

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE
PARIS COURT OF APPEAL
INTERNATIONAL CHAMBER
Division 5 - 16
JUDGMENT OF May 14th 2019
(N° 5, 10 pages)

General Directory Entry Number: **RG 18/07935** – N° Portalis 35L7-V-B7C-B5QUA

Decision referred to the Court: judgment of November 6th, 2017 – Paris Commercial Court - RG No 2015016802

APPELLANTS

PETER BODUM A/S SA, a company incorporated under Danish law
Represented by its legal representatives
30Humblebaek Strandvej 21
3050 HUMLEBAEK (DENMARK)

BODUM HOLDING AG, a company incorporated under Swiss law
Represented by its legal representatives
Registered in the trade and companies registry of Luzerne
Kantonsstrasse 100
6234 TRIENGEN (SWITZERLAND)

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

RESPONDENT:

Mr. [A]

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

COURT COMPOSITION

Pursuant to the provisions of Article 786 of the Code of Civil Procedure, the case was heard on 26 March 2019, in open court, before Mr François ANCEL, President, and Ms Laure ALDEBERT, Judge, the lawyers not having objected to it.

These judges made a report of the pleadings for the ruling of 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 in accordance with Article 785 of the Code of Civil Procedure.

Clerk at the hearing: Ms. Saoussen HAKIRI.

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 Ms. Anaïs CRUZ, Clerk to whom the minute was delivered by the signatory judge.

I — Facts and proceedings

1. Peter Bodum A/S is a company incorporated under Danish law, which belongs to the Bodum Group and is active in manufacturing and marketing Bodum brand products in the Scandinavian countries.
2. It is wholly owned by Bodum Holding AG, a company incorporated under Swiss law, which is the holding company of the Group.
3. Mr. [A] (hereinafter Mr. [A]) is a company director who managed the French company “Les Anciens Etablissements Martin”, owner of a press coffee maker called "Chambord" that was registered with the INPI on 13 April 1970 and has been marketed in France and abroad for many years.
4. He is also the director of the British company Household Articles Limited, now known as the Greenfield Group, which markets household items including “the Classic” press coffee maker which is similar to the "Chambord" press coffee maker.
5. By contract dated 8 August 1991, drawn up in English and subject to French law, the Danish company Bodum Holding AS, now called Peter Bodum A/S, acquired all the shares in the company “Les Anciens Etablissements Martin” for the price of 13 million francs from the company's shareholders, Mr [A] being appointed as the Sellers' representative.
6. The assignment of the entire share capital of the company included the assignment of the intellectual property rights held by the company “Les Anciens Etablissements Martin”, in particular dealing with the registered design of the Chambord press coffee maker.

7. Under the terms of this contract, clause 4 is drafted as follow:

“In consideration of the compensation paid to Stockholder for the stocks of the Company, Stockholder guarantees, limited to the agreed compensation, see Article 2, that he shall not for a period of four (4) years- be engaged directly or indirectly in any commercial business related to manufacturing and/or distributing of the Company's products and/or any other business in which the Company has been engaged, other than after mutual agreement as an employee of, or advisor to Buyer, a subsidiary, or an affiliated company.

Should Stockholder (i.e. any of the Stockholders hitherto) violate this obligation not to compete with the business of the company as to run to-day, Buyer shall be entitled to an agreed penalty in the amount of FF 100. 000 to be paid by the violating person each and every time a violation by the initiative of Stockholder takes place.

In addition Buyer shall be entitled to demand compensation for any loss suffered on account of such violation. Buyer shall further without standing security be entitled to ask the competent jurisdiction or any court of competent jurisdiction to issue an injunction against a continued violation of the above non-competition provisions.

Notwithstanding Article 4 Buyer agrees that Stockholder through Household Articles Limited, a limited company incorporated and registered in the United Kingdom, can manufacture and distribute any products similar to the Company's products outside of France. It is expressly understood that Household Articles Limited is not entitled, directly or indirectly, to any such activity in France, and that Household Articles Limited furthermore is not entitled, directly or indirectly, globally to manufacture and/or distribute coffee-pots under the trade marks and/or brand names of "Melior" and "Chambord", held by the Company. Stockholder agrees that Household Articles Limited is not entitled to use for a period of (4) years the importers, distributors, and agents which the company uses and/or has used the last year. Any violation of these obligations will constitute breach of Stockholder's obligation according to Article 4”.

