration agreement in the underlying relationship between the issuer and the recipient of the cheque divests state courts of their jurisdiction to issue a payment order.
- Although a state court has no jurisdiction to issue a payment order, if a payment order has already been issued state courts cannot abstain from hearing an opposition against it.
- Despite state courts lacking jurisdiction to issue a payment order, arbitrators still have no jurisdiction to issue a payment order or hear an opposition against it.
- Subsequent bearers of a cheque are not bound by an arbitration agreement relating to the underlying relationship between the issuer and the recipient, unless they knowingly acted to the issuer's detriment.
- The rule that a bearer of a cheque is not bound by an arbitration agreement relating to the underlying relationship between the issuer and the recipient does not apply if the bearer is the recipient.

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Endnotes

(1) Kalamata Single Member First-Instance Court Judgment 32/2014.

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