

**FRENCH REPUBLIC**  
**ON BEHALF OF THE FRENCH PEOPLE**  
**PARIS COURT OF APPEAL**  
**International Chamber**  
**Division 5 - 16**  
JUDGMENT OF MAY 14<sup>th</sup>, 2019  
(N° 6, 12 pages)

General Directory Entry Number: **RG 18/22279**– N° Portalis **35L7-V-B7C-B6Q6V**

*Decision referred following the judgment of the Supreme Court (Cour de cassation) of June 27<sup>th</sup>, 2018 which partially overturned the judgment of the Versailles court of appeal (division 12<sup>th</sup>, RG No 15/02119) of January 3<sup>rd</sup>, 2017 completed by another judgment issued by the same court, same division (RG No 17/01107) on April 18<sup>th</sup>, 2017 subsequent to a motion for failure to rule, on appeal of a judgment of February 17<sup>th</sup>, 2015 of the Nanterre Commercial Court (RG No 2013F03395).*

**APPELLANTS:**

**Mrs. [A]**

**Mr. [B]**

**FOTRACO ESTABLISHMENT**

Having its registered office at C/o RECHTA TREUHAND, Anstalt Kirchstrasse 39, VADUZ 9490 FÜRSTENTUM-LIECHTENSTEIN  
Represented by its legal representatives,

**CARMARSUD**

Having its registered office at Avenida Samuel Lewis y Calle 56, Edificio Tila Oficina 3,  
PO BOX 87-1382  
PANAMA - REPUBLICA DE PANAMA  
Represented by its legal representatives,

Represented by..., member of the Paris Bar : [...]

Represented by..., member of the Paris Bar : [...]

**RESPONDENT:**

**SA THALES**

Having its registered office at Place des Corolles, Esplanade Nord, Tour Carpe Diem 92400 COURBEVOIE  
Represented by its legal representatives,

Represented by ... of the SELARL [ ], member of the VAL-DE-MARNE Bar: [ ]  
Represented by..., member of the Paris Bar : [...]

## **COURT COMPOSITION**

The case was heard on April 2<sup>nd</sup>, 2019 in open court, before the Court composed of:

Mr François ANCEL, President  
Ms Laure ALDEBERT, Judge  
Ms Fabienne SCHALLER, Judge

who ruled on the case, a report was presented at the hearing by Mr François ANCEL in accordance with Article 785 of the Code of Civil Procedure.

**Clerk at the hearing:** Cyrielle BURBAN

## **JUDGMENT**

- Adversarial
- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.
- signed by François ANCEL, President and by Cyrielle BURBAN, Clerk to whom the minute was delivered by the signatory judge.

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## **I — FACTS AND PROCEDURE**

### **Facts**

1. Mrs. [A] and her son Mr. [B] (hereinafter referred to as Mr. and Mrs. [C]) claim to be the sole heirs of Mr. [D], who died on February 22<sup>nd</sup>, 1986 in the United States, and they state that he was engaged in representing multinational companies in the Middle East in order to promote the conclusion of contracts with local authorities and companies. In particular, he was said to have worked in Iraq as an intermediary of Thomson-CSF, now Thales, either directly or through companies which he directed, in return for a percentage commission of the total amount of the contracts signed.
2. The Panamanian company Carmarsud, incorporated by Mr [D] on November 20<sup>th</sup>, 1978, and the Liechtenstein company Fotraco Establishment, incorporated on September 18<sup>th</sup>, 1975, claim that they also acted as intermediaries for Thomson-CSF.

### **Procedure**

3. Having discovered several years after her husband's death a handwritten note relating to the period from August 25<sup>th</sup>, 1982 to February 15<sup>th</sup>, 1983 containing contract numbers, amounts of commissions, deposits paid and commission balances which, according to her, established that Thales still owed her husband commissions totalling EUR 6,013,644 under three contracts respectively named 'FAISAN II' (No 75 653), 'SOTI' (No 75 750) and 'BAZ 221' (No 50/41071), Mrs. [A], together with her son Mr. [B], acting as heirs of Mr [D] (hereinafter referred to as 'Mr. and Mrs. [C]) and the companies Fotraco Establishment and Carmarsud, brought an action against Thales by writ of summons served by bailiff on June

18<sup>th</sup>, 2013, before the Nanterre Commercial Court, claiming the sum of EUR 6,013,644, to be adjusted, in payment of the commissions which they consider to be due to Mr [D] and damages in the sum of EUR 50,000.