8. From 2007, the companies of the Bodum Group and Household Articles Ltd came into conflict over the right of Household Articles Ltd company or its distributors to market the "The Classic" coffee maker similar to the aforementioned Chambord model, which gave rise to litigation in Denmark, in the United States and in Germany.
9. During these proceedings, the parties developed divergent interpretations of Clause 4 of the assignment agreement, Household Articles Limited claiming that it is entitled under the clause to manufacture and market the "The Classic" coffee maker throughout the world except in France, which the Bodum companies contested arguing that the shares assignment of 1991 including the exclusive rights to the model did not give it a license or an authorization to copy the design.
10. In the context of these proceedings, Mr. [A] was repeatedly heard as a witness in 2007 before the Danish court, in 2008 in the United States, in 2009 before another Danish court, and in 2012 before the Hamburg court.
11. At the end of these proceedings, the American court of appeal and the Danish supreme court ruled respectively in judgments of September 2nd, 2010 and September 3rd, 2013, that the purchase agreement of August 8th, 1991 allows Household Articles Limited company to sell copies of the Chambord model except in the French territory. However, in its judgment of December 1st, 2016, the German court of appeal ruled in favor of the company Peter Bodum A/S.

Proceedings

12. Considering that the testimony of Mr. [A] ousted the Bodum companies and deprived them of the exclusive rights acquired on the "Chambord" model in 1991, Peter Bodum A/S brought in March 12th, 2015 an action against Mr. [A] before the Paris commercial court on the basis of the legal warranty of title so that the court would:
 - prohibit Mr. [A] from asserting that he has granted a license on the Chambord model to Household Articles Ltd. as a legal representative of the company "Les Anciens Établissements Martin";
 - Order him to pay damages in the sum of EUR 1,000,000.
13. Bodum Holding AG engaged wilfully in the proceedings.
14. In a judgment dated November 6th, 2017 the court:
 - FOUND the claims of Peter Bodum A/S and Bodum Holding AG inadmissible and dismissed them;
 - ORDERED Peter Bodum A/S and Bodum Holding AG to pay in solidum to Mr. [A] the sum of EUR 10,000 as compensation for the loss suffered as a result of abusive proceedings;
 - ORDERED Peter Bodum A/S and Bodum Holding AG to pay *in solidum* to Mr. [A] the sum of EUR 30,000 pursuant to Article 700 of the Code of Civil Procedure;
 - DISMISSED the parties from their other, further or contrary claims;
 - ORDERED Peter Bodum A/S and Bodum Holding AG *in solidum* to pay the costs of the proceedings, including those to be recovered by the Registry, in the sum of 153.96 euros, of which 22.22 euros of VAT are to be paid by the parties. »
15. Peter Bodum A/S and Bodum Holding AG appealed this judgement on April 13th 2018.

II — Claims of the parties

16. According to their latest submissions sent electronically on January 15th, 2019, PeterBodum A/S and BodumHolding AG request the Court pursuant to Articles 1626 of the Civil Code, 32-1 of the Code of Civil Procedure and 1240 of the Civil Code, to :
 - Reverse the judgment in all its provisions, and in particular, in that it found the claims of PETER BODUM A/S and BODUM HOLDING AG inadmissible on the grounds that they lack standing and legal interest in bringing proceedings and are time-barred,
 - Reverse the judgment in that it ordered PETER BODUM A/S and BODUM HOLDING AG to pay Mr [A] the sum of EUR 10,000 for abuse of procedure,

And ruling again,

- Prohibit Mr. [A], in his capacity as seller, from asserting that article 4 of the share purchase agreement of August 8, 1991, grants HOUSEHOLD ARTICLES LIMITED and its

successors the right to manufacture and market copies of the CHAMBORD press coffee maker model, subject to a penalty payment of EUR 1,000 per infringement from the date of the judgment,

