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Termination of an established business relationship: the french supreme court reiterates its position and completes its reasoning

The Commercial Chamber of the *Cour de Cassation* (French Supreme Court) ruled on several occasions that a claim for termination of an established business relationship[1] is a tort action, regardless of whether the business relationship was based on a series of contracts[2], on a single contract that has been terminated[3], or whether the termination resulted in domestic[4] or international litigation[5].

The Commercial Chamber of the *Cour de Cassation* considers that while the relationship is based on a contract or series of contracts, the termination does not fall under the contractual liability regime as the suddenness of the breach goes beyond the scope intended by the parties thereby making it fall within the tort liability regime.

In the wake of this case law, the Commercial Chamber of the *Cour de Cassation* ruled on the ancillary issue of jurisdiction in relation to a claim brought on the basis of Article L. 442-6, I, 5° of the French Commercial Code.

1. In a judgment dated September 15, 2009, the Commercial Chamber of the *Cour de Cassation*, ruling on an international case, held that the competent court is, in principle, the court having **jurisdiction over the territory where the harmful event occurred.**

In the case in question, a German company terminated a 10-year business relationship with its supplier, a French company. The latter then initiated proceedings before the Commercial Court of Paris on the basis of Article L. 442-6, I, 5° of the French Commercial Code.

The German company claimed that the Commercial Court of Paris lacked jurisdiction to hear the dispute and invoked Article 2 of Council Regulation 44/2001[6] of December 22, 2000, which was indeed applicable to the dispute. Pursuant to this Council Regulation, persons domiciled in a Member State must, in principle, and whatever their nationality, be sued in the courts of that Member State.

To establish that French courts – and more particularly the Paris courts – were competent to hear the case, the French company relied on the provisions set forth in Article 5.3 of said Council Regulation pursuant to which a person domiciled in a Member State may be sued in another Member State "*in matters relating to tort, delict or quasi-delict in the court for the place where the harmful event occurred or may occur*".

The judges of the French lower courts ruled that their courts lacked jurisdiction because the case was based on a contractual claim.

On appeal, the Commercial Chamber of the *Cour de Cassation*, upholding the principle according to which an action brought for termination of an established business relationship is a matter relating to tort, logically held that the Paris court was indeed competent to hear the dispute pursuant to Article 5.3 of the aforementioned Council Regulation n°44/2001 applicable in matters relating to tort, delict and quasi-delict.

2. The Commercial Chamber of the *Cour de Cassation* refined its reasoning in two judgments dated October 13, 2009 and March 9, 2010. After recalling that the party terminating an established business relationship is liable in tort, **it set aside the application of a jurisdiction clause set forth in a terminated contract and held that the courts before which the tort claim had been brought was indeed competent to hear the case**.

In the first dispute, the terminated party summoned the terminating party before the Commercial Court of Compiègne.

The terminating party argued that the competent court was not the Commercial Court of Compiègne but that of Paris based on the jurisdiction clause set forth in the contract. Specifically, this clause stipulated "*any dispute and litigation in relation to the interpretation and performance of this instrument and of the mandate annexed hereto shall be submitted to the Paris Courts*".

By virtue of Articles 42 and 46 of the French Code of Civil Procedure on jurisdiction, the Commercial Chamber of the *Cour de Cassation* reversed the judgment of the Amiens Court of Appeals that had declared the Commercial Court of Compiègne incompetent to hear the case.

In the second dispute, the terminated party summoned the terminating party before the Commercial Court of Vannes. The terminating party argued that the Court in Vannes lacked jurisdiction because the jurisdiction clause set forth in the contract stipulated that "*any controversy and/or dispute arising in connection with the formation, interpretation, performance, termination or breach of the agreement shall be submitted to the exclusive jurisdiction of the Commercial Court of Orléans, whether it relates to a substantive claim, a third-party claim, a summons to compulsorily join the proceedings, a summons to appear before the summary judge,*

and even in the case of multiple defendants".

The Rennes Court of Appeals found that the Vannes Commercial Court had jurisdiction, and this was later upheld by the Commercial Chamber of the *Cour de Cassation*.

It should be noted, however, that in the two aforementioned cases, the termination of the business relationship itself was not addressed.

In fact, the Commercial Chamber of the *Cour de Cassation* seems to have tried to accurately ascertain the parties' intention on the basis of the wording of the termination clause, thereby drawing the attention of the author of such clause to the importance of using accurate terms.

Indeed, in its judgment dated March 9, 2010, the *Cour de Cassation* suggested that a jurisdiction clause could apply in tort, even in the framework of domestic litigation. However, the clause would not be applicable if it did not expressly state that it would apply in the case of termination of the business relationship.

As such, it appears that it is the comparison of the wording of the jurisdiction clause that may explain the conflicting decisions rendered by the Commercial Chamber and the First Civil Chamber of the *Cour de Cassation*. In the past, the First Civil Chamber admitted the application of a jurisdiction clause in the case of a sudden termination of an established business relationship[7] because, in that particular case, the clause targeted any dispute arising out of or in connection with the contractual relationship.

In any event, it is necessary to reconcile the aforementioned case law of the Commercial Chamber of the *Cour de Cassation,* which has upheld that termination of an established business relationship falls under tort liability and ruled on the ancillary issue of competent jurisdiction, with the provisions set forth in Article L. 442-6, III, paragraph 5 of the French Commercial Code. In its current version, as amended by the Law for the Modernization of the Economy of August 4, 2008, it provides that disputes relating to the sudden termination of an established business relationship are reserved for certain courts: "*disputes arising in connection with the enforcement of this Article shall be submitted to the courts, the place and jurisdiction of which are set in a Decree*[8]».

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[1] Article L. 442-6, I, 5e of the French Commercial Code

[2] Cass. com., February 6, 2007: JurisData n° 2007-037247 ; Bull. civ. 2007, IV, n° 21

[3] Cass. com., January 13, 2009, n° 08-13.971: JurisData n° 2009-046541 ; Bull. civ. 2009, IV, n° 3

[4] Cass. Com., February 6, 2007 as cited above.

[5] Cass. com., October 21, 2008, n° 07-12.336: JurisData n° 2008-045498

[6] **Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters** ; *Official Journal n° L 012 du 16/01/2001 p. 0001 – 0023*

[7] First Civil Chamber, March 6, 2007, n° 06-10.946: Bull. civ. 2007, I, n° 93 – Cass. com. March 21, 2000/ Rev. crit. DIP 2000, p. 792, note A. Sinay-Cyterman

[8] Cf. Article D. 442-3 of the French Commercial code