

Poznań High School Moot Court 2023

Case File

All the presented facts are to be deemed as true. The parties shall not present any additional evidence in front of the court, apart from this document.

Context:

Gregory Graveyard, a serious entrepreneur who has been struggling for years with disputes with his former business partner Daniel Deadman, decided that he would use the compensation obtained in this dispute to start another business. However, he no longer had enough strength to engage in another venture on his own. His forty-five years younger concubine, Cecilia Cat, seemed to be the perfect candidate to run a new business. He trusted her implicitly.

It was for her that he acquired 100% of shares in LIGHT Sp. z.o.o. The company's commercial turnover was focused on the November 1 holiday, allowing the company to operate for only two months each year. According to Gregory Graveyard, the rest of the time could be spent traveling. He also immediately appointed Cecilia as the president of the management board, entitled to independently represent the company without any restrictions, except for those indicated in the Commercial Companies Code (k.s.h.). There were no other members of the management board.

However, the situation of the company was not easy. The market was saturated, and the high salary expectations of the crew made the task difficult. The key to success could be introducing candles into shopping malls throughout the country and attracting customers interested in "final matters" immediately after back-to-school shopping, since as Gregory noticed, after the All Saint's Day, Christmas shopping is already reigning and "the market cannot be expanded in this direction"

Relevant events:

Recognizing the market, Gregory Graveyard also came to the conclusion that ASCO Poland Sp. z o. o. would be a perfect hypermarket for that goal. However, its representatives stipulated that they could buy the goods and export them accordingly, provided that their price is lower than that of the competition, and LIGHT Sp. z o. o. will pay ASCO Poland Sp. z o.o. a 15% margin and an additional fee of 15% of the price for the very possibility of selling, called the fee for exporting products.

Gregory Graveyard agreed to such a solution, counting on making up for the losses necessary at the beginning in the following years, which happened as planned. The candles produced by the LIGHT company practically flooded the market. It is a fact that from the end of September at the entrance to each store there were poles filled with candles, so that none of the customers could miss them. Each year, the parties signed annexes extending their cooperation for another year. However, it quickly turned out that ASCO earns much more from their sale than LIGHT does.

In a conversation with his lawyer, Gregory Graveyard found out that numerous court decisions have already been made, in which entrepreneurs supplying goods to hypermarkets win compensations for acts that violate Art. 15 of the Act of 16 April 1993 on Combating Unfair Competition (art. 15 ustawy z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji), which prohibits charging fees, other than the commercial margin, for accepting goods for sale. The business relationship described above was fully suitable for conducting such a process - thanks to it, LIGHT Sp. z o.o. would "recover" 15% of the fee in the form of compensation, which for the last three years of cooperation alone gave two million zlotys plus interest due.

Gregory Graveyard immediately decided to start the process, especially since the industry had already begun to decline due to the flood of the Polish market with cheap candles from China, where LIGHT's most serious competitor located their production.

Since it was the end of the year, LIGHT sp. z o.o. represented by the President of the Management Board Cecilia Cat was invited by ASCO Poland sp. z o.o. to sign another annex extending the existing cooperation. Cecilia Cat could not praise the courtesy with which she was received by the authorized representatives, especially a vice president for marketing -

Thomas Temptation - who is her age. She regretted that the signing of annexes takes place only once a year and that the upcoming process will prevent further meetings

Cecilia Cat decided not to be a "puppet CEO" and finally made an independent decision to extend the cooperation for another year. She was completely convinced by the assurances of the other party that lawsuits do not build commercial relations, that claims for the retrospective period would exclude future cooperation, and that arbitration, not the common court, is the best way to resolve disputes. That is why she agreed to the proposal of ASCO representatives that in the currently signed annex, LIGHT sp. z o.o. waived all claims for previous cooperation. She moreover decided that any disputes arising from the legal relations between the parties, regardless of the date of their occurrence, shall be submitted to the arbitration court conducted by one of the employers' organizations. The aforementioned disputes include in particular:

- disputes regarding any claims for the performance of the sales contract,
- claims for return of unjustified or improperly performed service arising in the event of invalidity of the whole or/and part of the sales contract,
- tort claims, if they result from a legal event related to the implementation of the sales contract or at the same time are considered non-performance or improper performance of the sales contract

When questioned by the attorney of Gregory Graveyard, Cecilia Cat stated that she had carefully analyzed the provisions of the annex, pointing out that so much was said in the media about the weakness of the judiciary. She was surprised by the information that all disputes settled so far by the arbitration court in similar cases ended with hypermarkets winning, while identical disputes previously settled by common courts ended with goods suppliers winning. Thus, filing a claim to the arbitration court meant a certain defeat.

Legal actions taken:

In this factual state, only legal arguments remained applicable. LIGHT Sp. z o. o. decided to file a lawsuit against ASCO Poland Sp. z o. o. to the District Court. The subject of the lawsuit was the payment of all previous fees other than the commercial margin. In support of the request, the plaintiff's attorney, inter alia, indicated arguments regarding the nature of each tort, excluded the possibility of waiving the resulting claims, and questioned the validity of

the arbitration clause. He also pointed to Art. 58 § 1 k.c. in the scope of acting to circumvent the Act on Combating Unfair Competition (ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji) by introducing contractual provisions excluding effective redress, and thus exceeding the limits of freedom of contract and violation of the principles of social coexistence.

Defendant ASCO Sp. z o. o. before joining the dispute on the merits of the case, revived the arbitration clause and, on this basis, applied for the claim to be rejected due to the inadmissibility of the court proceedings, and in the event of the ineffectiveness of this plea, for the claim to be dismissed due to a valid waiver of claims. The justification for the position emphasized, inter alia, the issues of freedom of contract, which allows for the waiver of claims regardless of their nature and does not limit the possibility of an arbitration clause by its jurisprudence. The professionalism of contractors was also pointed out.

None of the parties questioned the circumstances of the signature of the annex in which the disputed provisions are found. In addition, the documents submitted to the lawsuit clearly show that the fees charged by the defendant are fees other than the commercial margin for accepting goods for sale.

Case-file created by ELSA Poland.

Your task is to prepare two memorials on behalf of the plaintiff's attorney (CLAIMANT) and defendant's attorney (RESPONDENT). The goal of the claimant is to achieve compensation for the allegedly illegal actions of ASCO Poland Sp. z.o.o. The goal of the respondent is to achieve a dismissal of the case by the common court. The deadline for the written submissions is 5.05.2023.

In order to help you prepare for the competition we have created a list of helpful articles. Those include, but are not limited to the following:

K.C: Art. 58, Art. 84, Art. 353(1), Art. 385, Art. 388, Art 415

K.P.C: Art. 203, Art. 1161, Art. 1165

K.S.H: Art 201, Art 204, Art 205, Art 208, Art 209