SUPREME COURT OF THE NETHERLANDS

CIVIL-LAW DIVISION

Number 22/03139
Date 22 March 2024

JUDGMENT

In the matter of

THE RUSSIAN FEDERATION
seated in Moscow, Russian Federation,
CLAIMANT in cassation, respondent in the conditional cross-appeal in cassation,
hereinafter: the Russian Federation,
represented by: [lawyer 1] and [lawyer 2],

versus

1. HULLEY ENTERPRISES LIMITED,
having its registered office in Nicosia, Cyprus,
2. VETERAN PETROLEUM LIMITED,
having its registered office in Nicosia, Cyprus,
3. YUKOS UNIVERSAL LIMITED,
having its registered office in Douglas, Isle of Man,
RESPONDENTS in cassation, claimants in the conditional cross-appeal in cassation,
hereinafter: HVY,
represented by: F.E. Vermeulen.

1 The course of the proceedings

For the course of the proceedings in the fact-finding instances, the Supreme Court refers to:
a. the judgment in case C/09/596260 / KG ZA 20-670, rendered by the District Court of The Hague on 27 October 2020;
b. the judgment in case 200.292.064/01, rendered by the Court of Appeal of The Hague on 28 June 2022.
An appeal in cassation was lodged by the Russian Federation against the court of appeal's judgment.

With the permission of the single-judge civil division, the Russian Federation filed a supplementary cassation writ. A conditional cross-appeal in cassation was lodged by HVY Each party moved that the other party's appeal be dismissed.
The case was explained on behalf of the parties by their respective lawyers, for HVY also by P.E. Ernste and A.G. Colenbrander.
The Opinion of Advocate General P. Vlas advises that the principal appeal in cassation be dismissed.
A written response to that opinion was submitted by the Russian Federation's lawyer.

2 Assumptions and facts

2.1 In cassation, the following may be assumed.
(i) HVY are three former shareholders of the Russian company OJSC Yukos Oil Company, which company has gone bankrupt.
(ii) The Russian Federation was ordered in three arbitral awards given by the Permanent Court of Arbitration in The Hague on 18 July 2014 (hereinafter: the arbitral awards) to pay substantial amounts to HVY.
(iii) The Russian Federation demanded the setting aside of the arbitral awards (hereinafter: the setting aside proceedings). The District Court of The Hague allowed these claims by judgment of 20 April 2016.[1]
(iv) In the setting aside proceedings, the Court of Appeal of The Hague, by a final judgment of 18 February 2020, annulled the district court's judgment and dismissed the Russian Federation's claims.[2]
(v) The judge in preliminary relief proceedings with the District Court of The Hague on 28 April 2020 granted leave to enforce the arbitral awards.
(vi) FKP Sojuzplodoimport (hereinafter: FKP) is a Russian state-owned enterprise engaged, inter alia, in the exploitation of trademarks relating to Russian vodka.
(vii) On 7 May 2020, HVY levied executory attachment against the Russian Federation and against FKP on various trademark and copyrights in the hands of FKP.
(viii) By judgment of 5 November 2021, the Supreme Court in the setting aside proceedings set aside the final judgment of the Court of Appeal of The Hague of 18 February 2020 and the preceding interim judgment of 25 September 2018[3] and referred the proceedings to the Court of Appeal of Amsterdam, for further handling and settlement.[4]

2.2 In these preliminary relief proceedings, FKP principally demands the lifting of the attachment referred to in 2.1 (vii) above and in the alternative a stay of the enforcement. The attachment of the trademarks was lifted by the judge in preliminary relief proceedings.[5]

2.3 The court of appeal[6] set aside the judgment given by the judge in preliminary relief proceedings and lifted the attachment levied by HVY, insofar as it was levied (i) at the expense of and with regard to property in the hands of FKP; (ii) on the copyrights on the design of the products produced and sold under the trademarks by or with the consent of FKP and/or the Russian Federation.

2.4 In response to the argument of FKP and the Russian Federation that, in view of the Supreme Court judgment of 5 November 2021 (mentioned above in 2.1 (viii)) above) in

[1] District Court of The Hague 20 April 2016, ECLI:NL:RBDHA:2016:4229.
[2] Court of Appeal of The Hague 18 February 2020, ECLI:NL:GHDHA:2020:234.
[3] Court of Appeal of The Hague 25 September 2018, ECLI:NL:GHDHA:2018:2476.
[4] Supreme Court 5 November 2021, ECLI:NL:HR:2021:1645.
[5] District Court of The Hague 27 October 2020, ECLI:NL:RBDHA:2020:10708.
[6] Court of Appeal of The Hague 28 June 2022, ECLI:NL:GHDHA:2022:1159.

the setting aside proceedings, the arbitral awards cannot be enforced, the court held as follows:

"5.4 In the setting aside proceedings initiated by the Russian Federation, the Supreme Court on 5 November 2021 set aside the judgments of the Court of Appeal of The Hague of 25 September 2018 and 18 February 2020 and referred the case to the Amsterdam Court of Appeal for further handling and settlement. According to FKP and the Russian Federation, that annulment causes the operative part of the judgment given by the district court of The Hague on 20 April 2016, in which decision the arbitral awards had been set aside, to apply once again. As a result, for the time being, HVY is not authorized to enforce those arbitral awards. Moreover, the leave to enforce obtained pursuant to the final judgment of the district court of The Hague has been cancelled by operation of law pursuant to article 1062 (4) DCCP, all this according to the Russian Federation and FKP. HVY have disputed the foregoing.

