

# Application of the new case law of the Court related to commercial agent status: refusal of the status in case of the impossibility of company modifying the conditions of contracts, and in particular the prices

28/10/2021



Ruling no 474 of 12 May 2021 (19-17.042) - Cour de cassation (Court of Cassation) - Commercial Chamber  
- ECLI:FR:CCAS:2021:CO00474

**Quashing**

Only the french version is authentic

*Appellant(s): [Natural person/Legal entity 1], société à responsabilité limitée (limited liability company)*

*Respondent(s): [Natural person/Legal entity 2], société anonyme (limited company)*

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## **Facts and procedure**

1. According to the ruling under appeal (Angers, 26 March 2019), the company [Natural person/Legal entity 2] (the company [I]), which markets wines, called on the company [Natural person/Legal entity 1] (the company [D]) in 2001 to sell its products in Russia, without any written contract being formalised.
2. On 9 October 2015, company [I] informed company [D] that it was terminating its relationship with Luding, which accounted for 90% of its sales in Russia, following difficulties with this customer.
3. Taking the view that company [I] had terminated the commercial agent contract between them, company [D] sued it for payment of compensation in lieu of notice and compensation for termination.

## **Reviewing plea**

### **Considering the first, fourth, and fifth parts of the plea, appended hereafter**

4. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on these pleas, which are clearly not of a nature to lead to quashing.

### **But for the second part of the plea**

#### **Statement of plea**

5. Company [D] objects to the ruling for dismissing its claims for compensation, whereas "the fact that the agent negotiates contracts in the name and on behalf of the principal on the basis established by the latter, including with regard to prices and contractual conditions, does not exclude the qualification of commercial agent. In deducing from the fact that company [I] retained control and determination of the conditions of the contracts, in

particular prices, the consequence that company [D] had not been entrusted with the negotiation of the contracts, the cour d'appel (Court of Appeal) again infringed Article L. 134-1 of the Commercial Code."

## **Court's response**

In view of Article L. 134-1, paragraph 1 of the Commercial Code, as interpreted in light of Article 1, paragraph 2 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents:

6. Under the terms of this provision, a commercial agent is a self-employed intermediary who, while not bound by an employment contract, is permanently responsible for negotiating and possibly concluding contracts of sale, purchase, rental or provision of services, in the name of and on behalf of producers, industrialists, traders or other commercial agents.

7. Interpreting Article 1, paragraph 2 of Council Directive 86/653/EEC of 18 December 1986, in its ruling of 4 June 2020, *Trendsetteuse* (C-828/18, points 33 and 34), the CJEU states that the main tasks of a commercial agent are to bring the principle new customers and to increase the volume of business with existing customers, and that that it is possible for the commercial agent to accomplish those tasks by providing information and advice as well as through discussions, aimed at facilitating the conclusion of the transaction for the sale of goods on behalf of the principal, even if the commercial agent does not have the power to change the prices of the goods. It follows from the generality of these terms that it is not necessary to have the power to modify the conditions of contracts concluded by the principal in order to be a commercial agent.

8. In order to dismiss the claims of company [D], after having recalled that it was with regard to the tasks actually carried out by the latter that it had to be verified whether it was permanently responsible for negotiating and possibly concluding contracts in the name and on behalf of company [I], the ruling notes that it was clear from the documents examined that company [I] had not entrusted company [D] with negotiating contracts with Luding, and that it had retained control over the determination of the terms of the contracts, and in particular, the prices. The ruling states that the fact that company [I] was able to ask company [D] to have the contracts delivered to it or to have them signed and returned is part of the mission of presenting the products and supporting the commercial relations of company [I], which cannot be confused with the mission of a commercial agent as defined by the law. The ruling adds that the fact that company [D] followed up on deliveries and payments does not establish the existence of a commercial agent contract, nor does the fact that it led to the growth of sales relationships of company [I].

9. In so ruling, relying on the impossibility for company [D] to modify the conditions of the contracts, and in particular the prices, the cour d'appel (Court of Appeal) infringed the above-mentioned provision.

## **Scope and consequences of the quashing**

10. Pursuant to Article 624 of the Civil Procedure Code, the quashing of the ruling's provision dismissing company [D]'s claim for compensation entails the operative part dismissing the claim for compensation for abusive proceedings from company [I], which is connected to it by a link of necessary dependence .

**ON THESE GROUNDS, and without having to rule on the last objection, the Court:**

QUASHES AND SETS ASIDE, all provisions of the ruling delivered on 26 March 2019, between the parties, by the cour d'appel (Court of Appeal) of Angers;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Rennes;

**President: Ms Mouillard**

**Reporting Judge: Ms Bellino, Judge Referee**

**Advocate-General: Mr Debacq**

**Lawyer(s): SAS Cabinet Colin - Stoclet - SCP Marlange et de La Burgade**

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