

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE
PARIS COURT OF APPEAL
INTERNATIONAL CHAMBER
Division 5 - 16
JUDGMENT OF 26 FEBRUARY 2019

(N° /2019, 17 pages)

General Directory Entry Number: **RG 18/27181**– N° Portalis 35L7-V-B7C-B62MX

Decision referred to the Court: judgment of 15 November 2018 – Paris Commercial Court - RG No J201800051

APPELLANTS:

Mr. [A]

Domiciled [...]

Born on [...]

Managing director

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

Having as litigator ..., member of the Bar of [...]

[B], a public limited company incorporated under Luxembourg law

Having its registered office at [...]

Registered in the trade and companies registry of [...]

Represented by its legal representatives Mr. [A]

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

Having as litigator ..., member of the Bar of [...]

[C], a company under liquidation ordered by judgment of the Paris Commercial Court dated June 13th, 2017,

Having its registered office at [...]

Registered in the trade and companies registry of [...]

Represented by [...] acting as liquidator of the company [...]

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

Having as litigator ..., member of the Bar of [...]

RESPONDENTS:

[D],

Having its registered office at [...]

Registered in the trade and companies registry of [...]

Represented by its legal representatives [...]

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

Having as litigator ..., member of the Bar of [...]

[E], a company incorporated under Japanese law
Having its registered office at [...]
Registered in the trade and companies registry of [...]
Represented by its legal representatives [...]

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

[F], a public limited company incorporated under Luxembourg law
Having its registered office at [...]
Represented by its legal representatives [...]

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

COURT COMPOSITION

The case was heard on January 22th, 2019 in open court, before the Court composed of:

[...], President
[...], Judge
[...], Judge

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

Clerk at the hearing: [...]

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 [...], President and by [...], Clerk to whom the minute was delivered by the signatory judge.

I — Facts and Proceedings

1. Mr. [A], of French nationality, presents himself as the founder and manager of design agencies for the conception, realization and marketing of products for various markets and in particular the medical industry.
2. [B] is a public limited holding company under Luxembourg law, of which Mr. [A] is an "administrator", operating in the field of design and functional furniture.
3. [C] is a company incorporated under French law specialized in the design and distribution in France of podiatry products, of which Mr. [A] was the Chairman. On June 13th, 2017 it was subject to compulsory liquidation proceedings, [...] having been appointed as liquidator.

4. [E], [D] and [F], hereinafter referred to as "Group (G) companies", managed by [...], are part of "Group G", which is specialized in the design and sale of dental products.
5. [E] is a company incorporated under Japanese law, which presents itself as the parent company of Group (G).
6. [D] is a simplified joint-stock company, registered in the trade and companies registry of [...], specialized in the design and sale of dental products.
7. [F] is a holding company incorporated under Luxembourg law, the purpose of which is to unify the sales, marketing and logistics of products [G] on the European market.
8. Mr. [A] and group [G] were in commercial relations since 1999, group [G] having entrusted him with the development of certain products. In particular, he held the position of [D] 's Managing Director and [C]'s and [H]'s Chairman , as well as of [I] (a German subsidiary of group [G]), at the time when these companies were subsidiaries of group [G].
9. On April 9th, 2014, pursuant to a share purchase agreement (SPA), [E], [D] and [F] agreed to assign to (B), "*in the presence of Mr. [A] and [J]*", all their shares in [C], [H] and [I] for a sum of EUR 1,900,002 payable in three installments: EUR 1,500,002 paid on the date of signature on April 9th, 2014; EUR 200,000 paid on April 30th, 2015 and EUR 200,000 paid on April 30th, 2016.
10. After the conclusion of three amendments aimed at postponing the date of the achievement of the assignment, [E], [D] and [F] on the one hand, and [B] and [C] (the latter for the acquisition of [I]'s shares) on the other hand, "*in the presence of Mr. [A] and [J]*" confirmed the assignment by deed dated September 15th, 2014 ("Confirmation and Reiterative Agreement") under the terms of which the payment conditions have been amended as follows:
 - an initial payment of EUR 1,000,002 made on the day of signature, i.e. September 15th, 2014;
 - the balance of EUR 900,000 payable in 3 installments of EUR 300,000, on July 30th, 2015, July 30th, 2016 and July 30th, 2017.
11. After the resignation of Mr. [A] from his position as [D]'s Managing Director, it appeared that [H], [C] and [J] (also managed by Mr. [A]) still owed [D] various sums in respect of unpaid advances and product orders.
12. On 27 February 27th, 2015, Mr. [A] sent a summary letter to Mr. [...] listing the sums owed by these three companies to [D] for a total amount of EUR 965,628.26.
13. On March 31st, 2015, a loan agreement was entered into between [D] and [B], which became the assignee of the aforementioned receivables, under the terms of which [D] granted [B] a loan of EUR 913,909. This agreement provides in Article 9 a clause conferring exclusive jurisdiction on the Court of First Instance of Utsunomiya in Japan.
14. Under the terms of a rider No. 4 signed on July 31st, 2015 to the share purchase agreement of April 9th, 2014 (SPA), a new schedule was agreed between the parties, providing for the postponement of the payment of the first installment (EUR 300,000) initially scheduled for July 30th, 2015 to June 30th, 2016 and the other two installments on July 31st, 2016 and July

