

Enforceable copies
issued to the parties on:

FRENCH REPUBLIC
IN THE NAME OF THE FRENCH REPUBLIC

COURT OF APPEALS OF PARIS

Pole 5 - Chamber 16

ORDER OF 30 JUNE 2020
APPEAL FOR CANCELLATION OF AN ARBITRAL AWARD

(no. 27/2020, 10 pages)

Registration number in the general directory: **RG no. 19/09729 - Portalis no. 35L7-V-B7D-B75DC**

Decision referred to the Court: arbitral award (matter no.) given on _____
by the arbitral tribunal under the aegis of the International Court of Arbitration
of the International Chamber of Commerce of Paris, composed of Mr. (), sole
Arbitrator.

APPLICANT OF THE APPEAL:

Mr. Z.
born on (...), of (...) nationality, residing at:

*Represented by Me (...), lawyer at the bar council of Paris, mailing box: having as
his pleading lawyer Me (...), lawyer registered at the bar council of Carpentras,*

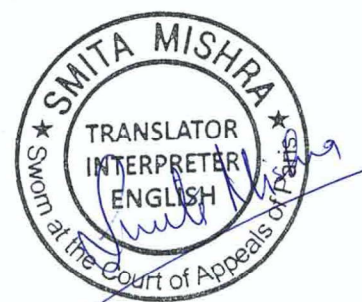
DEFENDANT:

**AXON ENTERPRISE, INC. (earlier known as TASER INTERNATIONAL
INC)**

An American company,

Having its registered office at: 17800 N. 85th Street, Scottsdale, Arizona - United
States of America

*Represented by Me (...), lawyer at the bar council of Paris, mailing box:
Having as its lawyer, Me (...), lawyer at the bar council of Paris, mailing box:*



COMPOSITION OF THE COURT:

Under:

- Article 4 of the law no. 2020-290 of 23 March 2020 of emergency to cope with the epidemic of covid-19;
- Order no. 2020-304 of 25 March 2020 concerning the adaptation of the rules applicable to the courts of judicial order ruling in non-criminal matters and to contracts of co-ownership management companies, notably its Articles 1 and 8;
- Order no. 2020-306 of 25 March 2020 as amended relating to the extension of expired deadlines during the health emergency period and adaptation of the proceedings during this period;

The matter was retained as per the procedure without hearing, the lawyers have expressly agreed to it.

The court composed as follows deliberated:

François ANCEL, President
Fabienne SCHALLER, Councillor
Laure ALDEBERT, Councillor

Court Clerk, during the arguments: Clémentine GLEMET

ORDER:

- ADVERSARIAL
- by making available of the order to the Court Clerk, the parties having been informed therefore beforehand under the terms stipulated in second paragraph of Article 450 of the Civil Procedure Code.
- signed by François ANCEL, President and by Clémentine GLEMET, Court Clerk to whom the original was handed by the signing magistrate.

I – FACTS AND PROCEEDINGS:

1. Mr. Z. introduces himself as the manager of the company SMP TECHNOLOGIES, a French company specialised in electric installation works.
2. The company AXON ENTERPRISE Inc. (hereinafter referred to as "AXON") introduces itself as an American company, earlier known as "TASER INTERNATIONAL", manufacturing and marketing of electroshock weapons, a weapon of fourth category, under the brand "Taser" and mainly intended for law enforcing agencies.



3. The company TASER INTERNATIONAL (that became "AXON") entrusted to SMP TECHNOLOGIES by a first contract dated 4 and 5 February 2005 the exclusive distribution of Taser products for France, then by a second contract dated 1 and 15 September 2010 the exclusive distribution of Taser products in nine African countries (Algeria, Morocco, Gabon, Togo, Niger, Burkina- Faso, Mali, Cameroon, Guinea-Conakry).