- Prohibit also Mr. [A], in his capacity as seller, from asserting that the company LES ANCIENS ETABLISSEMENTS MARTIN has granted a licence or any other authorisation to HOUSEHOLD ARTICLES LIMITED, or its successors, on the model of the CHAMBORD press coffee maker, subject to a penalty payment of EUR 1,000 per infringement from of the judgment,
 - Order Mr [A] to pay PETER BODUM A/S and BODUM HOLDING AG compensation of EUR 1 000 000 for the damage caused by his breaches of the warranty of title, in particular by his statements before the Danish and American courts,
 - Order Mr [A] to pay PETER BODUM A/S and BODUM HOLDING AG the sum of EUR 30,000 under Article 700 of the Code of Civil Procedure,
 - ORDER Mr. [A] to pay all the costs of the proceedings of the first instance and the appeal, including the legal fees of the SCP JB, pursuant to article 699 of the Code of Civil Procedure.
17. According to its latest submissions sent electronically on January 30th 2019, Mr. [A] requests the Court pursuant to Articles 122 of the Code of Civil Procedure, 2224 of the Civil Code, 6 and 10 of the European Convention of Human Rights, 1602 et subs. of the Civil Code and in particular article 1625 and subs. of the Civil Code, 32-1 of the Code of Civil Procedure, to:

Principally

Uphold the appealed judgment in that it has:

- Found the claims of Peter Bodum A/S and Bodum Holding AG inadmissible and dismissed them;
- Ordered Peter Bodum A/S and Bodum Holding AG to compensate Mr. [A] for the damage suffered as a result of the abuse of procedure
- Ordered *in solidum* Peter Bodum A/S and Bodum Holding AG to pay Mr [A] the sum of EUR 30,000 under Article 700 of the Code of Civil Procedure;
- Ordered *in solidum* Peter Bodum A/S and Bodum Holding AG to pay Mr [A] the costs of the proceedings

REVERSE for the rest,

And, ruling again

- Order Peter Bodum A/S and Bodum Holding AG jointly and severally to pay Mr [A] damages in the sum of EUR 20,000 to compensate the harmful consequences of their abuse of procedure.

In the alternative, where needed,

- Dismiss Peter Bodum A/S and Bodum Holding AG of all their claims,

And in any case,

- Order Peter Bodum A/S and Bodum Holding AG jointly and severally to pay Mr [A] the sum of EUR 7,000 pursuant to Article 700 of the Code of Civil Procedure for the appeal proceedings;
- Order Peter Bodum A/S and Bodum Holding AG jointly and severally to pay the entire costs of the appeal proceedings, including the legal fees of Maître [], member of the Paris Bar.

18. The Court refers to the decision made and to the aforementioned submissions for a detailed statement of the dispute and the parties' claims, in accordance with Article 455 of the French Code of Civil Procedure.

III — CLAIMS OF THE PARTIES AND REASONS FOR THE DECISION

Peter Bodum A/S and Bodum Holding AG's title to act

19. Mr. [A] seeks the upholding of the commercial court judgment in that it found the claims of the Bodum companies inadmissible on the grounds that they lack standing and legal interest in bringing proceedings.
20. He claims that Peter Bodum A/S has no interest in bringing proceedings, arguing that it has lost all rights to the shares of “Les Anciens Établissements Martin” for having sold them to another company of the group, the company Bodum France SA.
21. He explains that Peter Bodum A/S was only a shareholder in the company “Les Anciens Établissements” from August 1991 until June 2008, when it sold all its shares to Bodum France SAS, and that it also does not own the intellectual property rights to the “Chambord” model, which were sold to PI Design AG in April 2014. It adds that the conditions under which case law has found admissible for an intermediary seller to claim against the original seller on the grounds of a warranty of title are not met, as the appellant is unable to justify the harm suffered in the context of the chain of the transfer. He deduces from this that it has neither standing nor interest to act on the basis of the warranty of title. He adds that the fact that Peter Bodum A/S is a distributor of Chambord coffee machines in Scandinavia does not give any more standing or interest in bringing proceedings to claim warranty of title in proceedings in countries where it is not a distributor, and that, as regards the Danish proceedings, the facts are time-barred.
22. M. [A] argues that Bodum Holding AG is also lacking standing and interest in bringing proceedings insofar as it is neither a sub-purchaser of the thing sold nor the owner of the property rights in the “Chambord” model. It specifies that if Bodum Holding AG holds the capital of Bodum France and PI Design, a parent company is not admissible to bring an action in place of its subsidiary, which has the sole capacity and interest to act, in application of the principle of independence of legal entities.
23. In response, the appellants argue, on the ground of a judgment of the French Supreme Court of March 21, 2000 (Civil 1st, March 21, 2000, No. 98-10.828), that they have standing and interest in bringing proceedings, insofar as the warranty of title is owed to the purchaser but also to the sub-purchaser of the property, as the assignment does not cause to the initial purchaser the loss of the benefit of this warranty, since it is constituting a direct and real interest to him.
24. The Bodum companies claim that Peter Bodum A/S, the original purchaser, continues to

market the Bodum brand products in all Scandinavian countries, even though it sold all the shares of the company “les Anciens Établissements Martin” to Bodum France in 2008, and that it has thus suffered from a direct and real loss as a result of the marketing by the respondent of the disputed products in breach of the competition clause included in the assignment contract of 1991.

