

CONCURRENT JURISDICTION OF BRAZILIAN COURTS IN CONTRACT DISPUTES

During judgment of Ordinary Appeal no. 114/DF, filed by MTD Engenharia Ltda. against the Republic of Argentina, held on June 2, 2015, the Fourth Panel of the Superior Tribunal of Justice (STJ) reiterated that Brazilian courts have concurrent jurisdiction to prosecute and judge causes accruing from contracts with clauses electing privileged jurisdiction. STJ ruling recognized concurrent jurisdiction held by Brazilian courts in the instant case, because the contract disposed that implementation of its obligation (building of the new headquarters for the Argentinian Embassy in Brasília) should take place in Brazil. Minister Raul Araújo, reporting the appeal, supported his decision on Article 88 of the Brazilian Code of Civil Procedure which establishes the circumstances under which concurrent jurisdiction is contemplated and also affirmed that the occasional recognition of the competence of a foreign jurisdiction in disfavor of the jurisdiction of Brazilian courts would hurt the principle of Brazilian national sovereignty. The decision so reiterates a very sensitive issue that affects international contracts with election of foreign privileged jurisdiction and implementation of its obligation in Brazil – such as License Agreements of Intellectual Property rights and Know-How – reaffirming that in such cases concurrent jurisdiction of Brazilian courts is applicable (RO 114/DF – 2011/0027483-8).

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