

Delivering expert knowledge
to global counsel



Arbitration - Portugal

Arbitrability of tenancy disputes

Contributed by **PLMJ - AM Pereira Sáragga Leal Oliveira Martins Júdice E Associados - Sociedade De Ad**

July 01 2010

Facts
Decision
Comment

The Lisbon Court of Appeal recently affirmed the competence of arbitral tribunals to judge all tenancy disputes, including those related to the termination of lease agreements.⁽¹⁾

Facts

The plaintiff filed an enforcement request against the defendant in a court. The request was based on an arbitration award regarding the termination of a lease agreement between the parties.

However, the court found the arbitration agreement to be null and void. According to the first instance court, the parties could not have established the arbitrability of the termination of the lease agreement (particularly when the termination was made by the landlord) since Portuguese law does not allow it.⁽²⁾ As a result the court found the arbitration award to be invalid and subsequently rejected the request.

The plaintiff appealed to the Lisbon Court of Appeal.

Decision

The appeal court stated that: (i) arbitral tribunals are competent to judge leasing disputes; and (ii) all disputes between parties (including the termination of a lease agreement) are arbitrable.

According to the appeal court, Portuguese law does not deny the arbitrability of the termination of a lease agreement. In fact, it is quite clear that there is no provision stating that only the courts can rule on the issue.

Therefore the Lisbon Court of Appeal reversed the first instance court's decision.

Comment

According to the majority of Portuguese doctrine, lease disputes are arbitrable except when it comes to the termination of a lease agreement (especially when such termination is made by the landlord).⁽³⁾ However, Portuguese case law in this area is unclear, hence the importance of this decision.

The Lisbon Court of Appeal's decision was correct. Portuguese law does not state that the termination of a tenancy agreement must be judged by a court and not by an arbitral tribunal. Rather, the law states that the decision must be taken by a tribunal (including, therefore, arbitral tribunals). The legal provision invoked by the majority of scholars seems to have been misinterpreted and based on the false concept that arbitral tribunals are not entities performing a jurisdictional function.

⁽⁴⁾ The Lisbon Appeal Court has once more shown here that it favours arbitration.

The new Portuguese lease law was not yet applicable in this case. Nevertheless, the issue remains, as the relevant provisions are similar between the old and new lease law.⁽⁵⁾

For further information on this topic please contact José Miguel Júdice or António Pinto Monteiro at PLMJ - AM Pereira, Saragga Leal, Oliveira Martins, Judice e Associados - Sociedade De Advogados, RL by telephone (+351 21 319 7300), fax (+351 21 319 7400) or email (jmj@plmj.pt or anpm@plmj.pt).

Endnotes

⁽¹⁾ Case 19961/08.5YYLSB.L1-1, December 10 2009.

⁽²⁾ Articles 63.2 and 51 of the Portuguese Lease Law (RAU).

⁽³⁾ See, for instance, Luís de Lima Pinheiro, *Arbitragem Transnacional – a Determinação do Estatuto da Arbitragem*, Almedina, 2005, pp 110-111; Miguel Teixeira de Sousa, *A Acção de Despejo*, 2.^a edição, 1995, Lisboa, pp 29-30; Manuel Januário da Costa Gomes, *Arrendamentos para Habitação*, 2.^a edição, 1996, Coimbra, pp 230 and 278; António Marques

dos Santos, "Arrendamento urbano e arbitragem voluntária", in *Estudos em Homenagem ao Professor Doutor Inocêncio Galvão Telles*, vol III, Coimbra, pp 573-589.

(4) See Lisbon Court of Appeal decision of June 5 2007 (Case 1380/2007-1) and Pinto Furtado, *Manual do Arrendamento Urbano*, 3.^a edição, 2001, pp 1051-1052.

(5) See the referred Articles 63.2 and 51 of the former Portuguese Lease Law (RAU) and Articles 1084.2 and 1080 of the new Portuguese Lease Law (Civil Code).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Authors

José Miguel Júdece



António P Pinto Monteiro



© Copyright 1997-2011 Globe Business Publishing Ltd

Online Media Partners

