

CHICRI BROTHERS, INC., by and thru its Managing Director, C. P. ABOU-JAOUDE, Appellants, v. ISUZU MOTORS OVERSEAS DISTRIBUTION CORPORATION, Appellee.

Chicri Bros. v Isuzu motors [2000] LRSC 13; 40 LLR 128 (2000) (21 July 2000)

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 29, 2000. Decided: July 21, 2000.

1. A written agreement to submit to arbitration any controversy existing at the time of making the agreement or thereafter arising is valid and enforceable without regard to the justiciable character of the controversy, and is irrevocable except on such grounds as exist for the revocation of an agreement.
2. Where the parties have named the arbitrators in their agreement, the hearing shall be before such arbitrators; and if the agreement provides a method for the appointment of arbitrators, not named in the agreement, such method shall be followed.
3. The Liberian Constitution guarantees respect for the obligations of contract as well as forbids the Legislature from passing laws impairing the obligation of contract.
4. The Liberian Constitution guarantees the inviolability of private property.
5. The statutes and case law of Liberia expressly provide for arbitration and enforcement of arbitration awards, and state these to be legal and valid procedures for dispute resolution by private parties.
6. Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.
7. Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose of some disputed matter submitted to them by the contending parties for decision and award, in lieu of judicial proceedings.
8. The object of arbitration is the final disposition of differences between parties in a faster, less expensive, more expeditious, and perhaps less formal manner than available in ordinary court proceedings.
9. A party cannot disregard its obligations to submit to arbitration where the contract subjects all disputes arising thereunder to arbitration.
10. The Civil Procedure Law of Liberia obligates all courts of the Republic to take judicial notice of foreign laws.
11. General arbitration statutes are not illegal or unconstitutional per se; rather, provisions of such statutes, by which agreements to arbitrate are made valid, enforceable and irrevocable, except to the extent that they are revocable on grounds applicable to the revocation of any contract, are upheld as against claims of unconstitutionality.

12. The Liberian Civil Procedure Law expressly validates the arbitration provisions of a contract, whether they be justiciable in nature or not.

13. A contract providing that disputes arising thereunder shall be arbitrated in a foreign jurisdiction using foreign law is not thereby rendered ipso facto illegal or unconstitutional.

14. An agreement to submit a dispute to arbitration under the law of a foreign state confers jurisdiction by consent which will be recognized either by the courts of the state of residence or the courts of the foreign state, or by the courts of the state in which the award resulting from the submission is sought to be enforced.

The appellant corporation instituted an action of damages against the appellee corporations, with one of whom, Co-appellee Isuzu Motors Limited, appellant had a non-exclusive dealership agreement. The appellant asserted that as a result of Co-appellee Isuzu Motors Limited entering into a non-exclusive dealership agreement with another corporation, the latter had violated its contract with the appellant, and that this had resulted in damages to the appellant. The appellees filed an answer as well as a motion to dismiss the complaint, stating that the trial court lacked jurisdiction to adjudicate the dispute since clauses six and seven of the contract which appellant claimed was violated by appellees specified that any disputes arising under the contract shall be submitted to arbitration in Tokyo and be governed by the law of Japan. The trial court agreed with the appellees and dismissed the complaint. From the ruling dismissing the complaint, the appellant noted exceptions and announced an appeal to the Supreme Court for a final review.

The Supreme Court held the trial court's ruling to be correct, noting that not only was the contract to submit disputes arising thereunder legal, valid, binding, constitutional and enforceable, but also that the parties to the contract were legally obligated to follow the method and procedures prescribed by the contract in the resolution of their disputes. The Court observed that contracts calling for arbitration were recognized as valid by both Liberian statutes and case law, as well as internationally, and therefore were not ipso facto illegal or unconstitutional. The Court reiterated the constitutional guarantee of the right of contract and opined that neither the courts nor the legislature had the right to impair the obligations guaranteed by the constitution. It pointed out that rather than depriving the courts of their jurisdiction, as contended by the appellant, arbitration was an inexpensive and expeditious way of resolving disputes.

