

A jurisdiction clause included in general terms of sale may extend to tort disputes

In a decision dated February 13, 2019, the *Cour de cassation* (French Supreme Court) confirmed that a jurisdiction clause stipulated in connection with a sale agreement and included in the general terms of sale may extend to tort disputes likely to arise between the parties.

In this particular case, a supplier had verbally entered into a master distribution agreement with its trading partner. During the performance of this agreement, the supplier issued invoices on the back of which were printed its general terms of sale which included a jurisdiction clause[1].

Relying on this forum clause, the supplier sued its distributor before the Marseille Commercial Court to seek the payment of unpaid invoices as well as compensation for acts of unfair competition and abusive practices.

The defendant objected to the jurisdiction of the Marseille Commercial Court on the ground that the forum clause included in the supplier's general terms of sale was unenforceable against it.

By a judgment dated December 5, 2017, the Paris Court of Appeals dismissed the defendant's plea of lack of jurisdiction. The defendant then lodged an appeal against said judgment before the *Cour de Cassation*.

The distributor contended in particular that a jurisdiction clause is enforceable only against the person who has accepted it and that in the present case it was not established that such clause had previously been brought to its attention at the time the invoices were issued nor that it had approved it at the time the parties agreed on the services to be provided.

The *Cour de Cassation* upheld the appellate judgment and ruled that "*having noted that the parties had been in a business relationship for eight years during which [the supplier] had issued one hundred and twenty invoices to [the distributor's] name, reproducing on the back its general terms of sale which stipulated a forum clause, the Court of Appeals was able to infer that the jurisdiction clause was enforceable*".

It follows from this that the tacit acceptance of the general terms of sale which makes its provisions enforceable can be assessed in particular in the light of the length of the business relationship in question and

the fact that the invoices on which these general terms of sale GTCs appeared were regularly paid during that period without protest.

The defendant further argued in support of its appeal that, in accordance with the provisions set forth in Article 23(1) of Regulation No 44/2001 of December 22, 2000, a clause conferring jurisdiction is necessarily limited to disputes which have arisen or which may arise in connection with a particular legal relationship. Consequently, the jurisdiction clause stipulated in relation to a sale agreement and included in the general terms of sale did not, in its view, extend to claims for damages brought by the plaintiff for acts of unfair competition and unlawful practices allegedly committed.

In this decision, the *Cour de Cassation* upheld the appellate judgment according to which the forum clause may extend to tort disputes that are likely to arise between the parties.

It held that *"having noted that the jurisdiction clause was drafted in sufficiently broad terms to include all disputes arising from the contractual relationship, the Court of Appeals was able to infer that the clause applied to disputes arising from the legal relationship in relation to which it had been agreed as well as to claims for compensation for unfair competition and unlawful practices."*

The solution adopted by the 1st Civil Chamber of the *Cour de Cassation* confirms its willingness to apply jurisdiction clauses extensively.

Such clauses are therefore likely to apply to claims for compensation brought in tort. However, the clause in question must be drafted in sufficiently broad terms and the disputes in question must result from the contractual relationship in relation to which the clause was agreed.

[1] 1st Civil Chamber of the *Cour de Cassation*, February 13, 2019, n°18-11.609

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