

The impecuniosity of a party is not in itself such as to characterise the manifest inapplicability of the arbitration clause within the meaning of Article 1448 of the Code of Civil Procedure.
(Ruling No. 680 – 21-21.738)

28/09/2022



Appeal No. 21-21.738

Dismissal

Summary

Since the plaintiffs in a proceeding, who were parties to franchise and supply contracts containing arbitration clauses, did not maintain that a prior attempt to initiate arbitration proceedings had failed because they had not been able to remedy their financial difficulties, the right of access to the courts is not infringed by a court of appeal which declares itself incompetent to hear the dispute, rightly holding that impecuniosity is not, in itself, such as to characterize the manifest inapplicability of those clauses as defined in Article 148 of the Civil Procedure Code.

COUR DE CASSATION (COURT OF CASSATION)

Public Hearing of 28 September 2022

Dismissal

Mr CHAUVIN, President

Ruling No. 680 FS-D

Appeal No. 21-21.738 FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COURT OF CASSATION, FIRST CIVIL CHAMBER, 28 SEPTEMBER 2022

1. Mr [M] [B], domiciled at [Address 1], 2. the company CPP Le Mans distribution, a limited liability company, whose registered office is [Address 2],

brought appeal No. 21-21.738 against the ruling of the Paris Court of Appeal, Division 5, Chamber 4 of 30 June 2021 in the dispute between them:

1. Selima, a simplified joint-stock company with registered offices at [Address 3],
 2. CSF, a simplified company with registered offices at [Address 3],
 3. the company Carrefour Proximité France, a simplified joint-stock company with registered offices at [Address 3],
- respondents at the quashing.

In support of their appeal, the plaintiffs rely on the single ground for the quashing attached to this ruling.

The case file has been sent to the Prosecutor General.

On the report of Ms Guihal, judge, the observations of Ms Soltner, counsel for Mr [B] and the company CPP Le Mans distribution, of the SARL Delvolvé and Trichet, counsel for the companies Selima, CSF and Carrefour Proximité France, and the advisory opinion of Mr Sassoust, Advocate-General, after proceedings in the public hearing of 5 July 2022, attended by Mr Chauvin, President, Ms Guihal, judge-rapporteur, Mr Vigneau, elder judge, Messrs Hascher, Avel, Bruyère, judges, Mr Vitse, Ms Kloda, Ms Champ, Ms Robin-Raschel, judge-referees, Mr Sassoust, Advocate-General, and Ms Vignes, Chamber Registrar,

following deliberation in accordance with law, the First Civil Chamber of the Court of Cassation, composed of the abovementioned president and judges in accordance with Article R. 431-5 of the Judicial Code, delivered this ruling.

Facts and Procedure

1. According to the ruling under appeal (Paris, 30 June 2021), the company CPP Le Mans Distribution (CPP), formed by Mr [B], manager, and the company Selima, a subsidiary of the Carrefour group, entered into a franchise contract with Prodim, which became Carrefour Proximité France (CPF), and a supply contract with the company CSF France (CSF).
2. These two contracts and the partners' agreement, the "computer pack" agreement, the "SVP social" agreement and the loyalty contract contained an arbitration clause.
3. Alleging that they were victims of anti-competitive and restrictive practices by CPF, CSF and Selima, CPP and its manager brought them before a commercial court.
4. The companies CPF, CSF and Selima raised the lack of jurisdiction of the state courts by invoking the arbitration clauses of franchising and supply contracts.