4. On 1 and 2 September 2010, a contract for professional services was also concluded between TASER INTERNATIONAL and " Z., SMP technologies" as a "Consultant". Under this contract, it is stipulated that *"the Consultant will be remunerated on the basis of commissions for the development of new businesses/accounts in France for the period beginning in January 2010 and ending 31 December 2011, at the rate of 8 % on all the sales executed and invoiced by the Company to the accounts acquired and served in France"*. Article 9 includes an arbitration clause referring to the Regulation of the International Chamber of Commerce in Paris and designating Paris as the seat of the arbitration.

5. Considering that AXON owed commissions to it under this contract, Mr. Z. approached the International Court of Arbitration of the International Chamber of Commerce of Paris on 5 April 2016, on the basis of Article 9 of the contract, requesting to convict this company to pay to it the sum of 884,574 Euros in payment of commissions, 93,118 Euros as lawyer's fees and the totality of the costs of proceedings.

6. In response, AXON requested to dismiss the requests of Mr. Z., 20,000 Euros of damages for abusive proceedings, 64,202 Euros for lawyer's fees and Mr. Z bearing the totality of the costs of proceedings.

7. On, after having given a first partial award on, to confirm its jurisdiction, the Arbitral Court of the International Chamber of Commerce dismissed the requests of Mr. Z. and sentenced him to pay to the company AXON the sum of 17,000 USD as costs and fees of the Arbitral Court and the administrative costs remaining due, as well as the sum of 38,534.20 Euros as "reasonable expenses incurred by the latter for its defence".

8. This award has been subject matter of an enforcement order on by the President of the First Instance Court of Paris.

9. The arbitral award and enforcement order were notified to Mr. Z. as per the bailiff's statement dated 2 April 2019.

10. On 2 May 2019, Mr. Z. seized the court with an appeal for cancellation against the arbitral award of and the enforcement order of



11. By an order dated 19 November 2019, the pre-trial judge dismissed the request of Mr. Z. of the provisional enforcement of the arbitral award of _____ and the enforcement order of _____.

12. Questioned on an appeal to the proceeding without hearing under Article 8 of the order no. 2020-304 of 25 March 2020, each of the parties, on 12 May 2020, expressly accepted that the matter be judged as per the proceeding without a hearing.

13. The parties were informed on 29 May 2020 that the decision would be given in accordance with the timetable fixed in the framework of the protocol of proceeding applicable before the International Chamber of Commerce, on 30 June 2020 by the above-mentioned judges.

II – CLAIMS OF THE PARTIES:

14. Under his latest pleadings communicated electronically on 29 April 2020, Mr. Z. requests the Court to be pleased to:

- Cancel the arbitral award given by the International Court of Arbitration of the International Chamber of Commerce of Paris on _____;
- Cancel the judgement on application for enforcement given on _____ by the President of the First Instance Court of Paris;
- Refer the parties before the International Court of Arbitration of the International Chamber of Commerce of Paris otherwise composed;
- Sentence the American Corporation AXON ENTERPRISE, INC to pay to Mr. Z. the sum of 30 000 € under Article 700 of the Civil Procedure Code;
- Dismiss AXON ENTERPRISE in all its claims.

15. Under its latest pleadings communicated by email on 7 May 2020, the company AXON requests the court, under Article 1520, 3° and 5° of the Civil Procedure Code, to:

- Dismiss Mr. Z. in all his requests;
- Dismiss the action seeking annulment filed by Mr. Z. against the arbitral award given or _____ by the International Court of Arbitration of the International Chamber of Commerce of;



- Sentence Mr. Z to pay to AXON ENTERPRISE, Inc. the sum of 20,000 Euros as damages for abusive proceedings;
- Sentence Mr. Z. to pay to AXON ENTERPRISE, Inc. the sum of 30,000 Euros under Article 700 of the Civil Procedure Code.