4. By judgment of February 17<sup>th</sup>, 2015, the Nanterre Commercial Court:  
Found inadmissible Mr. and Mrs. [C] and the company Fotraco Establishment for having no interest in bringing proceedings,  
Found Carmarsud's claims inadmissible as time-barred;  
Ordered jointly and severally Mr. and Mrs. [C], Carmarsud and Fotraco Establishment to pay each Thales the sum of EUR 5,000 under Article 700 of the Code of Civil Procedure;  
Ruled that there is no need to order provisional execution;  
Ordered jointly and severally Mr. and Mrs. [C], Carmarsud and Fotraco to pay the costs of the proceedings.
5. Mr. and Mrs. [C], Carmarsud and Fotraco Establishment appealed the judgment by notice of appeal dated March 19<sup>th</sup>, 2015 before the Versailles Court of appeal, which on January 3<sup>rd</sup>, 2017, ruled as follows:
  - Found Mr. and Mrs. [C], Fotraco Establishment and Carmarsud claims inadmissible for lack of standing;
  - Ordered them to pay Thales the sum of EUR 5,000 under Article 700 of the Code of Civil Procedure.
6. On the application filed by Thales for failure to rule, the Versailles Court of appeal, in a corrected judgment of April 18<sup>th</sup>, 2017 added, after the first paragraph of the operative part, the reference to the confirmation by the court of the judgment of the Nanterre Commercial Court of February 17<sup>th</sup>, 2015.
7. Mr. and Mrs. [C] and the companies Carmarsud and Fotraco Establishment appealed to the Supreme court (*Cour de cassation*).
8. In a judgment dated June 27<sup>th</sup>, 2018, the Supreme court overturned the judgment of the a Versailles Court of appeal in that it found the claims of Mr. and Mrs. [C] and Carmarsud inadmissible for lack of standing and referred the case back to the Paris Court of appeal.
9. As regards Mr. and Mrs. [C], the Supreme court partially struck down the judgment of the Versailles Court of appeal pursuant to Article 3 of the Civil Code, in that it found Mr. and Mrs. [C] inadmissible on the grounds that they did not establish the content of Iraqi law, whereas the French judge who finds a foreign law applicable must investigate its content, either *ex officio* or at the request of the party invoking it, with the assistance of the parties and personally if necessary.
10. With regard to Carmarsud, the Supreme court noted that the appeal court had not drawn any conclusions from its findings as to the legal existence of the company.
11. By notice of appeal dated October 12<sup>th</sup>, 2018, Mr. and Mrs. [C], the companies Carmarsud and Fotraco Establishment brought an action before this Court. The case was registered under No RG 18/22279 and fixed at short notice, following a notice of the Clerk's office on November 29<sup>th</sup>, 2018, with a hearing on March 19<sup>th</sup>, 2019.
12. This notice was notified electronically on November 29<sup>th</sup>, 2018 by Mr. and Mrs. [C], Carmarsud and Fotraco Establishment to Thales.
13. On March 18<sup>th</sup>, 2019, a notice of lapse of the notice of appeal was sent to the parties, as no service of the notice of appeal within the 10-day time limit had been delivered to the

Respondent in accordance with article 1037-1 of the Code of Civil Procedure, as of November 29<sup>th</sup>, 2018.