25. Bodum Holding AG claims that owning 100% of the companies of the Bodum group allows it to hold all the shares and assets of its subsidiaries, so that it must be considered as the final purchaser of the shares of the company “Les Anciens Établissements Martin” and shall be found admissible entitled to act in that capacity.

Thereupon,

On Peter Bodum A/S admissibility to act

26. Article 31 of the Code of Civil Procedure states that the action 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 attributes the right to act only to those persons it qualifies to raise or challenge a claim, or to defend a particular interest.
27. Under Article 122 of the Code of Civil Procedure, grounds of lack of right to act, such as lack of standing and interest in bringing proceedings, statute of limitations, specific deadlines or *res judicata*, are grounds to have an adversary's claim declared inadmissible, without consideration of the merits.
28. Lack of legal interest in bringing proceedings shall result in the inadmissibility of the claim. It is not subject to the prior demonstration of the merits of the action.
29. It appears from the consideration of the case that Peter Bodum A/S considers to directly enforce the legal warranty of title owed by its seller, the company “Les Anciens Etablissements Martin”, in the context of the sale of the shares of this company, the rights of which have been the subject of successive assignments within the companies of the Bodum Group.
30. This action is based on the legal obligation of the seller to warranty the title for the benefit of the buyer, as provided for by the provisions of Articles 1625 and 1626 of the Civil Code, which provide in particular that the seller is obliged by law to guarantee the buyer against eviction that he suffers in whole or in part in the item sold, or from the alleged encumbrances on that item, that were not declared at the time of sale.
31. The warranty of title is the consequence of the obligation to ensure the peaceful possession of the sold item.
32. It is established and undisputed that Peter Bodum A/S is no longer the owner of the shares of “Les Anciens Etablissements Martin” relating to the "Chambord" model, which it sold on February 10th, 2009 to Bodum France, who dissolved this company and benefitted of the transfer of whole of its assets.
33. Subsequently, Bodum France SA transferred the rights to the model to PI Design AG in 2014, which holds the intellectual property title.
34. Although Peter Bodum A/S marketed the products corresponding to the model sold and was a party to the Danish proceedings in which Mr [A] appeared to certify the existence of an authorization to copy the Chambord model to the benefit of Household Articles, the Court

notes that Peter Bodum A/S acts in its capacity as original purchaser against the original seller in the context of the legal guarantee in respect of the assignment of shares of 1991 so that the circumstance that it is a distributor of Chambord coffee machines is inoperative to justify its interest in bringing proceedings on the basis of that action.

35. In this respect, if the intermediary seller does not lose the right to bring an action on the ground of warranty of title when it is in his direct and real interest, this solution implies that the intermediary seller has a direct and real interest in taking personal action against his own seller to obtain compensation for his loss, for example when he has been ordered on the basis of the warranty of title to reimburse the price of a good sold to its purchaser and to pay damages and interest.
36. It is not the case here, as the contractual liability of Peter Bodum A/S does not currently appear to be challenged in the context of these assignments, for having sold a model that does not meet the expectations of the sub-purchasers, for which the original seller would have to bear the damaging consequences as part of its obligation under the warranty of title.
37. It cannot simply claim that Mr [A], by his statements before the foreign courts, harms the exercise of the right assigned, in this case the "Chambord" model, that it previously resold to a company of the Bodum group, to justify that the warranty of title would be due by its seller as long as its own guarantee has not been sought and that it did not receive any claim on this basis.
38. It follows that Peter Bodum A/S does not establish that it has a real and direct interest in personally enforcing its own seller's warranty of title, so that its action against Mr [A] is inadmissible.