31st, 2017. This rider also stipulates in clause 1.1.2 that "*Mr. [A] guarantees to [E] in an absolute and unconditional manner the immediate payment by the purchaser of all debts that have become due*".

15. Since [B] did not pay interests due in the first half of 2016, by letter dated May 24th, 2016 reiterated on June 15th, 2016 [D] gave formal notice to [B] and Mr. [A] (at the address of his personal residence at [...]) to pay the sum of EUR 932,040.27 representing the outstanding balance due under the loan granted on March 31st, 2015.
16. Subsequently, by letter dated July 12th, 2016 [D] gave formal notice to [C], [B] and Mr. [A] to pay the sum of EUR 313,931 under the share purchase agreement (corresponding to the due date of June 30th, 2016 in addition to interests).
17. By letter dated November 4th, 2016 [D], relying on undertaking to guarantee entered into pursuant to clause 1.1.2 of rider no. 4 to the share purchase agreement, requested payment from Mr. [A] of the sum of EUR 900,000.
18. By letter dated November 7th, 2016 [D] also gave formal notice to [B] and Mr. [A] to pay the sum of EUR 913,909.40 in accordance with the loan agreement.
19. Considering that they had been victims of fraudulent misrepresentation linked to the lack of information on the real financial situation of [C] and [H] at the time of their takeover, [C] and [B], by writ of summons of January 27th, 2017 registered under the number RG [...], sued [D], [E] and [F] before the Paris Commercial Court seeking that they be ordered to pay damages in the sum of EUR 2,522,909.40.
20. Furthermore, by writ of summons of February 7th, 2017 registered in the court's general directory under number RG [...], [C], [B] and Mr. [A] sued [D] and [F] before the Paris Commercial Court to seek an order ruling the loan agreement of March 31st, 2015 null and void. By writ of summons of February 23rd, 2017 registered in the court's general directory under number RG [...] [D] and [F] sued [C] and [B] before the Paris Commercial Court to seek an order that they pay the sum of EUR 900,000, in addition to interest pursuant to the share purchase agreement and its riders.
21. Similarly, by writ of summons served by bailiff on February 24th, 2017 registered under number RG [...] [D], [F] and [E] sued Mr. [A] before the Paris Commercial Court in order to seek an order ruling that the guarantee undertaken by Mr. [A] in rider No 4 is valid and order him to pay the sum of EUR 900,000.
22. Finally, [D], by a writ of summons dated March 13th, 2017, requested the appearance of Mr. [A] and [B] before the Utsunomiya District Court in Japan in order to have them ordered to pay the sum of EUR 932,040.47 pursuant to the loan agreement. The proceedings are pending before the Utsunomiya District Court.
23. By two judgments dated June 13th, 2017 the Paris Commercial Court opened winding-up proceedings in respect of [C] and [...] (formerly (H)) and appointed [...] taken in the person of [...] as liquidator.
24. In the proceedings registered under number RG [...], [D], [F] and [E] raised, in *limine litis*, the lack of jurisdiction of the Paris Commercial Court relating to the claim for annulment of the loan agreement in favor of the Court of First Instance of Utsunomiya.

