

Unfair clauses : exclusion of the contracting authority acting for professional purposes (Ruling n° 351- 21-20.643)

25/05/2023



Ruling No. 351

Partial quashing

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE THIRD CIVIL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 25 MAY 2023

The company Hôtel le Bristol, a simplified joint-stock company with registered office at [Address 1], lodged appeal No. X 21-20.643 against the ruling delivered on 2 June 2021 by the *cour d'appel* (Court of Appeal) of Paris (Division 4, Chamber 5) in the dispute between:

- (1) Axa France IARD, a public limited-liability company whose registered office is [Address 3],
 - (2) Mr [L] [W], of address at [Address 6], practising under the architecture agency brand name [L] [W],
 - (3) Mr [H] [I], of address at [Address 4], acting as court-appointed liquidator of the company COBATECO,
 - (4) TPF Ingénierie, a simplified joint-stock company with sole shareholder with registered office at [Address 9], formerly Beterem, successor to Beterem Engineering,
 - (5) *Mutuelle des Architectes Français* (MAF), a mutual insurance company for French architects with variable contributions, with registered office at [Address 2],
 - (6) *Société Mutuelle d'Assurance du Bâtiment et des Travaux Publics* (SMABTP, Public Works and Construction Mutual Insurance Company), with registered office at [Address 5],
 - (7) Bureau Veritas, a simplified joint-stock company with sole shareholder with registered office at [Address 8],
 - (8) QBE Europe, a public limited-liability company with registered office at [Address 11],
 - (9) Vialatte Ingénierie, a simplified joint-stock company with registered office at [Address 7],
 - (10) Mr [H] [I], of address at [Address 4], in his capacity as court-appointed liquidator of Est Constructions,
- respondents at the quashings.

Axa France IARD and *Mutuelle des Architectes Français* each lodged a cross-appeal against the same ruling.

Mr [W] also filed a cross-appeal and a cross-appeal of contingent interest against the same ruling.

TPF Ingénierie lodged a cross-appeal of contingent interest.

The appellant bases its action on fifteen grounds of quashing.

Axa France IARD and the *Mutuelle des Architectes Français* each base their actions on one ground of quashing.

Mr [W] bases his action on four pleas of quashing for his cross-appeal and on one ground of quashing for his cross-appeal of contingent interest.

TPF Ingénierie bases its action on one ground of quashing.

The case file has been sent to the prosecutor-general.

On the report by Mr Zedda, judge referee, the observations of SCP Nicolay, de Lanouvelle, lawyers of Hôtel le Bristol, SARL Boré, Salve de Bruneton and Mégret, lawyers of Bureau Veritas and QBE Europe, SAS Boulloche, Colin, Stoclet and Associés, lawyers of *Mutuelle des Architectes Français*, SCP Célice, Texidor, Périer, lawyers of Axa France IARD, SARL Delvolvé and Trichet, lawyers of Vialatte Ingénierie, SCP Gadiou and Chevallier, lawyers of TPF Ingénierie, SCP L. Poulet-Odent, lawyer of *Société Mutuelle d'Assurance du Bâtiment et des Travaux Publics*, SARL Meier-Bourdeau, Lécuyer and Associés, lawyers of Mr [W], and the advisory opinion of Mr Burgaud, Advocate-General referee, after debate in the public hearing of 4 April 2023 in the presence of Ms Teiller, President, Mr Zedda, judge referee-rapporteur, Mr Delbano, elder

judge, Ms Farrenq-Nési, Mr Boyer, Ms Abgrall, judges, Ms Djikpa, Ms Brun, Ms Vernimmen, Ms Rat, judge-referees, Mr Burgaud, Advocate-General referee, and Ms Letourneur, Chamber Registrar,

the Third Civil Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the abovementioned President and judges, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

5. According to the ruling under appeal (Paris, 2 June 2021, corrected by ruling of 29 March 2023) and the exhibits of the case file, the public limited company Hôtel le Bristol commissioned Mr [W], insured with *Mutuelle des Architectes Français* (MAF), with the supervision of works to extend the hotel it operates.

6. The following parties intervened in the operation:

- for structural and civil engineering, the company COBATECO, insured with Axa France IARD (the company Axa);
- for studies on technical equipment, the company Beterem, via TPF Ingénierie;
- for technical inspections, Bureau Veritas, via the company Bureau Veritas Construction, insured with QBE Insurance Europe Limited, via the company QBE Europe SA/NV (the company QBE Europe) and via Société Mutuelle d'Assurance du Bâtiment et des Travaux Publics (SMABTP);
- for the building work, masonry, partitions, linings, coves and joinery work, the company Est Constructions, insured with SMABTP.