On Bodum Holding AG admissibility to act

39. It follows from the foregoing that Bodum Holding AG, the parent company of the Bodum group, also cannot rely on the existence of an interest in bringing proceedings to claim the warranty of title, being observed in addition that as a shareholder in its subsidiaries, it cannot substitute for them, or this would disregard the rule that 'no one pleads by public prosecutor', to bring in their stead an action which would enable them to obtain compensation for personal harm resulting from the harm suffered by its subsidiaries alone.
40. In the light of the above, the decision of the court finding Peter Bodum A/S and Bodum Holding AG inadmissible shall be upheld.

On the abusive nature of the Bodum companies' action

41. Mr. [A] requests the court to uphold the judgment of first instance in that it ruled against the appellant companies for abuse of proceedings pursuant to Article 32-1 of the Code of Civil Procedure. He considers that the appellant companies have used the French justice system to cause him moral harm and financial pressure. Mr. [A] submits that the court did not adequately quantify the damage suffered in awarding damages in the sum of EUR 10,000 and requests that this sum be raised to EUR 20,000.
42. In response, the Bodum companies argue that the right to act is a fundamental principle necessary to any democratic society and that only inadmissible conduct can be sanctioned. The mere failure of the litigant cannot constitute a fault likely to engage his liability. Any judicial conviction for abuse of procedure must be strongly motivated, which the Court did not do by merely holding that the claims of the Bodum companies exerted financial pressure and moral harm without characterizing the existence of a fault or providing proof of a harm.

Thereupon

43. According to Article 32-1 of the Code of Civil Procedure, "*anyone who acts in a dilatory or abusive manner may be condemned to a civil fine of up to 10,000 euros, without prejudice to any damages that may be claimed*". Damages are then awarded on the basis of Article 1240 of the Civil Code.
44. The exercise of a legal action may only constitute an abuse of right in special circumstances that render it wrongful.
45. In this case, the Court held that the Bodum companies' claims abusively put Mr. [A] under financial pressure and caused him moral harm in view of the importance of the claims made and unjustified.
46. It appears from the consideration of the case that the Bodum companies brought an action against Mr. [A] seeking its prohibition in his capacity as seller from asserting that the company "Les Anciens Etablissements Martin" had granted a license or any other authorization to Household Articles Limited or to its successors, on the Chambord press coffee maker model, subject to a fine of EUR 1,000,000 per established infringement reduced to EUR 1,000 on appeal and to order it to pay damages in the sum of EUR 1,000,000.
47. That action, the inadmissibility of which has been upheld by this Court, was brought to deter Mr [A] from testifying in current or future proceedings and to make him a threat to his future business throughout the proceedings, which lasted more than two years.
48. It follows from the foregoing that Peter Bodum A/S, by bringing the matter before the Court and Bodum Holding, by voluntarily engaging in these proceedings in which they did not justify their interest in bringing proceedings, intended to exert significant financial pressure on Mr. [A], given the amounts claimed, thus characterizing wrongful conduct which necessarily caused moral damages to Mr. [A], correctly assessed by the first judges at the sum of EUR 10,000.
49. The decision shall therefore be fully upheld.

Costs and expenses

50. The costs of the proceedings and procedural compensation have been correctly settled by the Commercial Court in its judgment of November 6th, 2017.
51. At this court level, Peter Bodum A/S and Bodum Holding AG, the losing parties, shall be ordered *in solidum* to pay the costs of the appeal.
52. They shall also be ordered *in solidum* to pay Mr [A], who had to incur legal fees and expenses to assert his rights, the total sum of EUR 7,000 pursuant to Article 700 of the Code of Civil Procedure.
53. The claim from Peter Bodum A/S and Bodum Holding AG under Article 700 of the Code of Civil Procedure shall be dismissed.

IV- ON THESE GROUNDS, THE COURT HEREBY

1. UPHOLDS the judgment of the Paris Commercial Court of November 6, 2017 in all its provisions;

2. ORDERS *in solidum* Peter Bodum A/S and Bodum Holding AG to pay Mr. [A] the total sum of EUR 7,000 euros pursuant to Article 700 of the Code of Civil Procedure;
3. DISMISSES Peter Bodum A/S and Bodum Holding AG's claims under Article 700 of the Code of Civil Procedure brought against Mr [A];
4. ORDERS Peter Bodum A/S and Bodum Holding AG in solidum to pay the costs of the proceedings to be recovered in accordance with Article 699 of the Code of Civil Procedure.

The Clerk
Clémentine GLEMET

The President
François ANCEL