14. The appellants requested, by letter dated March 18<sup>th</sup>, 2019 the organisation of a procedural hearing, after having enjoined Thales to communicate exhibits, that it refused.
15. According to their submissions sent electronically on March 18<sup>th</sup>, 2019, on the eve of the hearing, the appellants request the President of the division to:
  - Order Thales to communicate the following documents and pay a penalty payment of EUR 100 per day of delay from the date of the order to be issued:
    - \* The assignment and commissioning contract concluded between Carmasud and Thomson CSF under the SOTI contract 75750
    - \* The assignment and commissioning contract concluded between Mr. [D] and/or Carmasud and/or Fotraco with Thomson CSF under the FAISAN II contract No. 75 653.
    - \* The assignment and commissioning contract concluded between Mr. [D] and/or CARMARSUD and Thomson CSF under the BAZ 221 contract No. 50/41071.
  - Order Thales to pay all the costs of the proceedings of the present procedural hearing which recovery will be carried out in accordance with Article 699 of the Code of Civil Procedure.
16. According to its submissions sent electronically on March 19<sup>th</sup>, 2019, Thales asserts that the President of the division has no jurisdiction to rule on disclosure claim of the appellants, and subsidiary, requests to join the ruling on this issue with the one on the merits as their claim was filed late. In response to the notice of lapse, Thales concluded that there was no lapse as the notification of the hearing was received on November 29<sup>th</sup>, 2018.
17. By electronic message sent on March 29, 2019, the counsel of the appellants claimed that the notice of appeal had not lapsed.
18. By order issued on April 2<sup>nd</sup>, 2019 before the opening of the hearing, the President of the division ruled that it shall not be ruled that the notice of the appeal null and void, joined the procedural issue to the merits and reserved the costs of the proceedings.

## II — CLAIMS OF THE PARTIES

19. **According to their submissions sent electronically on December 12th, 2018, the appellants** request the Court, in accordance with Articles 1134, 1315, 1147, 2233 and 2274 of the Civil Code, Articles 11 and 31 of the Code of Civil Procedure and L. 110-3 of the Commercial Code, in substance, to:
  - REVERSE the judgment of February 17th, 2015 of the Nanterre Commercial Court in that it dismissed the claims of Mrs [A], Mr [B] and FOTRACO on the ground of lack of interest in bringing proceedings
  - UPHOLD the judgment in that it found that Carmarsud had an interest in bringing proceedings against Thales;
  - REVERSE the judgment in that it dismissed the claims of Carmarsud as time-barred;
  - REVERSE the rest of the judgment ,

*And ruling again:*

- ORDER Thales (formerly named THOMSON CSF) to pay Mrs [A], Mr [B] in their capacity as heirs of Mr [D] as well as Carmarsud the total sum of EUR 6,013,644, to be adjusted, in payment of commissions due to Mr [D];
- ORDER Thales (formerly THOMSON CSF) to pay Mrs [A] and Mr [B] as heirs of Mr [D] and Carmarsud damages in the sum of EUR 50.000;
- ORDER Thales to pay the sum of EUR 20.000 under Article 700 of the Code of Civil Procedure as well as all the costs of the proceedings, including the fees of Me [ ] , Attorney at Law, in accordance with the provisions of Article 699 of the Code of Civil Procedure;

**20. According to its submissions sent electronically on February 11th, 2019, Thales requests the Court to:**

Preliminary,

- DISMISS the exhibit No 43 referred to in the appellant's submissions of Mrs. [A], Mr. [B], Fotraco and Carmarsud, that was not communicated by the appellants to Thales,

Principally ,

- RULE the claims of Mrs. [A] and Mr. [B] inadmissible on the ground of lack of interest to bring proceedings,
- RULE the claims of Carmarsud inadmissible on the ground of lack of interest to bring proceedings,
- UPHOLD, therefore, the judgment issued on 17 February 17<sup>th</sup>, 2015 by the Commercial Court of NANTERRE, except in that it ruled that Carmarsud had an interest in bringing proceedings, and REVERSE the judgment on this point only,

In any case

- RULE the action brought by Mrs [A], Mr [B] and Carmarsud inadmissible, in that it is directed against Thales, which has no interest in being in these proceedings,

In the alternative,

- FIND the action brought by Mrs [A], Mr [B] and CARMARSUD time-barred,
- RULE consequently that the claims of Mrs. [A], Mr. [B] and CARMARSUD are inadmissible,
- UPHOLD consequently, the judgment issued on February 17th, 2015 by the Commercial Court of Nanterre in that it found Carmarsud's claims inadmissible as time-barred, and extend, if necessary, the decision to Mrs. [A] and Mr. [B],

On a more subsidiary basis,

- In the unlikely event that the Paris Court of appeal would have to rule on its power of evocation, REFER the case to the Commercial Court of NANTERRE, so that it may be decided on the merits of the dispute,

On an infinitely subsidiary basis,

- DISMISS Mrs [A], Mr [B] and the Carmarsud of all their claims, requests, and submissions,

In any case,

- ORDER jointly and severally Mrs. [A], Mr. [B], Fotraco and Carmarsud to each pay Thales the sum of EUR 15,000 pursuant Article 700 of the Code of Civil Procedure,
- ORDER jointly and severally Mrs. [A], Mr. [B], Fotraco and Carmarsud to pay all the costs of the proceedings, including the fees of Maître [ ], lawyer, pursuant to Article 699 of the Code of Civil Procedure.

