

**LIGHT Sp. z o.o.**

**(CLAIMANT)**

**V.**

**ASCO Poland Sp. z o.o.**

**(RESPONDENT)**

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**POZMOOT 2023**

**CLAIMANT MEMORIAL**

**AMELIA MAZURKIEWICZ - PISAREK and OSKAR URBAN**

# INDEX

## translations and abbreviations

Article	art
Spółka z ograniczoną odpowiedzialnością (Sp. z o.o.)	limited liability company (LLC)
LIGHT Sp. z o.o.	LIGHT LLC
ASCO Poland Sp. z o.o.	ASCO Poland LLC
Kodeks Cywilny (k.c.)	Civil Code (CC)
Kodeks spółek handlowych (K.s.h)	Code of Commercial Companies (CCC)
Kodeks postępowania cywilnego (k.p.c.)	The Code of Civil Procedure (CCP)
ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji	Law on Combating Unfair Competition

## INTRODUCTION

Your Honour my name is Amelia Mazurkiewicz-Pisarek and this is my co-counsel Oskar Urban in the case before you today we are representing the claimant LIGHT LLC in their claim against ASCO Poland LLC. The council for claimant will present a brief of the relevant facts and issues in the case, establish the jurisdiction of the court in this matter and provide a merits based argumentation in submissions 1, 2, and 3.

## STATEMENT OF FACTS

- LIGHT LLC is a candle manufacturing company.
- Gregory Graveyard owns 100% of LIGHT LLC shares.
- ASCO Poland LLC is a hypermarket chain.

- For the past 3 years LIGHT LLC was and still is obligated by contract to supply candles to ASCO Poland LLC and pay a 15% fee for the right to sell in addition to the 15% commercial margin charged by ASCO Poland.
- Cecilia Cat is the CEO of LIGHT LLC, under advisement of representatives of ASCO Poland LLC in the most recent contract signed she agreed to:
  - continue the current business arrangement;
  - waive claims for excessive overcharging of LIGHT LLC by ASCO Poland LLC;
  - manage all future disputes through an arbitration court.

## **PURPOSE OF APPEAL**

The awarding of full monetary compensation in the sum of 2,000,000 Polish Złoty plus interest, as a result of the breach of the Law on Combating Unfair Competition by ASCO Poland LLC in its contractual relationship with LIGHT LLC.

## **OPENING SPEECH**

Your Honor, were it not for the actions and irresponsible management of Cecilia Cat the case before us today would have been clear and simple. The supermarket chain ASCO overcharged our client LIGHT LLC for their services by demanding payment for the very right to sell in their stores. This goes directly against the principles of fair competition as the chain is exploiting its size and influence to force our client into unfavorable business agreements, the supermarket's actions go directly against the Act on Prevention of Unfair Competition. However the CEO of LIGHT LLC, in part due to her misguided notions and in part as a result of manipulation waived in the most recent contract our client's rights to seek compensation and argue our case in a common court. The council for claimant, on the bases of the Civil Code, the Code of Commercial Companies and the Code of Civic Procedure, will argue that both the arbitration clause and the waiver of claims agreed to by the two parties in the contract is invalid. And on that basis the council for claimant will pursue payment for the damages resulting from the unfair contract to be paid in full.

## ARGUMENTS ON:

### JURISDICTION and APPLICABLE LAW

#### JURISDICTION:

As a civil case between two Polish entities over a dispute occurring in Polish territory, the common court has full jurisdiction over this case.

#### APPLICABLE LAW:

The council for claimant will base its arguments upon among other:

- The Code of Commercial Companies; as both LIGHT and ASCO are legally registered Limited Liability Companies and this is the legal document which grants such entities a legal personality, under art. 12:

*“Upon registration in the register, the **limited liability company** in organisation or the joint-stock company in organisation shall become a limited liability company or joint-stock company and **shall acquire legal personality**. Upon that moment, it shall become a party to the rights and obligations of the company in organisation.”*

And regulates its functioning in title III.

- The Civil Code whose provisions regulate among other the acts of Limited Liability Companies as its scope as defined in art. 1 is:

*“**This Code governs the civil law relations between natural and legal persons.**”*

LLCs are legal persons under the Code of Commercial Companies.

- The Law on Combating Unfair Competition and the Claims for Damages Caused by a Violation of Competition Law; as they directly regulate the subject matter.