5.5 The court of appeal rejects the foregoing argument of FKP and the Russian Federation. In the setting aside proceedings, the district court of The Hague set aside the arbitral awards on the ground that no valid arbitration agreement existed (article 1065 (1) (a) of the old DCCP). On appeal, the court of appeal ruled that there was no ground for setting aside the awards on that point and the complaints in cassation directed against that decision were rejected by the Supreme Court. In the judgment of 5 November 2021, only plea 1 was considered well-founded by the Supreme Court. According to that plea, the court of appeal should not on formal grounds have rejected the argument that the arbitral awards were contrary to public policy (article 1065 (1) (d) of the old DCCP), due to HVY allegedly having acted fraudulently in the arbitration proceedings. After cassation and referral by the Supreme Court, all that remains to be decided in the setting aside proceedings is this contention, which is currently before the Amsterdam Court of Appeal. No setting aside court has yet ruled on its merits. The above means that setting aside proceedings are currently pending, the basic principle of which is that these do not suspend enforcement (article 1066 (1) DCCP). Also the lapsing by operation of law of the leave to enforce on account of the setting aside of the arbitral award as referred to in article 1064 [1062, DSC] (4) does not apply here."

3 Assessment of the plea in the principal appeal

3.1 Part 1 of the plea is directed against legal ground 5.5, in which the court of appeal rejected FKP's and the Russian Federation's argument that, in view of the Supreme Court's judgment of 5 November 2021 in the setting aside proceedings, the arbitral awards cannot be enforced. It complains that the Supreme Court's judgment means that the district court's judgment of 20 April 2016, or the operative part of it, in which the arbitral awards were set aside, applies once again, and that, as a result, pursuant to article 1062 (4) DCCP, the leave to enforce the arbitral decisions granted by the judge in preliminary relief proceedings has lapsed by operation of law.

3.2 A judgment in the first instance that is set aside on appeal must be deemed to have lost its effect as long as the judgment on appeal itself has not been set aside.[7] If the Supreme Court sets aside the judgment rendered on appeal and refers the case back for further handling and settlement, the answer to the question as to the extent to which the judgment in the first instance applies once again as a result thereof, depends on which parts of the judgment set aside by the Supreme Court in cassation have not been challenged, or have been challenged in vain, and do not build on, or are indissolubly

[7] See Supreme Court 28 September 1984, ECLI:NL:HR:1984:AG4866, ground 3.2; Supreme Court 14 December 1990, ECLI:NL:HR:1990:ZC0084.

related to, a decision that was successfully challenged in cassation, and have therefore become irreversible.[8]

3.3 In the setting aside proceedings, the district court of The Hague, in its judgment of 20 April 2016, allowed the Russian Federation's claim for the setting aside of the arbitral awards, due to the absence of a valid arbitration agreement.

On appeal, in its interim judgment of 25 September 2018, the court of appeal of The Hague held that the Russian Federation's contention on appeal that HVY had acted fraudulently in the arbitration proceedings could only be raised in revocation proceedings pursuant to article 1068 DCCP, and not in setting aside proceedings. By final judgment of 18 February 2020, the court of appeal *inter alia* held that the grounds put forward by the Russian Federation to argue that no valid arbitration agreement existed, could not support that conclusion. The court of appeal set aside the district court's judgment of 20 April 2016 and rejected the Russian Federation's claim to set aside the arbitral awards.

By judgment of 5 November 2021, the Supreme Court found that the Russian Federation's complaint to the effect that the court of appeal had erred in ruling that the Russian Federation's allegations of fraudulent conduct by HVY in the arbitration proceedings could be raised in revocation proceedings only. The Supreme Court dismissed Russian Federation's complaints against, *inter alia*, the court of appeal's finding that the arbitration agreement was valid. In the operative part of the judgment of 5 November 2021, the Supreme Court set aside the court of appeal's judgments of 25 September 2018 and 18 February 2020 and referred the case back to the Amsterdam Court of Appeal, for further handling and settlement.

3.4 It follows from the foregoing that the Supreme Court's judgment of 5 November 2021, namely that the court of appeal's finding that the arbitral awards cannot be set aside due to the absence of a valid arbitration agreement, has become irreversible, thus permanently removing the basis for the district court's judgment of 20 April 2016, in which the arbitral awards had been set aside on the ground that no valid arbitration agreement was present. The effect of that judgment was therefore not revived. It is for this reason that part 1 fails in its entirety.

3.5 The remaining complaints of the plea cannot lead to cassation either. The Supreme Court is not required to state reasons why it arrived at this decision. Indeed, in assessing these complaints, it is not necessary to answer questions relevant to the unity or development of the law (see section 81 (1) of the Judiciary (Organization) Act).

3.6 In view of the above, there is no need to discuss the cross-appeal, which was lodged subject to the condition that the plea in the principal appeal would lead to the setting aside of the court of appeal’s judgment.

4 Decision

The Supreme Court

- dismisses the principal appeal;
- orders the Russian Federation to pay the costs of the proceedings in cassation, up to this judgment estimated on the part of HVY at EUR 857 in disbursements and at EUR 2,200 in fees.

[8] Cf. Supreme Court 17 January 1997, ECLI:NL:HR:1997:ZC2254, ground 3.8.3; Supreme Court 19 September 2014, ECLI:NL:HR:2014:2739, ground 3.6.2.

This judgment is rendered by the justices C.E. du Perron, presiding justice, A.E.B. ter Heide, F.R. Salomons, G.C. Makkink and K. Teuben, and was pronounced in open court by justice A.E.B. ter Heide on 22 March 2024.