

Amsterdam Court of Appeal sets aside awards for lack of arbitration agreement

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In *Sina v GeoSolutions* (ECLI:NL:GHAMS:2022:2493), the Amsterdam Court of Appeal partially set aside jurisdiction and merits awards on the basis that the claimant had not agreed to an arbitration clause in a licence agreement that was merely signed under "acknowledged and agreed".

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The Amsterdam Court of Appeal has partially set aside a jurisdiction award and a merits award for lack of an arbitration agreement. The court ruled that the claimant (Sina) had not agreed to the arbitration clause in a licence agreement between a subsidiary of Sina and GeoSolutions when it signed the licence agreement under "acknowledged and agreed".

Contrary to the tribunal's finding that the arbitration clause applied to all parties, the court ruled that the arbitration clause was agreed between "both parties", that being Sina's subsidiary and GeoSolutions, and not Sina itself. Sina's financial interest in the performance of the licence agreement and the fact that the licence agreement coincided with a convertible loan agreement to which Sina was a party, did not change this ruling.

It had not been established that, during a telephone conversation which predated the signing of the licence agreement, in which it was discussed that Sina would sign the licence agreement and convertible loan agreement, Sina had agreed to become a party to the licence agreement and the arbitration agreement. Moreover, the arbitration clause in the draft licence agreement was not amended following this telephone conversation, which should have happened had that been the intention of the parties. GeoSolutions argued that time pressure at the time that the licence agreement and convertible loan agreement were entered into prevented the arbitration clause from being amended. This was not considered a valid reason not to amend the arbitration clause. After all, the main parties signed the licence agreement eleven days after the telephone conversation and Sina signed the licence agreement even later.

Further, the court ruled that Sina was not estopped from bringing its claim to set aside the awards due to its position in the arbitration. Sina invoked the lack of jurisdiction of the tribunal in its first submission in the arbitration and maintained that position during the arbitration.

Lastly, the court upheld the awards insofar as they were rendered between Sina's subsidiary and GeoSolutions, as the claim to fully set aside the awards was not properly substantiated and the parts of the award which were upheld were separable from the parts of the awards which were set aside.

The decision confirms that, when third parties sign an agreement, caution should be exercised about the extent to which they are bound by the terms of that agreement, including an arbitration clause.

Case: *Sina v GeoSolutions and others* (ECLI:NL:GHAMS:2022:2493) (Amsterdam Court of Appeal) (30 August 2022).

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