25. By judgment dated November 15th, 2018 the Paris Commercial Court joined the various proceedings referred above, but found it has no jurisdiction to hear any application relating to the loan agreement, in view of the jurisdiction clause in favor of the Utsunomiya Court of First Instance in Japan, and referred the parties to better lodge their claim on this point, and ordered jointly and severally [C], [B] and Mr. [A] to pay [D], [F] and [E] each the sum of EUR 3,000 in accordance with Article 700 of the Code of Civil Procedure.
26. [B], [C] and Mr. [A] appealed this judgment by a notice of appeal dated November 30th, 2018.
27. After having been authorized to do so by order dated December 17th, 2018 [B], [C] and Mr. [A] sued group (G) companies on December 27th, 2018 before the court of appeal .
28. At the end of the hearing, the court of appeal requested the parties to file post-hearing submissions as regards the possible application to the present dispute of Regulation (EU) no 1215/2012 of the European parliament and of the council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and its impact on the dispute.

II — Claims of the parties

29. **According to their latest submissions sent electronically on January 21st, 2019, Mr. [A], [B] and [C] request the Court, in accordance with Articles 42 et seq, 327 et seq and 367 et seq of the Code of Civil Procedure, and Articles 1165 et seq of the Civil Code, to:**

OVERTURN, the judgment undertaken, in that it :

- found having no jurisdiction to hear any claim relating to the loan agreement in view of the jurisdiction clause in favor of the Utsunomiya District Court in Japan and referred the parties to better lodge their claims on this point;
- ordered jointly and severally [C], represented by [...], taken in the person of [...] in his capacity as liquidator, the Luxembourg company [B] and Mr. [A] to pay [D], [F] and [E] each the sum of EUR 3,000 under Article 700 of the Code of Civil Procedure;

RULING AGAIN,

Principally

RULE that Mr. [A] is not bound by the jurisdiction clause ,

As a result,

RULE that the Paris Commercial Court has jurisdiction to hear any claim relating to the loan agreement,

In the alternative

RULE that the jurisdiction clause is deemed unwritten,

As a result,

RULE that the Paris Commercial Court has jurisdiction to hear any claim relating to the loan agreement

More subsidiarily

RULE that the claim relating to the nullity of the loan agreement is indivisible from the claims lodged in the proceedings RG 2017/015149, RG 2017/015147, RG 2017/023254, RG 2017/029051 and RG 2017/053391,

As a result,

RULE that the Paris Commercial Court has jurisdiction to hear any claim relating to the loan agreement,

IN ANY CASE

DISMISS [D], [F] and [E]'s counterclaims to order [B], [C] and Mr. [A] to pay the sum of EUR 10,000 for abuse of procedure.

ORDER [D], [F] and [E] to pay [B], [C] and Mr. [A] the sum of EUR 10,000 "*pursuant to Article 699 of the Code of Civil Procedure*" and to bear the entire costs of the proceedings, including the megal fees of [...], in accordance with Article 699 of the Code of Civil Procedure.

30. According to post-hearing submissions sent electronically on February 11th, 2019, [C], [B] and Mr. [A] claim that the provisions of Regulation No 1215/2012 relating to prorogation of jurisdiction, *lis pendens* and related actions are not applicable to the present dispute, since the clause conferring jurisdiction designates a third State to the European Union, so that Article 4 of that Regulation, which refers to the jurisdiction of the court of the defendant's domicile, should be applied.