Reviewing plea

Statement of plea

5. The company CPP and Mr [B] object to the fact that the Rennes Commercial Court was declared incompetent, that they were sent back to better remedy under the arbitration clauses stipulated in the franchise and supply contracts and that their claims were rejected, when: "1. article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees to every litigant effective access to the court, regardless of means; whereas, pursuant to said article, the proven state of impecuniosity of a party to a contract containing an arbitration clause is sufficient to characterize the manifest inapplicability of that clause; in this case, the Court of Appeal upheld the impecuniosity of the company CPP and Mr [B], holding that "incurring more than EUR 100,000 in arbitration costs is impossible and would lead CPP to a situation of cessation of payments"; that, in holding that the impecuniosity of a party is not such as to obstruct the application of the principle of jurisdiction, the court of appeal did not draw the legal consequences of its own findings and thereby infringed Article 148 of the Civil Procedure Code and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with the principle of the right of access to the courts;

(2) Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees all litigants effective access to the courts, regardless of means; that, by refusing to take account of the franchisee's lack of financial standing on the grounds that a party's lack of financial standing is not such as to frustrate the principle of jurisdiction by holding that, "it is for the parties involved in the arbitration to avoid any risk of a denial of justice in the face of a litigant with limited financial means", the court of appeal ruled on hypothetical grounds and infringed Article 1448 of the Civil Procedure Code, Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and the principle of the right to access to the judge, together with article 455 of the Civil Procedure Code;

(3) that the state of proven impecuniosity of a party to a contract containing an arbitration clause is sufficient to characterize the manifest inapplicability of that clause; that in related and indivisible agreements, each of which contains its own arbitration clause, the contractual scheme, which in fact prevents the parties from referring to the arbitrator all of the interrelated contracts by prohibiting the latter from ruling on a contract which does not contain the arbitration clause on which they are based, deprives them of the right of access to the court; that, in this case, the franchisees, without being effectively challenged, were "arguing in that regard that the contractual relationship forms part of an indivisible and common whole consisting first of articles of association with exclusive corporate purposes imposed on the franchisees, then of franchise and supply contracts and of the so-called "ancillary" contracts resulting therefrom, the

Carrefour group preventing the courts from considering the disputes in their entirety"; that the judgment does not usefully contradict the fact that seven contracts are binding on the parties in this case and that all of them contain an arbitration clause, with the exception of the articles of association, by holding that "they add that the articles of association with an exclusive corporate purpose and the CPF and CSF franchise and supply contracts are membership contracts imposed uniformly on all franchisees with no possibility of negotiation" ; that in this case the system set up by the Carrefour group contained as many arbitration clauses as there were contracts, which were all interconnected (franchise, supply contract, etc.), so that these contracts could not be examined together, apart from the indivisibility by which they were characterised, which led the franchisee to initiate as many arbitration proceedings as there were contracts containing an arbitration clause; that this contractual scheme is designed to deprive the franchisee of access to a judge because of the high costs involved; whereas in holding that, notwithstanding these elements, the cost generated by such proceedings, excluding lawyers' fees, under Article 700 of the Civil Procedure Code, was not such as to confer a manifestly inapplicable character on a clause that should nevertheless be considered unfair and leading to a denial of justice, the Court of Appeal infringed Article 1448 of the Civil Code, together with Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms and the principle of the right of access to the courts."

Court's response

6. According to Article 1448 of the Civil Procedure Code, when a dispute arising from an arbitration agreement is brought before a State court, the latter shall declare itself incompetent unless the arbitral tribunal has not yet been awarded the case and the arbitration agreement is manifestly null and void or manifestly unenforceable.

7. Since it was not argued that a prior attempt to initiate an arbitration procedure had failed due to the lack of a remedy for the financial difficulties alleged by Mr [B] and CPP, the Court of Appeal rightly held, without disregarding the right of access to the judge, that the appellants' invocation of their impecuniosity was not, in itself, such as to characterize the manifest inapplicability of the arbitration clauses.

8. The plea, which criticises an over-abundant reason put forward by the second part, is therefore unfounded as to the remainder.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Orders CPP Le Mans distribution and Mr [B] to pay costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims; Thus decided by the First Civil Chamber of the Court of Cassation and pronounced by the president at the public hearing on the fifteenth of June, two thousand and twenty-two.

President : Mr Chauvin

Reporting Judge : Ms Guihal

Advocate-general : Mr Sassoust

Lawyer(s) : SARL Delvolvé and Trichet – Ms Soltner

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