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Supreme Court recognises punitive damages

On July 5 2017, the Supreme Court of Cassation (Case 16401/17) recognised for the first time that punitive damages may be applied in connection with civil liability under Italian law. This important and potentially far-reaching decision was based on a comparative analysis of civil liability criteria in Italy and the European Union, and recognised the validity of a US decision, which included punitive damages in its damages assessment.

Facts

US company Nosa Inc obtained recognition and execution in Italy of three decisions rendered in the United States as final and binding from the Venice Court of Appeal, according to which Italian company Axo Sport SpA was required to pay damages of more than \$1.5 million. A US court granted an indemnity request by Nosa, which was paid out as damages to a motorcyclist following an accident in a motocross race for a presumed defect of a helmet. The helmet had been manufactured by Axo, distributed by Helmet House and resold by Nosa.

Nosa obtained recognition of this US decision, pursuant to Article 64 of Law 31 218/95, because Axo had accepted foreign jurisdiction at the time of the proceedings in the United States. Axo appealed to the Supreme Court claiming violation of Article 64, because the US court had rendered judgment against Axo utilising the potential liability test without verifying the grounds of the warranty.

According to Axo, the settlement agreement reached between Nosa and the motorcyclist was not valid with respect to Axo. However, the Court of Appeal recognised that the warrantor (Axo) could either approve the transaction between Nosa and the injured person or assume their defence against the guaranteed (Nosa).

The Court of Appeal found that Axo had approved the transaction. Therefore, the principle of right to defend was respected by the US court. On appeal to the Supreme Court, Axo argued that the potential liability test was not sufficiently verified by the Court of Appeal.

Supreme Court decision

The Supreme Court took into account the previous decisions of the same court and based its decision on the European Court of Justice's (ECJ) 2009 decision in *Gambazzi* (C-394/2007), which stated that the right of defence is not an absolute right but, within limits, can be subject to certain restrictions.

The Supreme Court took this ECJ principle into account and stated that the right to defend may be subject to certain limitations when the decision is rendered against a party which has had an opportunity to actively participate in the proceedings.

More precisely, the court stated that the limit of the public order which can be invoked in order to exclude the execution of a foreign decision in Italy cannot be invoked when there are differences between the Italian procedure and the procedure in force in the country where the decision was rendered.

The court found that Axo's right of defence was fully respected in the US procedures. Therefore, even though the potential liability test was applied, it did not interfere with the general principle of public order and the right of defence, which are the only bases which can be offered against the recognition of foreign decisions.

According to the Supreme Court decision, it is no longer possible to deny the recognition of punitive damages. Such damages must now be included in the evaluation of potential exposure for civil liability. The continuing evolution of civil liability in Italy must take into account some forms of damages which have a discouraging or punitive effect.

For the above reasons, the Supreme Court confirmed the execution of the US decisions in Italy.

Comment

This decision requires careful consideration in other contexts involving the recognition and calculation of damages. This notwithstanding, punitive damages will not automatically be recognised in Italy. In this particular case, the US decision strictly applied Florida state law, which specifically describes the type of liability and the quantitative limits of the damages. It is therefore likely that many future decisions will not award punitive damages in the absence of conditions similar to those in force in Florida.

On the other hand, it is important to recognise that this decision may allow Italian judges more leeway to grant increased damages in actions brought before Italian courts. In order to obtain general extended recognition and application of the principle of punitive damages, existing Italian law would require modification.

In the meantime, this decision offers a potentially significant weapon for (among other things) decisions rendered in IP matters. For example, the principle of punitive damages may be applied in patent and trademark matters when there is malicious litigation.

Going forward, the decision will surely play a decisive role in the recognition of foreign decisions as well as Italian decisions rendered in IP matters.

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