### **III — REASONS FOR THE DECISION**

#### **On the application to dismiss Appellant's Exhibit No. 43**

21. Thales requested, in its final submissions, that Appellant's Exhibit No. 43 entitled "Will of Mr. D" be dismissed on the ground that it had not been disclosed to it.
22. The appellants did not respond to this request.

#### **Thereupon,**

23. Exhibit 43 is titled on the list of exhibits produced by the appellants « Will of Mr. [D] ». Though Thales contested having received actual communication of this document in its submissions, its litigator confirmed under the terms of a message sent electronically on April 4<sup>th</sup>, 2019 having received communication of this document, which remained in its hands.
24. In the light of the foregoing, there is no reason to disregard this document, which is moreover mentioned in the list of exhibits produced by the appellants.

#### **On the admissibility and the interest in bringing proceedings of Fotraco Establishment**

25. Thales claims that the Versailles Court of appeal's rulings of January 3<sup>rd</sup> and April 18<sup>th</sup>, 2017 are final with respect to Fotraco Establishment as the Supreme court found in its ruling of June 27<sup>th</sup>, 2018 that the provision of the judgment regarding it are not to be appealed. Thales thus considers that Fotraco Establishment is inadmissible to act.
26. The appellants did not conclude on the plea based on the finality of the Versailles appeal court's decisions regarding Fotraco Establishment.

#### **Thereupon,**

27. In their final submissions, the appellants ask the court to find and rule that they all have an interest in bringing proceedings, including Fotraco Establishment, even if they do not claim any payment to its benefit.
28. However, it appears from the decision issued by the Versailles Court of appeal on January 3<sup>rd</sup>, 2017 that the Court found Fotraco Establishment inadmissible for lack of standing after finding that the documents filed in the proceedings did not justify its existence.
29. In its decision of June 27<sup>th</sup>, 2018, the Supreme court overturned the Versailles Court of appeal's decision only in that it found Mr. and Mrs. [C] and Carmarsud inadmissible for lack of standing. In so doing, the decision of the Versailles Court of appeal became final against Fotraco Establishment in that it found it inadmissible.
30. It shall thus be found that the latter company is no longer admissible to act, being observed that the appellants do not raise anyway any claim to its benefit.

### **On the interest in bringing proceedings of Mr. and Mrs. [C]**

31. In seeking confirmation of the judgment, Thales argued in substance that Mr. and Mrs. [C] lack of interest on the ground that they did not provide evidence of the existence of the contracts "FAISAN II", "SOTI" and "BAZ 221" on which the appellants based their claims, so that they did not provide evidence of the involvement and intervention of Mr. [D] in these three contracts.
32. Thales considers that the new documents produced on appeal by Mr. and Mrs. [C] (Exhibits Nos. 37 to 40) are no better evidence than those produced at first instance and cannot support the appellants' claims, in particular the appellants' Exhibit No. 39, in respect of which it submits that the appellants' handwritten statements relating to the contracts at issue, without knowing who drafted them or when, takes out its value as evidence.
33. Thales further submits that exhibits Nos. 9, 12, 38 and 40 are handwritten tables, the provenance and author of which are impossible to ascertain, and which contain a succession of figures which are virtually unreadable, and which have been erased several times and are undated. It therefore considers that the reality of their contents has not been evidenced and that it is impossible to deduce from them any evidence of a link with Mr. [D] and the applicants.
34. Thales also states that the commission balances claimed were in any event intended for Carmarsud and that it has not been established that Mr. [D] or his wife were involved in that company, since Exhibits Nos 5 and 6 produced by the appellants for that purpose have no evidentiary value, as the Nanterre Commercial Court held.
35. In response, and after reminding that according to Article L.110-3 of the Commercial Code in commercial matters proof can be provided by any means, the appellants argue, in particular, that Thales' obligation to pay a balance of commissions under the three contracts is evidenced by the documents filed in the proceedings which, in their view, prove the existence of contractual relations between Mr [D] and Thomson-CSF.
36. The appellants add that, in the proceedings pending before the Versailles Court of Appeal, they served summonses on Thales to obtain disclosure, in particular, of the disputed contracts and the documents relating to the commissions paid to Mr [D] and the companies Fotraco Establishment and Carmarsud, but that Thales did not comply, on the ground that the burden of proof had been reversed, which, in their view, constitutes a breach of Article 11 of the Code of Civil Procedure. They add that Thales did not explain the credit notes and transfers produced at the hearing. They consider that, in the absence of an explanation from Thales as to the origin of these payments, it must be accepted that these sums correspond to commission payments for the benefit of Mr. [D] and his companies.

