Swiss Supreme Court distinguishes between being a party to an arbitration agreement and having standing to sue

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In *decision 4A_562/2015,* the Swiss Supreme Court considered whether a party's standing to sue or be sued constitutes a jurisdictional issue.

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The Swiss Supreme Court has rejected an application to set aside an award on jurisdiction. The court distinguished between standing to sue and be sued, and being party to an arbitration agreement, finding that the instant case did not concern jurisdictional issues.

This decision serves as a reminder that the Swiss Supreme Court will clearly separate issues of substantive law from those pertaining to jurisdiction and that the question of standing is a matter of substantive law distinguishable from the question of whether there is or is not a valid arbitration agreement sufficient to establish jurisdiction. (*Decision 4A_562/2015.*)

The Swiss Supreme Court has rejected an application to set aside an award on jurisdiction. The petition related to a loan agreement, pursuant to which the sons of FA (AA, EA, DA and CA) would have the right to the free use of buildings located in Rome, owned by company B Srl. The parties agreed that if B Srl was put into liquidation, ownership of the buildings could be transferred to FA's sons, a pre-condition being that three of the sons sign the request for transfer. The agreement provided that the parties were to submit disputes over its interpretation or effect to a sole arbitrator (G), who would decide the matter on an equitable basis.

CA and DA commenced arbitration in order to give effect to the agreement and, in particular, its provision regarding the transfer of ownership. AA and B Srl objected to the jurisdiction of the arbitrator. By an interim award dated 28 August 2015, the arbitrator confirmed his jurisdiction to hear the dispute. On 9 October 2015, AA and B Srl filed a motion to set aside the arbitrator's interim award on the grounds that the arbitrator was not properly appointed, under Article 190(a) PILA, and that the arbitrator wrongly accepted jurisdiction, under Article 190(b) PILA.

One of the petitioners' main arguments was that the arbitrator lacked jurisdiction since the arbitral proceedings did not include all of FA's heirs, especially his widow. Here the Swiss Supreme Court confirmed that one's standing to sue or be sued is a matter which does not concern the jurisdiction of the arbitrator.

The petitioners also argued that the award should be set aside because:

- The arbitrator would be called to resolve an issue not covered by the agreement (that is, that the agreement was not only for a loan but required re-registration of the buildings).
- The three signatures required were missing.

The Swiss Supreme Court held that these matters concerned the merits of the case and not the arbitrator's jurisdiction to resolve disputes arising from the interpretation and execution of the agreement.

The court rejected the petitioners' application, finding no grounds to set-aside the award on jurisdiction.

This decision serves as a reminder that the Swiss Supreme Court will clearly separate issues of substantive law from those pertaining to jurisdiction and that the question of standing is a matter of substantive law distinguishable from the question of whether there is or is not a valid arbitration agreement sufficient to establish jurisdiction.

Case: *4A_562/2015.*

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