7. The company Est Constructions subcontracted the technical studies with Vialatte Ingénierie.

8. The company Hôtel le Bristol terminated the contracts of Mr [W] and the companies Est Construction and COBATECO during the work.

9. The company COBATECO was put into a winding-up process by decision of the court by judgment of 15 February 2012. The proceedings were closed on the grounds of insufficient assets by judgment of 13 February 2013.

10. Est constructions was put into a winding-up process by decision of the court by judgment of 10 July 2013. The proceedings were closed on the grounds of insufficient assets by judgment of 26 September 2018.

11. On the grounds of disorder and delay, Hôtel le Bristol sued Mr [W], MAF, SMABTP, Mr [I], in his capacity as liquidator of COBATECO and Est Constructions, and the companies Axa, Bureau Veritas and QBE Insurance for compensation for damages.

Reviewing pleas

On the first basis of the first plea of the main appeal lodged by Hôtel le Bristol

Statement of plea

[...] 18. Hotel le Bristol objects to the ruling declaring that the solidarity exclusion clause contained in Mr [W]'s architect's contract was valid and applicable for ordering Mr [W], under the guarantee of MAF, *notin solidum* with the other parties

who were liable for damages to which he contributed by reason of his breaches of contract, but only because of his contributory share in the damages, whereas "the exclusion of the architect's obligation *in solidum* in the event of damages to which he contributed by his breach of contract creates a significant imbalance between the rights and obligations of the parties to the contract, in particular when he was commissioned with the task of supervising the execution as in the present case according to the findings of the ruling, by allowing the architect to reduce the consequences of his contractual liability and by having the non-professional contracting authority assume the risk of insolvency of the co-authors of the damages to which the architect has contributed by his breaches of contract, where a clause providing for such an exclusion is unfair and must be deemed not written; by excluding the obligation *in solidum* of the architect commissioned with supervising the execution in this case, the *cour d'appel* (Court of Appeal) infringed Article L. 132-1 of the Consumer Protection Code."

Statement of reasons

Court's response

19. The terms of Article L. 132-1 of the Consumer Protection Code, in its wording prior to that resulting from Order No. 2016-301 of 14 March 2016, whereby contracts between professionals and non-professionals or consumers are deemed not written because their clauses are abusive, do not apply to contracts for the supply of goods or services directly related to the professional activity carried out by the contracting party (1st Civ., 24 January 1995, Appeal No. 92-18.227, Bulletin 1995 I No. 54; Com., 1 June 1999, Appeal No. 96-21.138, 96-20.962).

20. The *cour d'appel* (Court of Appeal) found that the company Hôtel le Bristol had entered into a contract of supervision with Mr [W] to extend the hotel it operated.

21. Since the contract is directly related to the professional activity of the contracting authority, the latter cannot be considered as a non-professional in his relations with the main contractor, regardless of his technical skills in the field of construction, such that the above provisions do not apply.

22. On purely legal grounds, substituted for the contested elements in question, under the conditions provided for by Article 620(1), and Article 1015 of the Code of Civil Procedure, the decision is considered legally justified.

[...]

ON THESE GROUNDS, and without having to rule on the other objections of the appeal, or any cross-appeal lodged by TPF ingénierie and Mr [W], the Court:

[...]

QUASHES AND SETS ASIDE^[i] the ruling delivered on 2 June 2021 by the *Cour d'appel* (Court of Appeal) of Paris between the parties, but only in so far as it states that [...];

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)

Thus decided by the third civil chamber of the Cour de cassation (Court of Cassation) and pronounced by the president at the public hearing of the twenty-five of the month of May two thousand and twenty-three.

[i] The ruling is quashed for other grounds, not translated

President : Mr Teiller

Advocate-general referee : Mr Burgaud

Judge referee : Mr Zedda

Lawyer(s) : SCP Nicolay, de Lanouvelle – SARL Boré, Salve de Bruneton and Mégret –
SCP Célice, Texidor, Périer – SARL Delvolvé and Trichet – SCP Gadiou and Chevallier –
SCP L. Poulet-Odent – SARL Meier-Bourdeau, Lécuyer and Associés

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Institution judiciaire

Translated rulings