

Court partially sets aside award on jurisdiction but confirms extension of agreement to non-signatories (Swiss Supreme Court)

by by **Practical Law Arbitration**, with **Schellenberg Wittmer Ltd**

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In *Decision 4A_528/2019*, the Swiss Supreme Court partially granted an application to set aside an award on jurisdiction in a major dispute in the private banking sector. It found that the arbitration agreement did not bind a non-signatory respondent but confirmed that the claimants could rely on the agreement, despite not being signatories.

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In a recently published French-language decision rendered in a domestic arbitration, the Swiss Supreme Court partially set aside a jurisdictional award, finding that the arbitration agreement did not bind a non-signatory respondent, but confirming that the claimants could rely on the agreement, despite not being signatories.

The dispute arose in relation to a series of quasi-identical agreements entered into between 1982 and 1988 (agreement) between the managing partners of a private bank in Geneva, according to which the descendants of the bank's founder had the right to be considered for appointment as partner, provided they were deemed fit and capable. Two descendants, F and G (claimants), failed to be appointed as partners and initiated ad hoc arbitration proceedings against the bank's former managing partners, their heirs and the legal successor of the bank itself (respondents), based on the arbitration clause referred to in the agreement.

The arbitral tribunal found that it had jurisdiction in relation to the claimants and five of the respondents who were signatories to the original version of the agreement (dated 1982) but that it lacked jurisdiction in relation to the remaining respondents. The five respondents (applicants) challenged this decision.

The court confirmed its long-standing case law regarding the extension of arbitration agreements to third-party beneficiaries of a contract. According to the award, the parties to the agreement intended to grant the founder's descendants actionable rights. On that basis, the Supreme Court confirmed that the agreement qualified as a third-party beneficiary contract, meaning that the claimants could rely on the arbitration clause, despite not being parties to it.

However, when it came to the applicants, the court reversed the arbitral tribunal's ruling, considering that only those who had signed a later 1988 version of the agreement were bound by the arbitration clause. The court held that the 1982 version had been superseded by later versions and had not, contrary to the tribunal's findings, continued to exist in parallel to the later versions. As one of the five applicants was not a signatory to the 1988 version of the agreement, the court considered that the tribunal did not have jurisdiction to hear claims against him.

This case provides an interesting reminder that third-party beneficiaries with actionable rights are entitled to rely on arbitration clauses in contracts to which they are not party and of which they may not even initially be aware.

Case: *Decision 4A_528/2019 (7 December 2020)* (Swiss Supreme Court).

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