### **Thereupon,**

37. Pursuant to articles 30 and 31 of the Code of Civil Procedure, an action is the right of the author of a claim, to be heard on the merits of this claim, in order for the judge to decide whether it has merits or not and is open to all those who have a legitimate interest in the success or rejection of a claim, subject to cases in which the law grants the right to act only to persons it determines to raise or fight a claim or to defend a particular interest.
38. The interest in acting is not, however, subject to the prior demonstration of the merits of the claim and the existence of the right invoked is not a condition of admissibility of the action but of its success.

39. In the present case, it is apparent from a letter dated April 14<sup>th</sup>, 1977 that Thomson-CSF confirmed to Mr. D. its "wish to collaborate with [him] in the electric cable sector" in return for "a 2% commission for any order obtained through [him] and processed through [his] intermediary", and from a letter from Thomson-CSF addressed on November 14<sup>th</sup>, 1978 to the Ministry of Commerce in Iraq that this company confirmed Mr. [D] has been hired "to advise its engineers and on the presentation and promotion of our equipment in the private sector".
40. Similarly, according to a letter dated August 6<sup>th</sup>, 1975 from Thomson-CSF to Mr. [D] concerning the sale of the Mirage F1 aircraft to the Iraqi Armed Forces, it is justified that Mr. [D] was indeed entrusted with the negotiation of the contract and that a commission of 2% calculated on the total amount of the invoices applicable to the orders was provided for.
41. In addition, Mr. and Mrs. [C] produced a transfer order issued by BNP on September 4<sup>th</sup>, 1978 for the attention of Mr. [D] for the sum of FR 100,800, issued in the name of Thomson-CSF in respect of its "10 months" expenses, and two other transfer orders issued by the same company on January 8<sup>th</sup>, 1980 in respect of "expenses for twelve months 1979" and on December 17<sup>th</sup>, 1980 for the same amount for the year 1980.
42. Credit notes were also produced on the order of Thomson-CSF for the benefit of Mr. [D] dated October 6<sup>th</sup>, 1977 and July 27<sup>th</sup>, 1978 for the following respective amounts of FR 2,174 and FR 1,578,188.
43. It is clear from these various elements, which are of such a nature as to establish that Mr. D, whose heirs are Mr. and Mrs. [C], did indeed have regular business relations with Thomson-CSF, from which Thales derives its rights, that Mr. and Mrs. [C] have an interest in bringing proceedings within the meaning of Article 31 above, which enables them to be admissible to bring proceedings to seek payment of sums they consider to be due in respect of these business relations, without prejudice to the assessment of the merits of this claim.

#### **On Carmarsud's interest in bringing proceedings**

44. Thales, seeking to have it reversed, criticized the judgment of the first instance for holding that Carmarsud had an interest in bringing proceedings on the basis of a transfer order from BNP and a handwritten table produced by the appellants. Thales submits that these documents are not probative, since the first document does not mention the disputed contracts, while the other document should have been set aside pursuant to Article 1315 of the Civil Code, according to which no one may adduce evidence in his own right. Thales adds that the new exhibits produced by the appellants, Nos 37 to 40, also have no evidentiary nature.
45. The appellants claim that Carmarsud worked as an intermediary in the sale of Thomson-CSF electronic equipment for any military activity of the Republic of Iraq, and consider that several documents filed in the proceedings provide evidence of the existence of a business relationship with Thomson-CSF.