31. **According to their latest submissions sent electronically on January 14th, 2019, the group [G] companies request the Court, in accordance with Articles 74, 75, 42, 48, 101 and 367 of the Code of Civil Procedure, to:**

UPHOLD the judgment of the Paris Commercial Court dated November 15th, 2018 in all its provisions and in particular in that it :

- Ruled that it does not have jurisdiction to hear any claim relating to the loan agreement in view of the jurisdiction clause in favor of the Court of First Instance of Utsunomiya in Japan and the connection existing between the French and Japanese proceedings relating to the loan agreement;
- Referred [B] and Mr. [A] to the Japanese courts already seized with regard to the loan agreement;
- Ordered Jointly and severally [C], represented by [...], taken in the person of [...] in its capacity as liquidator, te public limited company under Luxembourg law [B], and Mr. [A] to pay [D], [F] and [E] each the sum of EUR 3,000 under Article 700 of the Code of Civil Procedure;

If by extraordinary, the Court of appeal overturns the judgment in any of the challenged provisions, it is requested, ruling again, to :

RULE that the French courts, and more specifically the Paris Commercial Court, has no jurisdiction to hear the claims relating to the loan agreement in view of the clause

conferring jurisdiction to the Court of First Instance of Utsunomiya in Japan, the connection between the cases and the divisibility between the proceedings relating to the SPA and those relating to the loan agreement;

REFER [B] and Mr. [A] to lodge their claims with the Japanese courts already seized;

In the alternative

DECLINE JURISDICTION AND REFER THE PARTIES to the Court of First Instance of Utsunomiya (Japan), which has sole jurisdiction over the loan agreement application in view of the connection between the loan agreement proceedings raised in the Paris Commercial Court and the proceedings currently pending before that court;

In the further alternative, if the Court overturns the judgment by way of an extraordinary decision and finds that Mr. [A] is not bound by the jurisdiction clause ,

FIND that Japanese courts have jurisdiction over [B] and [D] and that this is not disputed;

ORDER the disjunction between the two instances, the one relating to the execution of the contract between [B] and [D], on the one hand, and the other one relating to the guarantee given by Mr. [A] under the loan agreement, on the other hand,

REFER [B] to the Japanese courts already seized ;

FIND that Mr. [A] has not lodged any ras regards the loan agreement.

In any event,

ORDER [B], [C] and Mr. [A] jointly and severally to pay [D], [E] and [F] the sum of EUR 15,000 under Article 700 of the Code of Civil Procedure, as well as the entire costs of the proceedings, in addition to damages in the sum of EUR 10,000 for abuse of procedure.

32. According to post-hearing submissions sent electronically on February 7th, 2019, group (G) companies conclude that Regulation 1215/2012 is inapplicable with regard to the clause conferring jurisdiction to a third State.

III — PLEAS OF THE PARTIES

33. In support of their claims, [B], [C] and Mr. [A] submit in substance that :

- The clause conferring jurisdiction is unenforceable, in accordance with Article 1165 of the Civil Code, against Mr. [A] since the loan agreement was concluded exclusively between [D], a company under French law, and [B], a company under Luxembourg law, it being specified that, although Mr. [A] signed that agreement, he did so only in his capacity as [B]'s president and not in his own name. In this respect, they contest the reading of Article 5.2 by group [G] companies interpreting it as a guarantee by Mr. [A], whereas this article does not refer to a debtor and a creditor but to a borrower and a lender and does not concern "the compliance by the debtor with his obligations" but the payment of the borrower's debts.
- The clause conferring jurisdiction is deemed unwritten pursuant to Article 48 of the Code of Civil Procedure as Mr. [A] is not a trader and has acted as legal representative of the public limited company [B]. They further argue that the mere difference in nationality of the parties cannot be a sufficient or necessary element to characterize an international dispute and that, in the present case, group [G] companies do not, in any way, demonstrate the international nature of the dispute relating to the loan agreement,

the dispute relating to this contract having a connection only with the French legal system and not being connected to Japan by any foreign element since it provides for the application of French law and forms part of an assignment and commercial relationship involving companies [C] and [H] (now [...]). ...) and [D], which are all French companies.