III – ARGUMENTS OF THE PARTIES:

16. **Mr. Z. considers** first of all that the arbitration court ruled without complying with the mission that was entrusted to it insofar as it disregarded its obligation to state reasons. It asserts that there does exist a contradiction of grounds between the partial award of 1 [redacted] that acknowledges its capacity as a party to the contract of professional services and the final sentence of 2 [redacted] that acknowledges that only the company SMP Technologies is the debtor of the commission of 8%. It adds that this contradiction is also brought to light in the reasons of the award. It reiterates that the contradiction of the grounds equals to absence of grounds. It adds that the motivation of the decisions results from the public policy on proceedings and that the annulment judge may cancel an award for defect of grounds in case of contradiction between its grounds and its means, insofar as this contradiction stands out from the award.

17. Mr. Z. also considers that the disregard by the arbitrator of his assignment also stands out in that the arbitration court abstained from applying the rules of the International Bar Association relating to the administration of proof in international arbitration, in particular its Article 9.5, that he had however declared as applicable by drawing no consequences from the refusal by AXON to his request to communicate the amount of real sales realised in France in 2010 and 2011 while considering that the petitioner was not entitled to claim the payment of any commissions whatsoever from the company AXON.

18. Mr. Z. then argues that the award is against international public policy due to:

- disregard by the arbitration court of a fraud during the conducting of the arbitral proceeding. He claims that providing falsified documents implies violation of international public policy on proceedings and that in the framework of communication of documents during an arbitral proceeding, a falsified email was provided by AXON, which should have led the arbitration court to dismiss this document, which it did not do;

- disregard of the principle of execution of agreements in good faith. He claims that AXON was of bad faith by providing a falsified copy of the email of 27 July 2010 and, after months of proceedings and request for communication of quarterly statements certified by an auditor, by providing a table made by an employee within the company, persisting in not making any effort of objectivation of the numbers thus provided;



- significant imbalance existing between the parties. He claims that the provisions of the Commercial Code have been recognised, in France, as coming under economic public policy and that it appears from the economy of the contract that Mr. Z. was the weaker party, this imbalance is found in the arbitration clause on which he does not have any control;

- deprivation of the right to access to a judge. Mr. Z. argues that as the weaker party in the professional services contract, the arbitration proceeding was imposed on him through an arbitration clause whose costs are disproportional to those of the proceedings before state courts to which his adversaries made him to derogate.

19. **In response, the company AXON claims** that the contradiction of grounds between the partial award of _____ and the final award of _____ and within this same award alleged by Mr. Z., which is, by the way, not established, is a criticism of the award on merits, which evades the control of the annulment judge. It argues in this respect that the contradiction of the grounds does not constitute absence of grounds.

20. AXON adds that the assignment of the arbitration court is limited by the arbitration agreement, the assignment instrument and the claims of the parties. It considers that in this case Mr. Z. does not specify how the arbitration court is not in compliance with its assignment as it appears from the arbitration clause stipulated in Article 9 of the professional services contract, the assignment instrument signed by both parties nor the claims of the.

21. Concerning the grievance from the failure to comply with the rules of administering proof enacted by the IBA, the company AXON emphasises that under the terms of the order of proceeding no. 5 of 14 December 2017, the arbitration court decided that it "shall draw" from the said rules but it never declared that it shall apply them. It adds that the arbitration court has admitted that it had justified of a "satisfactory reason" within the meaning of Article 9.5 thereof and reiterates that the content of the reasoning of the award is outside the annulment judge's powers.

22. Concerning the grounds for cancellation from the violation of international public policy, AXON considers that the acknowledgement and execution of the award of _____ that dismissed Mr. Z. for his requests for payment of commissions and besides sentenced him to partially reimburse his lawyers' fees and a part of the costs of the arbitration proceedings, does not run counter to the essential principles of French law.

23. It reiterates that this violation must be "flagrant, effective and definite" and considers that the grievances presented by Mr. Z. on this ground is ineffective.