The Court also disagreed with the appellant that the contract was illegal as it provided for resolution of the dispute to be governed by the laws of Japan. Holding that under Liberian law the courts had the obligation to take judicial notice of the laws of foreign countries, the Court accepted that the parties had the right to determine the jurisdiction which would govern disputes arising under their contract, noting that the courts had not been deprived of their jurisdiction since under the laws of Japan arbitrated disputes were subject to judicial review. Accordingly, the Court affirmed the ruling of the trial court.

Joseph P. H. Findley of Findley & Associates Law Firm, in association with David A. B. Jallah of the David A. B. Jallah Law Firm, appeared for the appellant. James E. Pierre and N. Oswald Tweh of Pierre, Tweh and Associates appeared for the appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case is before us on an appeal from a ruling made by His Honour Yussif D. Kaba, Assigned Circuit Judge, presiding over the September, A. D. 1999 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, dismissing appellant's complaint.

As culled from the certified records transmitted to this Honourable Court, a two-year non-exclusive dealership contract was executed between appellant and Co-appellee Isuzu Motors Limited on the 1st day of January, A. D. 1989. The contract expired on December 31, 1990 and was not renewed. Under the terms of the contract, the appellant was permitted to import new Isuzu vehicles and spare parts for sale within the Republic of Liberia on a non-exclusive basis.

After the expiration of the aforesaid dealership agreement on December 31, 1990, and subsequently, in 1996, the appellant requested a renewal of the contract. In response thereto, appellees requested the appellant to submit the following information: photos of the renovated garage, office showroom, organizational chart, political & market situation, appellant's business plan, appellant's audited annual profit and loss report for the previous five years, etc. In any event, no new contract was concluded between the parties after December 31, 1990.

In June 1997, Co-appellee Africa Motors began to purchase Isuzu vehicles and spare parts from Appellee Isuzu Motors Limited on a spot, i.e., cash basis for sale within the Republic of Liberia. On the 8th day of December, A. D. 1998, Africa Motors and Appellee Isuzu Motors concluded a non-exclusive dealership agreement with Isuzu Motors Limited, similar to the one executed in 1989 with the appellant.

Based upon the foregoing facts, the appellant filed on July 19, 1999 an action of damages for breach of contract against the appellees, alleging a breach of the dealership contract and demanding special damages of US\$2million, in addition to general damages and costs.

On the 30th day of July, A. D. 1999, the appellees filed an answer and a motion to dismiss the complaint. The basis of the motion was a lack of jurisdiction based on articles six and seven of the 1989 contract. Article six of the said agreement provided as follows, to wit:

“All disputes arising in connection with this agreement shall be settled amicably by and between the two parties. Failing an amicable settlement, the dispute shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. Any such arbitration shall take place in Tokyo, Japan, and shall be the sole method of dispute resolution.”

Article seven of the agreement also provides that:

"This agreement shall be governed by and construed in accordance with the laws of Japan. "

A hearing on the motion to dismiss, and the resistance thereto, was heard on the 15th day of November A. D. 1999. On the 19th day of November, A. D. 1999, the trial judge ruled granting appellees' motion to dismiss. The judge held that consistent with the Civil Procedure Law, 1 LCL Revised, chapter 64, sections 64.1 and 64.3, the appellant and appellees had agreed that arbitration would be the sole method of resolving any dispute under the contract,

and that the parties should therefore submit the dispute to arbitration in keeping with articles six and seven of said the contract, quoted supra. The appellant excepted to the trial judge's ruling and announced an appeal therefrom to this Court en banc.

A thorough review and inspection of the certified records transcribed and transmitted to this Honourable Court reveal that the appellant has essentially contended that:

(a) The appellant had an ongoing contract and business relationship with appellees, Isuzu Motors Corporation and Isuzu Motors Overseas Distribution Corporation, for the exclusive sale of Isuzu vehicles and spare parts in Liberia, and that the said contract had been in existence for a period of more than twenty five (25) years before the start of the Liberian civil crisis in 1990;

(b) That due to the sudden outbreak of the civil crisis, the contract could not be formally renewed;

(c) That the appellees, without any color of right and in disregard to the terms and conditions of the contract, had suddenly and deliberately refused to do business with the appellant and had instead chosen to do business with strangers, much to the loss and damage to appellant; and

(d) That although the Liberian law provides for the settlement of dispute by arbitration, and the arbitration clauses in the agreement are not void ab initio; however, where the arbitration clause in an agreement does not provide for an appeal from findings to a regular court system, the constitutional right to appeal would have been denied and the jurisdiction of the court ousted.