- Mr. [A] has the French nationality and can rely on Article 15 of the Civil Code, has never waived the right to be sued before a French court, and all the more so in favor of a particularly remote geographical jurisdiction whose language he neither speaks nor understands.
- A clause conferring jurisdiction is inoperative as soon as there is indivisibility between the claims and this indivisibility, which is assessed in the light of the risk of conflicting decisions and the identity of the subject matter of the claims, makes it possible to confer jurisdiction for the whole on the same court, even if one of them comes under the exclusive jurisdiction of another civil court. They specify that the challenge to the validity of the loan is part of the overall dispute relating to the sale of shares in [C] and [H] (now [...]).) in 2014 and opposing, on the one hand, group [G] companies and, on the other hand, [C], [B] and Mr. [A], since [D] maintains that the loan would be subsequent to the sale to [B] of the debts it held against [C] and [H] (now [...]). .;) so that, by means of this loan, [D] attempted to charge [B] and now Mr. [A] part of this intra-group liability that arose prior to the assignment.
- There is a risk of conflicting decisions if, on the one hand, the Paris Commercial Court grants [C] and [B]'s claim for compensation for fraudulent misrepresentations concealing the intra-group liabilities and, on the other hand, the Court of First Instance of the district of Utsunomiya in Japan orders Mr. [A] and company [B] to pay the sum of EUR 932,040.47 corresponding to this same liability.
- There is no justification for conferring jurisdiction to a Japanese court since the parties to the proceedings are not of Japanese nationality, the loan agreement does not provide for the application of Japanese law but of French law and the purpose of the contract is the granting and repayment of a loan which would have been granted by [D] to [B].

34. In response, in support of their claims, group [G] companies argue in substance that :

- The clause conferring jurisdiction inserted in the loan agreement signed on March, 31st 2015 between [D], [B] and Mr. [A] as a guarantor and manager of [B] and to which [F], [E] and [C] are not parties, is valid and prevails over the rules of territorial jurisdiction, it being specified that the restrictions provided for in Article 48 of the Code of Civil Procedure are inapplicable in the context of an international dispute concerning an international contract concluded between the French subsidiary of a Japanese company [D], and a Luxembourg company, [B], whose commitment is guaranteed by a French national domiciled in Belgium, Mr. [A], concerning the repayment of trade liabilities between these companies.
- The status of trader is in no way required in the context of an international contract, so that Mr. [A] cannot escape the application of that clause on the ground that he does not have the status of trader. They add that Mr. [A], a well-informed professional, has indeed entered into an undertaking by signing and ratifying the loan agreement, and that he has also ratified the jurisdiction clause provided for therein, which is therefore fully enforceable against him, which is the result of the common intention of the parties.