#### **Thereupon,**

46. In the present case, the documents in the file make it possible to justify several credit notices issued by Thomson-CSF to Carmarsud, one dated February 6<sup>th</sup>, 1980 for an amount of FR 6,438,600 and the other dated September 10<sup>th</sup>, 1981 referring to a contract dated July 16<sup>th</sup>, 1980 for a sum of more than FR 172,000 (an unreadable figure).
47. In the light of these elements, and for the reasons developed by the Commercial Court which the Court adopts, it must be considered that the proof of a business relationship



between Carmarsud and Thomson-CSF is justified so this company also has an interest in bringing proceedings against it within the meaning of Article 31 of the Code of Civil Procedure, without prejudice to the assessment of the merits of that claim.

### **On Thales' interest in the proceedings**

48. Thales invokes Article 32 of the Code of Civil Procedure, according to which a claim against a person without the right to act is inadmissible, and submits that the appellants are also inadmissible in that they fail to establish Thales's interest in the proceedings, insofar as they do not demonstrate the link between the commissions claimed under the FAISAN II, SOTI and BAZ 221 contracts and Thales, and in particular, its intervention under the said contracts and commission rights. Thales concludes that, as there is no evidence of the existence of a link between the subject-matter of the dispute and Thales, the appellants must be declared inadmissible.
49. The appellants have not developed a specific response to this plea.

### **Thereupon,**

50. If, pursuant to Article 32 of the Code of Civil Procedure, any claim made by or against a person without the right to proceed is inadmissible, the mere fact of maintaining that no contractual link is established between Mr. [D] and/or Carmarsud and Thales does not constitute an inadmissibility of proceedings but a plea to contest the merits of the claim.
51. It is therefore appropriate, in view of the reasons set out above, to reject the request based on the inadmissibility on proceedings.

### **On the limitation period of the action for payment of the balance of commissions**

52. Seeking the upholding of the judgment on this point, Thales maintains that the appellants' action is time-barred pursuant to Article L. 110-4 of the French Commercial Code, in its version prior to June 19<sup>th</sup>, 2008, which provides for a limitation time of ten years. Thales explains that the limitation period began to run from the date of the claims on which the appellants based their claims, namely "18.1.83", "28.1.83" and "11.2.83", and that the action was brought by a writ dated June 18<sup>th</sup>, 2013, so more than twenty years after the ten-year limitation period had expired, without the appellants providing proof of any acts interrupting the limitation period. Thales added that the appellants reversed the burden of proof when they argued that it had failed to provide proof of the limitation time.
53. In response, the appellants contest the starting point of the limitation period invoked by Thales and upheld by the court and argue that the commissions are, on the one hand, fragmented receivables so that the limitation time is divided and runs from each of the fractions as of its due date and that, on the other hand, they are contingent receivables because the commissions were paid only if an order had been placed, if the Thomson-CSF company had performed its sales and delivery services and if it had been paid by the end customer. They thus argue that the limitation period could only run from the fulfilment of these conditions pursuant to Article 2223 of the French Civil Code. They add that Thales did not provide the information required to assess the fulfilment of the aforementioned conditions and therefore did not provide proof of the limitation time invoked. The appellants state that the contracts concluded between Mr. [D] and Thomson-CSF were ancillary to the contracts concluded by Thomson-CSF with the clients presented by Mr. [D] and that it is not possible to separate the main contract and the contract of assignment in order to assess the limitation period, as those two contracts are indivisible and that it is for Thales to justify the expiry dates of the main contracts, which it does not do. They thus consider that it is not possible to determine the date on which the limitation period began to run in the absence of

communication by Thales of Thomson-CSF's invoices issued for the markets relating to this litigation and that the accounting schedule drawn up by Mr. [D] has not been updated as a result of his illness and cannot therefore serve as a reference for the determination of the limitation period starting date.

