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The continuation and outcome of the “serial” story on the delegations of powers within French sociétés par actions simplifiées

In our preceding e-newsletter, we announced the forthcoming end of the “serial” story on the delegations of powers within French *Sociétés par Action Simplifiées* («SAS»).

It is done! The *Cour de Cassation* (France’s Supreme Court) declared the end of the debate in two landmark judgments rendered on November 19 (Decisions no. 268 and no. 269).

The decisions rendered by the Second Chamber of the Paris Court of Appeals on November 5 and December 3, regarding the validity of dismissals, are thereby annulled.

According to the Court of Appeals, a delegation of powers within an SAS had to be authorized pursuant to the company’s by-laws as per Article L.227-6 of the French Commercial Code. Such Article stipulates that, in its dealings with third parties, the SAS is represented by a President whose powers may be delegated to the general manager when provided so by the by-laws.

All delegations of powers not specifically authorized by the by-laws were, therefore, to be considered null and void. These rulings resulted in the annulment of the dismissals authorized by individuals not having the proper delegation of power as per the by-laws.

We pointed out in our preceding article that such case-law, if validated by the *Cour de Cassation*, would not only affect the validity of a dismissal ordered by a human resources director, but would as well impact all delegations of powers granted within an SAS if such delegations had not been authorized pursuant to the by-laws.

The directors of an SAS will have a sigh of relief in reading the November 19 decision of the *Cour de Cassation*. The ruling was pronounced by a mixed Chamber composed of the Second Civil Chamber, the Commercial Chamber, the Economic and Financial Chamber, and the Labor Chamber, so as to eliminate the

threat that has been hovering over French SASs for a year now.

The same reasoning is present in the two court decisions regarding the interpretation of Article L.227-6 of the Commercial Code:

“Whereas, in accordance with Article L. 227-6 of the French Commercial Code, an SAS is represented, in its dealings with third parties, by a President and, if provided in its by-laws, by a general manager or a delegated general manager whose appointment is made public. This rule does not exclude the possibility for legal representatives to delegate certain acts, for example, the hire or dismissal of a company’s employees. ”

The Decision no. 268 concerns a case where a dismissal was ordered by a human resources director who had not been granted a written delegation of powers.

In so doing, the *Cour de Cassation* answers the key question of whether a human resources director has, by the nature of his functions, the power to dismiss someone:

“Whereas nothing requires a delegation of power, in the case of a dismissal, to be in writing; said delegation may be tacit and follow from the duties of the employee conducting the dismissal; Whereas to state that the dismissal was without cause, the decision [of the Paris Court of Appeals] maintains the lack of authority of the signatory to sign the dismissal letter; In so ruling, although the Court of Appeals had established that the dismissal letter was signed by the human resources manager, in charge of the company personnel and considered therefore as having been delegated the power to dismiss, the Court did not draw the appropriate legal conclusions therefrom and breached the aforementioned laws and regulations.”

This decision definitely ends the debate regarding the scope of powers of human resources directors in a company, regardless of its legal form.

Decision no. 269 goes even further, for it acknowledges that in case a representative exceeds his power (we can presume here that this does not refer to a human resources director), the principal may ratify, a posteriori, by express or tacit agreement, the representative’s actions, demonstrating thereby the clear and non-equivocal intention of the company to carry out the dismissal.

We can infer from this that such a ruling may apply to other actions, besides that of the dismissal of an employee.

New debates ahead...



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