- Mr. [A] is bound by the jurisdiction clause provided for in the loan agreement in view of the clear will expressed by the latter to guarantee [B]'s undertakings and thus by signing this agreement both in his capacity as debtor [B], referred to on the signature page as "Borrower", and in his capacity as personal guarantor (Mr. [A], as (B)'s Chairman, designated on the signature page of the agreement as "Guarantor") it being specified that when a third party ratifies the contract, he becomes retroactively bound by it and by the jurisdiction clause stipulated therein. They add that the ratification of jurisdiction clause entails a waiver of the French courts' jurisdiction, so that [B] and Mr. [A] cannot claim to benefit from Article 15 of the French Civil Code.
- The loan agreement is not directly related to the sale of shares in [C], [H] and [I] since it concerns the reimbursement of payments or cash advances or unpaid orders to [D] made while Mr. [A] was managing the companies, before and after the sale.
- The dispute relating to the payment of the sale price pursuant to the SPA is completely independent from the loan issue, the existence of the debts assumed by [B] under this contract not being disputed and these debts having no connection with the share purchase agreement (SPA) or subsequent agreements, so that there is perfect divisibility and an absence of any risk of conflicting between the proceedings pending before the Paris Commercial Court relating to the SPA and the proceedings relating to the loan agreement.
- In the alternative, if the Court does not confirm the lack of jurisdiction of the Commercial Court and the French courts to rule on the dispute relating to the loan, there is an undeniable risk of conflicting decisions inasmuch as the Court of First Instance of Utsunomiya is already seized of and has accepted jurisdiction over a claim for performance of the contract whose validity has been challenged by the appellants before the Commercial Court in an artificial manner, so that it would be appropriate to uphold the Court's judgment and decline jurisdiction in favor of the Japanese court pursuant to Article 101 of the Code of Civil Procedure.
- If the jurisdiction clause was not enforceable against Mr. [A], given the validity of the jurisdiction clause between [B] and [D] (which is and has never been disputed), the Commercial Court has no jurisdiction to rule on the claim for nullity made by [B] (the appellants claiming that only [B] is a party to the loan and therefore the only one entitled to claim for nullity), so that the claim for nullity of [B]'s loan, which will be referred to the Japanese courts, should be disjoined and it shall be found that Mr. [A] does not have any claim under this agreement.

35. The Court refers, for a fuller statement of the facts and claims of the parties, to the decision referred and the above-mentioned submissions, pursuant to Article 455 of the Code of Civil Procedure.

IV - Reasons for the decision

On the applicable law,

36. It should be noted that the dispute concerns the nullity of a loan agreement concluded on March 31st, 2015 between [D], having its registered office at [...] and [B], having its registered office at [...].
37. Article 9.2 of this loan agreement contains a clause specifying that the agreement is subject to French law and Article 9.3 of the loan agreement contains a clause stipulating that "*Any dispute arising in connection with this agreement shall be under the exclusive jurisdiction of*

the Utsunomiya District Court, Japan in first instance".

38. If Article 25 of Regulation No 1215/2012 provides that "*If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State (...)*", this text is not intended to apply where the clause designates a court of a third State, as is the case here.
39. In these circumstances, since the application of Article 25 is precluded, the validity of the disputed clause must be assessed no longer on the basis of Regulation No 1215/2012, which is inapplicable as a whole, but on the basis of the applicable law, including its conflict of laws rules, at the place where the court seized sits, in spite of such a jurisdiction clause, as in the present case, the French law, the disputed contract being governed, moreover, by French law.

On the validity of the jurisdiction clause

40. Under Article 48 of the Code of Civil Procedure "*Any clause which directly or indirectly derogates from the rules of territorial jurisdiction shall be deemed not to be in writing unless it has been agreed between persons all of whom have contracted as traders and unless it has been specified in a very apparent manner in the undertaking of the party against whom it is directed*".
41. However, clauses prorogating international jurisdiction are in principle lawful in the case of an international dispute and where the clause does not defeat the mandatory territorial jurisdiction of a French court.
42. In the present case, the dispute concerns the validity of a loan agreement concluded between a company governed by French law and a company governed by Luxembourg law, and involves a natural person domiciled in [...], so that the international nature of the dispute is satisfied.
43. Likewise, that clause does not derogate from any mandatory rule of territorial jurisdiction which applies in the present case to determine the territorial jurisdiction of a court to rule on the validity and the repayment of a loan concluded between two companies and the guarantor.
44. It must therefore be held that the disputed jurisdiction clause is valid, since the appellants are not entitled, in the context of this international dispute, to rely on the alleged absence of trader's status of Mr. [A], who, moreover, is also [B]'s director, in order to challenge the validity of the clause.