# SUBMISSION I

## ISSUE:

Does the arbitration clause of the contract signed by the parties exclude the admissibility of the proceedings of the case to the court?

## LAW and APPLICATION:

The arbitration clause of the contract does not exclude the admissibility of the proceedings of the case to the court, although under the Civil Code the parties have the right to freedom of contract, it is limited by the requirement of remaining in accordance with the law:

*Art. 3531. [Freedom of contract]*

*Parties executing a contract **may arrange their legal relationship at their discretion so long as the content or purpose of the contract is not contrary to the nature of the relationship, the law or the principles of community life.***

When dealing with uncertainty in contracts the Civil Code provides a list of fundamentally illegal provisions within contracts, it specifically prohibits any agreement between parties which would **automatically** forfeit the right to seek justice in a common court in favour of an arbitration court.

*Art. 385 3. [Catalog of forbidden clauses]*

*In case of uncertainty it is considered that forbidden clauses are those that:*

*23) exclude the jurisdiction of Polish Courts or forfeit the case to judgement by an arbitration court.*

Even if, *par impossible*, the court finds that the arbitration clause does not exceed the provisions of freedom of contract, the case would still not be inadmissible on the bases of the inadmissibility of court proceedings as the Code of Civil Procedure outlines that:

*Art. 1157. [Admissibility to an arbitration court]*

*If a particular clause of a law does not state otherwise, the sides may leave a dispute to be decided by an arbitration court if it relates to the matters of:*

- 1) disputes over material rights, except cases of alimony;*

In the present case the law does state otherwise as outlined in the Claims for Damages Caused by a Violation of Competition Law (Dz.U.2017.1132):

*Art. 11. [Jurisdiction of district courts]*

*Cases for compensation for damage caused by a violation of competition law fall within the jurisdiction of the district courts.*

This court is thus directly empowered.

**CONCLUSION:**

The contractual clause mandating that future disputes between LIGHT LLC and ASCO LLC be adjudicated by an arbitration court is invalid as it exceeds the rights of freedom of contract. Specifically the clause mandating that it may not be contrary to the law, thus the arbitration clause cannot be used as grounds to dismiss this case on the bases of inadmissibility to this court.

Additionally, the arbitration clause cannot be binding in this case as the law directly gives jurisdiction to a district court.

## SUBMISSION II

### ISSUE:

Does the waiver of claims against ASCO Poland LLC for previous cooperation by the CEO of LIGHT LLC remain in legal force?

### LAW and APPLICATION:

The provision in the contract in which LIGHT LLC waives all claims against ASCO Poland LLC is void as it violates the principles of social coexistence which under the Civil Code is grounds for invalidating a contract:

*Art. 58. [Unlawfulness of an act]*

*§ 2. A legal act contrary to the principles of social coexistence is invalid.*

Cecilia Cat is the CEO of LIGHT LLC entitled to represent the company, however she is neither the owner, nor shareholder of the company, the sole and complete owner of LIGHT LLC is Gregory Graveyard who owns 100% of LIGHT LLC shares. Cecilia Cat derives her representative power from the decisions of Gregory Graveyard and thus can be considered his legal representative. Even though she is a representative fully dependent on the good will of Gregory Graveyard she consciously and knowingly defied him, as she knew he was in the process of extracting a penalty payment from ASCO LLC which she obstructed by waiving the claims for that very penalty. Thus by her actions she violated the Code of Commercial Companies which demands loyalty from from members of the company:

*Art. 2091. [Duty of loyalty of a management board member to the company]*

*§ 1. A member of the management board should exercise due diligence in the performance of his duties resulting from the professional nature of his activity and remain loyal to the company.*

Cecilia Cat did not remain loyal to the company as she went directly against the wishes of the owner of the company; in the eyes of the judgment of the Court of Appeals from the 12 of January 2017 (I ACa 714/14):

***“The proxy, in accordance with the essence of the power of a proxy, that is: a legal relationship based on trust, should act in accordance with the empowerer’s presumed will, and in any case should not take actions contrary to the empowerer’s actual or presumed will, even if they formally fell within the scope of the power granted to them as proxy. Such action of the proxy may be considered contrary to the principles of social coexistence.”***

Although Cecilia Cat was not formally a proxy but the CEO for all intents and purposes she acted as a *de facto* proxy of Gregory Graveyard, in the eyes of the previously cited judgement and art 209<sup>1</sup> of the Civil Code her actions clearly constitute a violation of the principles of social coexistence and thus are grounds to invalidate the clause of waiver of claims.

