

Can a Third Party Raise Claims Under an Agreement to Which it Has Not Entered Into? The Swiss Federal Court Provides Guidance

The case: Swiss Ice Hockey team Schlittschuh Club Bern, operated by the SCB Eishockey AG ("SCB"), had filed a claim against the International Ice Hockey Federation IIHF with the Court of Arbitration for Sport (CAS) for compensation of alleged damages suffered in connection with the cancellation of the 2009/2010 and 2010/2011 Champions Hockey League seasons (the "CHL Events"). The IIHF had cancelled these IIHF Events because the relevant investors terminated their financial engagement for said CHL Events terminated; it had, further, terminated the agreements it had entered into with the national ice hockey federations and leagues of several countries, among others with the Swiss federation and the Swiss league, by means of which participation of the various clubs was secured (the "CHL Agreements"). SCB would have qualified for the 2009/2010 CHL Events, but could, after cancellation of the CHL Events, not participate. The IIHF rejected the SCB claim arguing, among others, that the CAS was not competent to hear the case. The CAS, however, held that it retained jurisdiction to adjudicate the claim filed by SCB and rejected the IIHF's motion challenging the competence of the CAS. The IIHF filed an appeal against the decision of the CAS with the Swiss Federal Court and maintained its position that the CAS was not competent.

The decision: According to the relevant statutory provisions in Swiss law, appeals against arbitral awards can be filed with the Swiss Federal Court. However, such appeal is possible for a limited number of grounds only, and it is, in particular not possible to appeal an arbitral award on its merits (unless the decision violates public order which, however, is very rarely the case). One of the reasons that allows for an appeal is jurisdiction, i.e. the Federal Court will hear an appeal where it is contended that the arbitration court has erroneously accepted its competence (or where it is contended that it has erroneously denied its competence). Thus, the Swiss Federal Court was competent to deal with the IIHF's appeal. As SCB was no party to the CHL Agreements the main question that the Federal Court had to decide was whether or not the CHL Agreements qualify as so-called agreements to the benefit of third parties. In general, agreements to the benefit of third parties allow such beneficiary to directly raise claims under the agreement, although it is no party to the agreement. In this context, the Federal Court had, further, to decide whether the arbitration clause contained in the CHL Agreements conferring jurisdiction to the CAS was of a "to the benefit of third parties" nature which would allow SCB to lodge a claim with the CAS. The Swiss Federal Court analyzed the relevant contractual arrangements and concluded, contrary to the CAS, that this was not the case, i.e. that the CHL Agreements were no agreements to the benefit of third parties that would allow a club to file a lawsuit against the IIHF with the CAS. The appeal of the IIHF and its motions were, thus, admitted and the decision of the CAS was set aside.

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