On the enforceability of the jurisdiction clause against Mr. [A]

45. It should be noted that the disputed clause is inserted in Article 9.3 of the loan agreement entitled "Loan agreement", which is expressly concluded between "two" parties, [D] on the one hand and [B] on the other, and has two signatures, one of [D]'s president, Mr. [...], and the other one of [B]'s "president", Mr. (A), these two signatures being preceded by the following terms: "*In witness thereof, both parties have caused this agreement to be duly executed by their authorized representatives as below*".

46. However, Article 5 of the same agreement also stipulates that "*Mr. [A], President of the Borrower (hereinafter referred to as the "Guarantor") has determined that the implementation of a personal guarantee was in his personal and financial interest*" and that "*The Guarantor guarantees to the creditor absolutely and unconditionally that the debtor will comply with his obligations and pay immediately all debts which have become due, whether on the due date stipulated, in advance or for any other reason*".
47. The signature of Mr. [A] is also marked "Borrower, Guarantor" so that it is clear that he signed it in his capacity as representative of [B] in respect of the repayment of the loan granted to the latter and in his personal name in respect of the guarantee to which he granted a security pursuant to Article 5 of the same contract.
48. In the light of the foregoing, it must be held that the jurisdiction clause is indeed enforceable against Mr. [A], who is therefore not entitled to invoke Article 15 of the Civil Code, having thus waived the privilege of jurisdiction.

On the plea based on indivisibility with the proceedings pending before the Paris Commercial Court

49. Mr. [A], [C] and [B] have no merits in pleading indivisibility of the claims with the other proceedings pending before the Paris Commercial Court relating to the validity and/or performance of the share purchase agreement entered into on April 9th, 2014 and its various amendments.
50. These claims relate to a share purchase agreement entered into on September 15th, 2014, which has a separate purpose from the loan agreement entered into on March 31st, 2015, which relates to the repayment of unpaid advances and/or product orders between group (G) companies.
51. In addition, the outcome of these proceedings, even if they arise from the commercial relations between Mr. [A], [C] and [B] and group (G) companies, is neither related nor dependent on the outcome of the dispute relating to the loan agreement entered into on March 31st, 2015.
52. Thus, no indivisibility likely to lead to a risk of a conflicting decision has been established, it being furthermore specified that the jurisdiction of the Japanese court to hear claims brought under this same loan agreement against [B] is not called into question.
53. Consequently, the judgment of the Paris Commercial Court shall be upheld in that it found it has no jurisdiction to rule on the claims of [C], [B] and Mr. [A] concerning the nullity of the loan agreement of March 31st, 2015.

On the abuse of procedure

54. The exercise of a legal action is in principle a right and does degenerate into an abuse which may give rise to damages only in the event of a fault which may give rise to the civil liability of the perpetrator.
55. In the present case, group [G] companies shall be dismissed on that ground, failing to prove any fault or blameworthy negligence on the part of [C], [B] and Mr. [A], who may legitimately have misunderstood the extent of their rights, and to establish the existence of a

damages other than that suffered as a result of the costs incurred in their defence.

Costs and expenses

56. Costs, expenses and, the procedural indemnity has been settled precisely by the Commercial Court.
57. At this Court level, [C], [B] and Mr. [A], the losing parties, shall be ordered to pay the costs of the proceedings.
58. In addition, they shall be ordered *in solidum* to pay group [G] companies, which had to incur irrecoverable costs in order to assert their rights, compensation under Article 700 of the Code of Civil Procedure which fair overall sum is set at EUR 10,000.

ON THESE GROUNDS, THE COURT HEREBY

1. UPHOLDS the judgment of the Paris Commercial Court dated November 15th, 2018 in all its provisions;

Adding to it,

2. ORDERS *in solidum* [B], [C] and Mr. [A] to pay [D], [E] and [F] the sum of EUR 10,000 under Article 700 of the Code of Civil Procedure;
3. ORDERS *in solidum* [B], [C] and Mr. [A] to pay the costs.

The Clerk
[...]

The President
[...]