

Paris Court of Appeal Confirms Importance of Estoppel in International Arbitration

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On October 9, 2008, the Paris Court of Appeal rendered two decisions confirming the importance of estoppel in international arbitration. See *Merial SAS v. Klocke Verpackungs - Service GmbH*, October 9, 2008, Case no. 07-06619; *Marocaine des Loisirs v. France Quick SAS*, October 9, 2008, Case no. 07-14539.

✘ In *Merial*, the claimant, a French company, sought annulment of an arbitral award on the grounds, *inter alia*, that it was not given the opportunity to reply in writing to new claims introduced by the defendant, a German company, two months before a scheduled hearing during the arbitration proceedings. The claimant also argued that the arbitral tribunal had ruled on the defendant's tortious claims in violation of the arbitration clause and the terms of reference, which referred only to contractual claims. The Paris Court of Appeal rejected the claimant's arguments on the basis that the claimant had not objected to a procedural order issued by the arbitral tribunal stating that both parties had an opportunity to explain their views about the admissibility of the defendant's new claims. The Court also added that the claimant signed the transcript of the hearing, which took place after the introduction of the defendant's new claims, without protesting. The Court concluded that the claimant was therefore estopped from arguing that the arbitral tribunal had violated its right to due process and failed to comply with the arbitration agreement and terms of reference.

In *Marocaine des Loisirs*, the claimant, a Moroccan company, had successfully challenged the arbitrator originally appointed by the defendant. The defendant then appointed a new arbitrator, which was confirmed on the very same day that an interim award was rendered by the arbitral tribunal. The claimant sought an annulment of the final arbitral award on the grounds, *inter alia*, that the terms of reference were null and void because the claimant was induced to sign them by fraud (since one of the arbitrators had a conflict of interest and was successfully challenged). The claimant also argued that the interim award could not have been approved by the replacement arbitrator by virtue of him having been appointed on the same day. Nonetheless the Paris Court of Appeal held that the claimant was estopped from raising any issues regarding the appointment of the new arbitrator because the claimant had signed the amendment to the terms of reference ratifying this appointment without protesting.

These two decisions are in line with recent rulings of the Paris Court of Appeal. See, e.g., *Baste SA v. Lady Cake Feine Kuchen GmbH*, September 20, 2007, Case no. 05-21985; *SELFA MJA v. International Company for Commercial Exchanges Income*, November 8, 2007, Case no. 06-7417; *Société Française de Rentes et de Financements Credirente v. Compagnie Générale de Garantie SA*, February 7, 2008,

Case no. 06-1279 (involving domestic arbitration); *Liv Hidravlika DOO v. Diebolt*, February 28, 2008, Case no. 05-10577).

The *Meriel* and *Marocaine des Loisirs* decisions are also consistent with the much-discussed decision of the French Supreme Court (*Cour de Cassation*) in *Golshani v. Islamic Republic of Iran*, dated July 6, 2005 (Case no. 01-15912). In *Golshani*, for the first time the Supreme Court referred expressly to the concept of estoppel, and applied it to prevent an individual who had commenced arbitration proceedings from contesting the resulting award on the basis that there was no arbitration agreement. Commentators have emphasized the significance of the *Golshani* decision, which introduced the Anglo-American concept of estoppel into the French legal system, and highlighted the difference between estoppel and similar civil law concepts such as implied waiver, good faith, or procedural loyalty, which French courts had relied upon before the *Golshani* decision to prevent a party from seeking the annulment of an arbitral award based on arguments not raised before the arbitral tribunal.

The consistent reference to the common law concept of estoppel by France's highest courts - as shown in these recent decisions - is an illustration of the unique nature of international arbitration, which combines civil and common law concepts. These decisions also confirm the pro-arbitration approach adopted by French courts.

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