### **Thereupon,**

54. It is common ground in the present case that the action for payment brought by Mr. and Mrs. [C] and Carmarsud is brought to obtain payment of a total sum of FRF 39,446,793, that is to say the sum of EUR 6,013,644, the appellants relying on a handwritten note (Exhibit No 9) which they indicate as coming from Mr. [D] mentioning for the period from August 25<sup>th</sup>, 1982 to February 15<sup>th</sup>, 1983, in a column entitled 'Balance', the figures of FRF 1, 913,109 (the column « observations » mentioning the reference "FAISAN II"), of FRF 36,953,929 (the column « observations » mentioning the reference "SOTI") and of FRF 579,755 (the column « observations » mentioning the reference "BAZ 221").
55. It should be noted that each of these three numbers is associated with the respective dates of January 18<sup>th</sup>, 1983, January 28<sup>th</sup>, 1983 and February 11<sup>th</sup>, 1983 in a column entitled "Claim", thus implying that as from these dates, Mr. [D] had or could request payment of these sums to Thomson-CSF.
56. It follows from the foregoing that, assuming that Exhibit 9 on which the appellants rely can be regarded as originating in the hand of Mr. [D], Mr. and Mrs. [C] and Carmarsud are seeking payment of the outstanding balance of commissions, payment of which was clearly due from January 18<sup>th</sup>, 1983, January 28<sup>th</sup>, 1983 and February 11<sup>th</sup>, 1983.
57. Thus, the alleged claims being, according to the very terms of the document on which the appellants rely, already due on these different dates, they must be retained as the starting point of the 10-year limitation period of Article L.110-4 of the French Commercial Code applicable at that time.
58. In this respect, the appellants cannot rely on the fragmented or contingent nature of the claims in order to invoke a starting point for the limitation period on the day of the payment by the client of Thomson CSF when, on the one hand, this interpretation is contradicted by the main document on which they rely to claim payment of these commissions and, on the other hand, they may not rely on contracts or exchanges between the parties relating to other contracts or documents to extend their clauses to the contractual relations relating to the alleged FAISAN II, SOTI and BAZ 221 contracts, the existence of which is not, moreover, evidenced apart from their mention in this handwritten note, which is itself uncertain.
59. Similarly, the request for the forced disclosure of these contracts, even though their existence is disputed by Thales, apart from being late, is manifestly unnecessary and unjustified, especially if, pursuant to Article 1315(2) of the Civil Code, now Article 1353(2), someone claiming to be released from an obligation must justify the payment or the fact which has brought about the extinction of his obligation, it is, in the first place, for the person claiming the execution of an obligation to prove it, so that the burden of proof of the existence of a contract lies on the person who relies on it.
60. In the light of all these elements, it must be found that the action in payment of the balance of the commissions, supposedly due, is time-barred since 1993, so that the claims of Mr. and Mrs. [C] and Carmarsud are inadmissible.

### **On the Article 700 of the Code of Civil Procedure**

61. The fate of the costs of the proceedings and the procedural indemnity has been settled

exactly by the Nanterre Commercial Court.

62. At this Court level, Mr. and Mrs. [C] and Carmarsud, the losing parties, shall be ordered *in solidum* to pay the costs of the proceedings, which shall be recovered in accordance with Article 699 of the Code of Civil Procedure.
63. In addition, they shall be ordered *in solidum* to pay Thales, which had to incur irrecoverable costs in order to assert its rights, compensation under Article 700 of the Code of Civil Procedure which fair sum is set at EUR 15,000.

**ON THESE GROUNDS, THE COURT HEREBY**

1. Upholds the judgment handed down by the Nanterre Commercial Court on February 17<sup>th</sup>, 2015 in that it found Carmarsud's action time-barred, as well as regards the costs and expenses of the first instance,
2. Overturns for the rest,

Adding to it,

3. Finds and rules that Exhibit 43 shall not be excluded from the proceedings;
4. Finds the company Fotraco Establishment inadmissible;
5. Dismisses Thales' claims for inadmissibility based on the lack of interest in bringing proceedings;
6. Dismisses Mrs. [A], Mr. [B] and Carmarsud application for disclosure of documents;
7. Finds and rules time-barred the action brought by Ms. [A] and Mr. [B];
8. Orders *in solidum* Ms [A], Mr [B] and Carmarsud to pay Thales the total sum of EUR 15, 000 under Article 700 of the Code of Civil Procedure;
9. Orders *in solidum* Ms [A], Mr [B] and Carmarsud to pay the costs of the appeal proceedings, which shall be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure.

***The Clerk***  
**A. CRUZ**

***The President***  
**F. ANCEL**