24. It notably asserts that the fraud alleged by Mr. Z. is not characterised whereas the email sent on 27 July 2010 by Mr. Z. to Mr S., Chairman of the company Taser International is not falsified given that the arbitration court considered in the final award that none of the parties provided the proof that the emails presented in the arguments by the other party constituted falsified documents and dismissed both parties in their respective request to reject the documents. The company AXON also asserts that the arbitral award does not base itself on this email to dismiss Mr. Z. in his requests.

25. AXON adds that the alleged disregard of the principle of execution in good faith of the agreements on the basis on the above-mentioned email which is not falsified does not allow to characterise being contrary to international public policy which is assessed only with respect to the acknowledgement and execution of an award within the meaning of Article 1520, 5° of the Civil Procedure Code.

26. It finally specifies that the grievance on the basis of significant imbalance between the parties in the drafting and performance of the professional services contract of September 2010 cannot be a basis for a petition for annulment under Article 1520 (5°) of the Civil Procedure Code and that the alleged deprivation of right to access to a judge is not disregarded by the execution of the award sentencing him to partially reimburse the adverse lawyer's fees and reiterates that concerning an international contract, the arbitration clause is customary and that it has moreover instituted the seat of the arbitral court in France and not in Arizona, in favour of the French distributor.

VI - GROUNDS FOR THE DECISION:

On the grounds of annulment due to disregard by the arbitration court of its assignment (Article 1520 (3°) of the Civil Procedure Code);

27. Under Article 1509 of the Civil Procedure Code, *"the arbitration agreement may, directly or with reference to an arbitration regulation or the procedure rules, settle the proceeding to be followed in the arbitral court. / If the arbitration agreement is silent, the arbitration court settles the proceeding insofar as it is required, either directly or with reference to an arbitration regulation or proceeding rules"*.

28. In this case, the arbitration agreement inserted in the professional services contract stipulates that *"Any controversy or claim arising out of or relating to this agreement (...) shall be submitted to arbitration before and in accordance with the rules of the International Chamber of Commerce, International Court of Arbitration in Paris, France (...)"*.



29. The arbitration regulation of the International Chamber of Commerce (2012) is therefore applicable to the arbitration court and its Article 31 stipulates that the "award must be reasoned".

30. In doing so, the condition of reasoning of the award was included in the arbitrator's assignment such that if this reasoning is absent, the award may incur an annulment on the basis of Article 1520, 3° of the Civil Procedure Code, it being hereby specified that the control of the annulment judge concerns only the existence and not on the relevance of the reasoning of the award.

On the grievance of disregard of the assignment by the arbitrator due to a contradiction of grounds:

31. In this case, it must be pointed out that Mr. Z. absolutely does not argue that the arbitrator disregarded his assignment as limited by the subject matter of the litigation determined by the claims of the parties but more precisely that the award would be tainted with a contradiction of grounds, which according to him, would be equal to an absence of grounds of such nature as to incur annulment of the award.

32. However, the grievance from a contradiction of reasoning of the arbitral award, which cannot be considered as an absence of reasoning, necessarily constitutes a criticism of the award on merits which is beyond the annulment judge's powers except in the cases, defined by Article 1520 of the Civil Procedure Code, of violation of international public policy.

33. In this respect, it must be pointed out that the arbitration court effectively reasoned its decision under its paragraphs 177 et seq. to rule if Mr. Z. could be considered as a party to the professional services contract justifying that he may rely on the arbitration clause and therefore the jurisdiction of the arbitration court to rule on his claims, this court, after having expressly questioned on the "debtor of the commission of 8%" (cf. paragraph 188), however considered, under a reason resulting from its paragraphs 189 to 208, that only the company SMP Technologies was the debtor of the commissions for the payment of which Mr Z. requested in his favour.

34. Thus, the existence of this motivation allows to dismiss the grievance.

On the grievance of disregard of the assignment by the arbitrator due to non-compliance by the arbitrator of the applicable procedural rules:

35. If the disregard by the arbitration court of the procedure applicable before it chosen by the parties is likely to expose its award to annulment, such disregard must be established.