In response to the aforementioned averments advanced by the appellant, the appellees contended, amongst other things, the following:

(a) That the dealership agreement entered into between the appellant and appellee on the 1st day of January, A. D. 1989 was not an exclusive dealership agreement as alleged by the appellant, but a two-year non-exclusive dealership agreement which expired on the 31st day of December, A. D. 1990, and which was never renewed.

b) That according to clause 6 of the dealership agreement executed between the appellant and Co-appellee Isuzu Motors Limited, it was the express intent of the parties thereto that any disagreement and/or dispute arising between the parties should be submitted to arbitration and not to the courts, was done by the appellant; and

(c) That the appellant conceded that the inclusion of an arbitration clause in an agreement is not necessarily illegal or void because arbitration is also provided for under the statutory laws of the Republic of Liberia.

Predicated upon the foregoing contentions and averments of the parties, summarized from the certified records before us, the briefs filed by the parties, and arguments made before this Court, we consider and deem the issues stated hereunder as salient and germane to the determination of this case.

1. Whether or not the inclusion of an arbitration clause in the agreement executed between the parties made the said agreement invalid and illegal? and
2. Whether or not the arbitration provisions, contained in clauses (6) and (7) of the non-exclusive dealership agreement entered into between the appellant and Co-appellee Isuzu Motors Limited are unconstitutional and oust the courts of their jurisdiction?

With respect to issue one, which is whether or not the inclusion of an arbitration clause in the agreement between the parties made the agreement invalid and illegal, the appellees maintained that the appellant could not legally resort to judicial action in the face of the arbitration clause in the agreement. Our Civil Procedure Law is clear and unambiguous on this point. It provides that “[a] written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid and enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any agreement.” Civil Procedure Law, Rev. Code 1:64.1.

Section 64.3 of the same law states as follows: “Where the parties have named the arbitrators in their agreement, the hearing shall be before such arbitrators. If the agreement provides a method for the appointment of arbitrators, such method shall be followed. . . .” Id.

Under the Liberian Constitution, obligations of contract cannot be impaired. The constitutional provision is worded as follows: “. . . the inviolability of private property shall be, guaranteed.” LIB. CONST. ch. III, art. 24. And it adds: "Obligations of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right " LIB. CONST., ch. III, art. 25.

Further to the above, this Court has held that "courts cannot enforce a contract in a manner otherwise than expressed there-in. The Legislature cannot make laws impairing the obligation of contracts". For reliance, see *Sherman v. Republic*, [\[1881\] LRSC 4](#); [1 LLR 145](#), Syls. 3 and 5 (1881), text at 154 and 155.

The Court takes judicial notice that at the time the case *Grant v. Foreign Mission Board of the National Baptist Convention, USA*, [\[1949\] LRSC 20](#); [10 LLR 209](#) (1949) was decided, our Civil Procedure Law did not provide for arbitration and judicial enforcement of arbitration awards. However, Following the *Grant* decision, the Legislature enacted the 1956 Code and the current 1973 Civil Procedure Law, as Title 1 of the Revised Code (1 LCLR), both of which expressly provide for arbitration and judicial enforcement of arbitration awards, and state these to be legal and valid procedures for dispute resolution by private parties.

Arbitration is defined by Black's Law Dictionary (7th ed.) as "a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding."

The Court notes that arbitration has become an inter-nationally accepted and recognized method of dispute resolution and has generally been favoured by the courts internationally and universally. American Jurisprudence 2d, defines the term as follows: "Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose of some disputed matter submitted to them by the contending parties for decision and award, in lieu of a judicial proceeding. The object of

arbitration is the final disposition of differences between parties in, a faster, less expensive, more expeditious and perhaps less formal manner than is available in ordinary court proceedings " [5 AM JUR 2d](#), Arbitration and Award, § 80, page 579.

This Court accepts the foregoing legal principles and therefore holds that the appellant cannot disregard its obligations under the contract to submit to arbitration since the contract subjects all disputes arising thereunder to arbitration.

