

RULING
IN THE NAME OF UKRAINE

August 31, 2011

Kyiv

The Supreme Court of Ukraine represented by the chamber of judges:

Chief Judge: Yu.L. Senin

M.I. Baliuk, N.P. Liaschenko,

Judges:

T.Ye. Zhaivoronok, L.I. Okhrimchuk, -

having considered in court session civil case upon petition of the company “Evertrade” (France) on giving permission of enforcement of international commercial arbitration award,

FOUND:

In October 2009 company “Evertrade” (France) filed a petition on giving permission of enforcement of international commercial arbitration award. In justification of the petition it indicated that the arbitrator of the Arbitration Institute of Stockholm Chamber of Commerce (Sweden) in accordance with provisions of paragraph 1.7 of the General Agreement of January 12, 2006 concluded between the company "Evertrade" and State Enterprise "Kherson Sea Commercial Port" (hereinafter - SE “Kherson Sea Commercial Port”) had considered the dispute between the company and the port and on August 8, 2008 made final arbitration award, which recovered from SE "Kherson Sea Commercial Port” monetary funds in favour of the company “Evertrade”.

Ruling of Suvorovskiy District Court of Kherson of April 21, 2010 granted petition of the company “Evertrade” and gave permission of enforcement of the final arbitration award of the Arbitration Institute of Stockholm Chamber of Commerce (Sweden) of August 8, 2008.

Ruling of the Court of Appeal of Kherson region of July 29, 2010 left ruling of Suvorovskiy District Court of Kherson of April 21, 2010 in full force and effect.

In cassation appeal SE "Kherson Sea Commercial Port" requests to cancel the rulings of courts of the first and appeals instances due to violation of the rules of substantive law and decree new ruling, which should dismiss a petition.

Cassation appeal is not subject to satisfaction.

It has been found that according to clause 7.1 of the General Agreement of January 12, 2006 concluded between the company "Evertrade" and SE "Kherson Sea Commercial Port" all the disputes and disagreements that may arise from this Agreement should be considered in Arbitration Institute of Stockholm Chamber of Commerce (Sweden), which award is final and is not subject to review in general courts. Final award of the Arbitration Institute of Stockholm

Chamber of Commerce (Sweden) of August 8, 2008 recovered from SE "Kherson Sea Commercial Port" monetary funds in favour of the company "Evertrade".

Having determined that the award of the Arbitration Institute of Stockholm Chamber of Commerce (Sweden) of August 8, 2008 came into force, SE "Kherson Sea Commercial Port" was duly notified of the time and place of case hearing, the Debtor during the proceedings provided explanations and filed necessary documents, the court of the first instance, which conclusions were agreed by the Court of Appeal, came to reasonable conclusion that there were reasons for granting permission of enforcement of the abovementioned award.

In such circumstances the cassation appeal should be rejected but the rulings of courts of the first and appeals instances should be left in full force and effect.

Following Articles 336, 342 of the Civil Procedure Code of Ukraine, the Chamber of Judges

RESOLVED:

To reject cassation appeal of the State Enterprise “Kherson Sea Commercial Port”.

To leave the Ruling of the Suvorovskiy district court of Kherson of April 21, 2010 and the Ruling of the Court of Appeal of Kherson region of July 29, 2010 in full force and effect.

The Ruling is not subject to appeal.

Chief judge: Yu.L. Senin

M.I. Baliuk,

T.Ye. Zhaivoronok,

Judges:

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