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additional short delivery had been proved; they were entitled so to find and since no point of law arose, no ground for leave had been established and the application for leave would be rejected.

PORTUNUS NAVIGATION CO. INC. v. AVIN CHARTERING S.A. (*THE WORLD PRESTIGE*). [1982] 1 Lloyd's Rep. 60.

92. ARBITRATION — Award — Procedure of special case — Nationality of the parties — Irrelevant — Recognition in Italy — Italy.

A standard contract of sale, form No. 119 of the Grain and Feed Trade Association, was signed between two Italian companies (Carapelli and Mantovani). The contract contained an arbitration clause reading:

"Any dispute arising out of or under this contract shall be settled by arbitration in London in accordance with the arbitration rules no. 1250 of the Grain and Feed Trade Association Limited, such rules forming part of the contract and of which both parties hereto shall be deemed to be cognizant".

A dispute arose between the parties concerning the performance of the contract and it was submitted to two arbitrators in London, according to the arbitration clause. The arbitrators pronounced an arbitration award in the form of "Special Case" (art. 21 of the Arbitration Act of 1950), condemning Mantovani. The decision was confirmed by the Commercial Court. Carapelli seised the Venice Court of Appeal to have the award recognised and made enforceable against Mantovani.

The latter resisted, alleging that according to arts. 800 and 191 of the Italian Procedure Code, foreign arbitration awards could not be recognised between two Italian citizens. They also claimed that since the arbitration clause was stipulated in Italy, according to Italian law, it needed a specific written approval to be held valid between the parties. Finally, they alleged that the recourse to the procedure of "Special Case" implies the will of the parties to resolve their agreement before the court, so that the court judgment and not the award should have been the object of the recognition.

Held, by the Venice C.A., that according to the New York Convention, the nationality of the parties was irrelevant for the validity of the arbitration clause. The specific rules of the New York Convention prevail over the general rules of the Italian procedure. The validity of the arbitration clause must be tested along the requirements foreseen by the law of the country when it has been stipulated, in this case, Italian law. However, the latter should apply only within the limits of the New York Convention. This convention did not prescribe the necessity of any specific approval.

Finally, when the arbitration award was pronounced in England in the form of a "Special Case", the judgment of the court was just a formal confirmation of an alternative award. Therefore the award and not the judgment was the object of the recognition.

*App. Venezia 26-IV-1980, Rassegna dell'Arbitrato, Anno XXI n. 4.

CORTE DI APPELLO DI VENEZIA, APRIL 26, 1980

Parties: Claimant: S.p.a. Carapelli (Italy)

Defendant: Ditta Otello Mantovani (Italy)

Published in: *Il diritto marittimo*, *vol. LXXXII* 256 (1980), pp. 265-267.

Articles

Facts

On August 10, 1978, S.p.a. Carapelli signed a contract to sell a quantity of soya beans. The contract made reference to standard contract no. 119 of the "Grain and Feed Trade Association" (G.A.F.T.A.). This standard contract made reference to G.A.F.T.A. arbitration; in fact, clause 26 of this contract states: "Any dispute arising out of or under this contract shall be settled by arbitration in London in accordance with the arbitration rules no. 125 of the Grain and Feed Trade Association Limited, such rules forming part of this contract and of which both parties hereto shall be deemed to be cognizant". The ensuing dispute concerned the performance of the contract. The parties filed a request for arbitration in London according to the G.A.F.T.A. rules. An award was rendered on 24 October 1977 requiring the Ditta Otello Mantovani to pay damages amounting to 1,831,091.80 US dollars plus interest. The award was rendered after a "special case" proceeding.

On April 17, 1978 S.p.a. Carapelli brought an action in the Court of Appeal of Venice for the recognition and enforcement of the above-mentioned award.

Extract

1. - The defendant opposed enforcement of the English arbitral award on the grounds that:
 - a) both parties were of Italian nationality,
 - b) a written arbitration clause did not exist in the contract;

The Court underlined the necessity of applying the customary rules of international trade as well as of taking into account the role of institutional arbitration (expressly considered by the Geneva Convention of April 21, 1961).

5. - The Arbitration Act of 1950 establishes the "special case" proceeding in Art. 21. The specific nature of this proceeding would have required the enforcement of a foreign judgment in Italy on the basis of the bilateral Convention between Italy and Great Britain which was enforced in Italy by law n. 280 of 1973. The New York Convention should not apply because an arbitration proceeding regarding a "special case" is no longer relevant. With reference to the English Arbitration Act of 1950, the court states that the English law is different from the Italian one; in England the award does not acquire a judicial character. Furthermore the purpose of the "special case" is to decide questions of law. The dispute is to be settled by the arbitrators. Finally, the "special case" proceeding does not change the nature of the English arbitral awards which are binding and final upon the parties under sec. 16 of the English Arbitration Act.

1 The defendant's claim on this point is the following:

2 On the contrary