Traversing the second issue, which is whether or not the arbitration provisions contained in clauses (6) and (7) of the non-exclusive dealership agreement entered into between the appellant and Co-appellee Isuzu Motors Limited are unconstitutional and oust the courts of their jurisdiction, appellant strenuously argued that articles six and seven of the contract are unconstitutional and illegal, in that (1) they restrict appellant to a forum from which there is no appeal; (2) they do not provide for a judicial review; and (3) they oust the Liberian courts of their jurisdiction.

We find no merit in appellant's contentions. Chapter 25, at section 25.1(2), of our Civil Procedure Law, as contained in 1 Liberian Code of Laws Revised, pages 195 -196, requires that our courts take notice of relevant and applicable foreign laws. We note with special emphasis in the instant case the following sections of the Japanese Law of Arbitration, which is Part VIII of the Japanese Code of Civil Procedure Law No. 29, (1980). Article 801 of the Japanese Arbitration Procedure gives a local court of competent jurisdiction the authority to set aside an arbitral award under the conditions laid down in sub-sections (1) through (6). Further, Article 804 prescribes the procedure for the setting aside of arbitral award by a court of competent jurisdiction and the time period for the institution of such proceeding. In addition, Article 805 provides as follows:

1. In an action for the appointment or challenge of an arbitrator, termination of an arbitration agreement, inadmissibility of an arbitration procedure, setting aside of an arbitral award, or rendering of an enforcement judgment, the competent court shall be the summary court or the district court designated in the arbitration agreement. Where there is no such designation, the competent court shall be in the summary court or the district court which has jurisdiction when the same claim is to be asserted in court."

2. "Where there are several competent courts under the preceding paragraph, the court to which the parties or the arbitrators first referred shall have jurisdiction."

It is clear that Japanese law specifically provides for judicial review of the entire arbitration proceeding, including the setting aside of any arbitral award. The court is of the opinion that articles six and seven of the contract do not oust the jurisdiction of the Japanese courts and, therefore, do not deprive the appellant of the right to a judicial appeal from any decision of the arbitration board.

This Court takes judicial notice of the fact that chapter 64, section 64, of the Liberian Civil Procedure Law is in harmony and consistent with the common law authorities that general arbitration statutes are not illegal or unconstitutional per se. The language and intent of sections 64.1 and 64.3 of our Civil Procedure Law is clear, simple and unambiguous. It expressly and specifically validates the arbitration provisions of a contract, whether it is justiciable in nature or not. Furthermore, section 64.3 stipulates that the method and

procedure agreed to by the parties in the agreement "...shall be followed." For reliance, see Civil Procedure Law, Rev. Code 1: 64.1 and 64.3.

In addition to the laws quoted above, [4 Am. Jur. 2d.](#), under Alternative Dispute Resolution, at § 25, at page 91, also provides that "Provisions of a general arbitration statute by which agreements to arbitrate are made valid, enforceable, and irrevocable, except to the extent that they are revocable on grounds applicable to the revocation of any contract have been consistently upheld as against claims of unconstitutionality."

The contract between the appellant and Co-appellee Isuzu Motors Limited was an international franchise agreement between a Japanese manufacturer and exporter on the one hand, and a Liberian importer and dealer on the other hand. We cannot say as a matter of law that merely because the contract requires that disputes arising thereunder be arbitrated in Tokyo, Japan, using Japanese law, it is ipso facto illegal or unconstitutional.

"An agreement to submit a dispute to arbitration under the law of a foreign state confers jurisdiction by consent which will be recognized either by the courts of the state of residence or the courts of the foreign state, or by the courts of a state in which the award resulting from the submission is sought to be enforced. Courts must give effect to freely negotiated forum selection clauses in arbitration agreements." [4 AM JUR 2d.](#), Alternative Dispute Resolution, § 91, page 146.

This Honourable Court is of the considered opinion that to agree with the appellant and invalidate standard arbitration provisions of an international franchise agreement, would be tantamount to simultaneously invalidating various international conventions, treaties, agreements, and protocols to which the Republic of Liberia is a party.

Wherefore, and in view of the foregoing, the ruling of the trial judge granting appellees' motion to dismiss appellant's action is hereby affirmed, without prejudice to appellant's right to have the dispute settled by arbitration in keeping with articles six and seven of the non-exclusive dealership agreement. Costs of these proceedings are assessed against the appellant. And it is hereby so ordered.

Ruling affirmed.