Even if, *par impossible*, the court finds that the actions of Cecilia Cat did not violate the principles of social coexistence the waiver of claims against ASCO LLC by LIGHT LLC still becomes invalid due to provision being obtained by depict; in violation of art. 86 of the Civil Code:

*Art. 86. [Deceit]*

*§ 1. If an error is caused by the other party with the intent to deceive, the legal effects (THE WAIVER OF CLAIMS) of a declaration of intent (SIGNING OF THE CONTRACT) made under the influence of the error may also be avoided.*

“Error” as defined by the verdict of the Supreme Court of Poland from the 9th of March 2022 (II CSKP 103/22) is:

***“Included in Art. 84 CC the definition of an error as a defect of a declaration of will refers to its common understanding. It consists of a wrong idea of the surrounding reality in terms of the true state of affairs or the lack of such an idea, so it occurs when there is a discrepancy between reality and its reflection in the subject’s consciousness.”***



Representatives of ASCO Poland used deceptive tactics to obtain the waiver of claims from Cecilia Cat. They manipulated her into signing the unfavourable contract, by falsely claiming that future cooperation will be impossible if LIGHT LLC seeks lawful compensation. They claimed that the best way to solve such disputes is the arbitration court, even though the representatives of ASCO were fully aware that leaving such matters to an arbitration court only produces one outcome - that is favourable to ASCO and unfavourable to LIGHT.

Example of apple and Samsung

Cecilia Cat operated under error when signing the contract, creating a defect in her declaration of will and by extension LIGHT LLCs declaration of will, which under art. 86 of the Civil Code means that its legal effects may be voided, thus invalidating the clause waiving the claims.

#### **CONCLUSION:**

The clause waiving all claims against ASCO Poland LLC by LIGHT LLC is invalid on two independent accounts:

- 1) Cecilia Cat acted disloyalty and against the established interest of LIGHT LLC violating *Art. 2091 of the Code of Commercial Companies*, and principles of social coexistence.
- 2) Representatives of ASCO Poland LLC used deceitful tactics to obtain the signature of the representative of LIGHT LLC, thus creating an error in their declaration of intent which is grounds for the action taken on said grounds to be declared null and void.

### **SUBMISSION III**

#### **ISSUE:**

Is LIGHT LLC entitled to receive compensation for breach of rules regulating unfair competition in the period of previous cooperation?

## **LAW and APPLICATION:**

ASCO LLC violated the Law on Combating Unfair Competition which states:

*Art. 15. [Inhibiting access to market]*

*1. An act of unfair competition is making it harder for other businesses to access the market, in particular by:*

*4) charging fees other than the commercial margin for accepting products for sale;*

Documents submitted to the court clearly show that fees other than the commercial margin were charged by ASCO LLC, in which case the claimant LIGHT is entitled to seek full compensation for the economic damage suffered under the Claims for Damages Caused by a Violation of Competition Law (Dz.U.2017.1132)

*Art. 3. [Responsibility on the basis of guilt]*

*The infringer is obliged to repair the damage caused to anyone by the infringement of competition law, unless he is not at fault.*

The condition of fault layed out in art. 3 is clearly met in the present case as it was ASCO Poland LLC which demanded the additional fee from LIGHT LLC and continues to demand and extract it to this day despite knowing it violates the Law on Combating Unfair Competition.

## **CONCLUSION:**

LIGHT LLC has a full and undeniable legal right to receive damages in the sum of 2,000,000 PLN plus interest from ASCO Poland LLC for violation of the fair business practices as outlined in the Law on Combating Unfair Competition.

## **CLOSING SPEECH**

Your Honor, the case as presented to you by us the council for claimant is clear, ASCO Poland LLC was and is in clear violation of the Law on Combating Unfair Competition. They knew they were illegally profiting by overcharging our client, and tried to shield themselves

by hiding behind sympathetic arbitration courts. They manipulated representatives of LIGHT LLC to sign unfavourable agreements and protect their own unlawful gains.

Your Honor, we as counsel for claimant have demonstrated that the actions of ASCO Poland LLC fully justify the damages claim made by our client and that the arguments of the opposing party relating to admissibility and waiver of claims do not stand up to legal scrutiny.

Thus we respectfully petition the court to grant the claimant LIGHT LLC damages from ASCO Poland LLC in the sum of 2,000,000 PLN plus interest, as compensation for their unfair business practices.