

University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

10-1-1991

Argentina

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

Argentina, 23 U. Miami Inter-Am. L. Rev. 249 (1991)

Available at: <http://repository.law.miami.edu/umialr/vol23/iss1/9>

This Legal Memorandum is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

LEGAL MEMORANDA

EDITOR'S NOTE

"Legal Memoranda" is a regular section of the Review devoted to reports from corresponding law firms throughout the hemisphere. The reports are compiled by the Review, but their accuracy is represented by the corresponding law firms, to which all inquiries should be directed.

We appreciate the contributions of our corresponding law firms and invite other law firms interested in participating in this section to contact us.

ARGENTINA

JURISDICTION OF ARGENTINE ARBITRATION TRIBUNALS IN THE FACE OF BANKRUPTCY PROCEEDINGS

On November 1, 1988, in the case *In re La Nación S.A. v. La Razón S.A.*, the Argentine Supreme Court expanded the jurisdiction of arbitration tribunals, reversing precedent in this area of the law. The jurisdiction of the General Arbitration Tribunal of the Buenos Aires Board of Trade (GAT) was extended to claims filed pursuant to arbitration agreements notwithstanding that a party of interest is involved in proceedings of economic consequence in a commercial court.

Pursuant to a share syndication agreement in which La Nación and La Razón included and agreed, La Nación filed a claim before GAT. La Nación sought to exclude La Razón from the syndication agreement alleging the latter's failure to honor obligations thereunder.

However, prior to La Nación's action, La Razón filed for a meeting of its creditors (concurso proceedings) pursuant to Article

22 of the Argentine Bankruptcy Code. La Razón asserted that owing to its action then pending in the commercial court, GAT lacked jurisdiction to issue a ruling which may have an adverse effect on its assets. GAT rejected this argument and proceeded with the arbitration proceedings.

While La Razón's objection was pending with GAT, it filed a similar objection with the aforementioned commercial court urging that it issue a declaratory judgment ruling that GAT lacked jurisdiction and that it assume jurisdiction in conjunction with the concurso proceedings then before it.

In considering La Razón's objection the commercial court focused on the two articles of the Argentine Bankruptcy Code which gave rise to the conflicting positions on this jurisdictional question, Article 22 and Article 138.

La Razón relied on Article 22 for support of its position. Article 22 provides that concurso and bankruptcy procedures "attract" all other procedures. Pursuant to this provision, all claims of an economic nature are amenable to the jurisdiction of the court in which the concurso proceedings are pending.

Article 138, on the other hand, provides that an arbitration tribunal may continue to process a claim after the debtor declares bankruptcy if the arbitration tribunal was set-up prior to the debtor's declaration. Being a tribunal in existence long before La Razón filed for concurso proceedings, GAT analogized bankruptcy proceedings to concurso proceedings and found that it had jurisdiction to proceed on La Nación's claim.

The commercial court held that in view of the possibility of a decision by GAT which would have an adverse impact on La Razón's assets, it would exercise jurisdiction over the claim in arbitration. The court thought this a prudent interpretation given the pending concurso action. It therefore found Article 22 applicable for the attraction of all claims, those in arbitration included.

GAT, having the authority to rule on questions of its own jurisdiction, held firm to its position, thus creating an impasse between the two tribunals. The Supreme Court of Argentina entertained the opportunity to resolve the conflict.

The Supreme Court reasoned that to hold Article 22 applicable to the circumstances, without regard to the provisions of Article 138, would be an arbitrary resolution of a seemingly conflicting area of the law. The Court further noted that Article 22 itself pro-

vided for the exception of arbitration proceedings from the typical "attraction" functions associated with the filing of bankruptcy proceedings. It then reasoned that since there was no attraction of claims in bankruptcy proceedings which have a big impact on the debtor's capacity to dispose of its property, there need not necessarily be an attraction of claims in concurso proceedings as the potential effect on the debtor's assets is similar. This form of logic appears faulty as canons of statutory construction would lead one to conclude otherwise; the legislature's expressed attraction exception for bankruptcy proceedings in Article 22, juxtaposed with its failure to expressly and separately recognize an exception for "concurso" proceedings, may suggest an intent not to establish an exception for the latter because it was separately addressed earlier in the same Article.

The Supreme Court held that GAT had the authority to process La Nación's claim and permitted it to continue the arbitration. The consequence of this ruling is that debtors may no longer circumvent arbitration by filing for a "concurso" proceeding. This effectively results in a race to judgment, the party bringing an arbitration claim and the creditors of the debtor being at odds.

The Supreme Court's decision was a complete reversal of prior Supreme Court rulings which expressed the same concerns and came to the same conclusion as did the commercial court in the case at bar.

Emilio J. Cárdenas
Cárdenas & Otero Monsegur
Buenos Aires, Argentina