

Communication concerning the decision of the Curia of Hungary  
in civil case n° Gfv.VII.30.263/2013

The plaintiff (a condominium) and the defendant (a bank) concluded a loan contract that contained an arbitration clause. In the arbitration procedure the bank asked the arbitration court to oblige the condominium to pay its debt pursuant to the loan contract. The arbitration court approved the bank's request for the most part.

Based on Article 55, paragraph (1), point b) of Act n° LXXXI of 1994 on Arbitration, among others, the plaintiff asked for the annulment of the arbitration court decision.

The first instance court rejected the request as it did not find the arbitration court decision invalid based on the reasons referred to by the plaintiff.

The Curia, proceeding upon a petition for judicial review by the plaintiff, quashed the final decision and annulled the arbitration court decision. The Curia held that though under Article 3 of the Act on Arbitration condominiums can stipulate an arbitration clause, the provisions of Act n° CXXXIII of 2003 on Condominiums stipulate that the managing agent of the condominium can sign the arbitration clause only if a decision of the general assembly of the condominium authorised him/her to do so.

The powers of the managing agent are not unlimited: (s)he can proceed in matters on behalf of the condominium community to which (s)he is entitled by statutory provisions [Article 43, paragraph (1) of the Act on Condominiums] or by a decision of the general assembly. Pursuant to Article 43, paragraph (1) of the Act on Condominiums the managing agent is not a body making a decision but a body preparing and executing decisions, it has unlimited powers towards third persons only in relation to the functioning and maintenance of the condominium. If a financial institution, when concluding a loan contract with the condominium, initiates the inclusion of an arbitration clause in the contract, the issue needs the consideration and decision of the general assembly, since Article 43, paragraph (1) of the Act on Condominiums does not authorise the agent to proceed on its own initiative. Without an authorisation by the general assembly, the agent cannot decide whether to sign the arbitration clause or not.

In the present case no minutes were attached indicating the authorisation of the agent by the general assembly to sign the arbitration clause. In lack of such a decision the arbitration clause contained in the loan contract did not come into effect.

Under Article 275, paragraph (4) of the Code of Civil Procedure, the Curia quashed the final decision and under Article 55, paragraph (1), point b) of the Act on Arbitration annulled the arbitration court decision.

Budapest, the 17<sup>th</sup> of April 2014

Civil Department of the Curia of Hungary