36. In this case, it appears from the award that the arbitration court, called to settle notably a request made by Mr. Z. to compel the company AXON to provide its statements of sales made in 2010 and 2011, decided to draw on the rules of the



International Bar Association, as the parties, consulted on this point, did not make any objection, as it appears from the paragraph 32 of the award which reiterates that this decision was taken by order of proceeding no. 5 of 14 December 2017 and that it concerned the requests for provision of "respective documents of the petitioner and the defendant in the framework of the present arbitration".

37. It also appears from the award that by order no. 6 dated 28 February 2018, the arbitration court ordered AXON to communicate to Mr. Z. *"a quarterly statement of products sold in France and those delivered in France with the indication of the date of the order by the client and the date of invoicing by Taser International certified by an auditor or a statutory auditor"*.

38. It is not contested that if the statements were provided, these documents were not "certified by an auditor or a statutory auditor" as indicated in the order of proceeding such that Mr. Z. requested the arbitral court to apply the rule of presumption against Article 9.5 of the IBA rules ("adverse inference") according to which *"If a Party, without satisfactory reason, does not provide any Document for which another Party has requested to provide and who does not make an objection within the granted period or does not provide any Document which was demanded to be provided by the arbitration court, the arbitration court may then infer that this Document is contrary to the interests of that Party"*.

39. Mr. Z. indeed argued before the arbitrator that since AXON did not fulfil its obligation, the calculation of the sums due must have been made on "projections".

40. However, far from not applying the procedure that was fixed in agreement with the parties, it must be noted on the contrary that the arbitration court ruled on its application in this case.

41. The arbitration court considered that the fact the documents provided were not certified by an auditor was not of such nature as to justify the consequence desired by Mr. Z. insofar as AXON had provided evidence *"of not being able to provide the documents certified by its auditor"*.

42. Thus, in the paragraph 216 of its award, the arbitration court indicates that it *"appears from the legal consultation provided in the arguments by the Respondent (consultation of the American law firm SNELL & WILMER, Respondent exhibit no. 42) that the American regulation prohibits auditors from providing expertise services for the companies that they manage in relation to proceedings (Article 2-01(c) (4) of the SEC regulation). The Respondent provides evidence that it was not able to get its quarterly sales statements certified by its auditor, it being certified that the request for providing the quarterly statements certified by "an auditor" necessarily refers to the auditor of the controlled company (in this case AXON ENTERPRISE, INC.) and not any chartered accountant firm whatsoever"*.



43. Based on these elements, the arbitration court assessed the performance by a party to injunction that was made to it to communicate documents regarding the documents that were finally provided by it, and it is not for the annulment judge to question this decision under the guise of a grievance from disregarding his assignment, such that the ground for annulment will be dismissed.

On the ground of annulment on the basis of being against international public policy (Article 1520 (5°) of the Civil Procedure Code);

44. Under Article 1520,5° of the Civil Procedure Code the petition for annulment is opened if the acknowledgement or enforcement of the award is against international public policy.

45. The court's verification should not be on the assessment that the arbitrator made of the rights of the parties but on the solution given to the litigation by the arbitration court, the annulment of award being incurred if its acknowledgement or enforcement is against the French conception of international public policy, which under Article 1520,5° mentioned above, implies all the rules and values which the French legal order cannot disregard, even in international situations.

On being against international public order due to alleged fraud:

46. Mr. Z. argues that the award must be set aside insofar as AXON provided "a falsified email" during the proceeding (email of 27 July 2010) and that the arbitration court dismissed his request to dismiss this exhibit.

47. It must be reminded that if the procedural fraud may be sanctioned with respect to the international public policy, it supposes notably that falsified documents were provided, that misleading testimony was provided or that the exhibits in the interest of the solution to the litigation was fraudulently hidden from the arbitrators, such that the decision thereof was surprised.

48. In this case, it appears from the exhibits submitted that during the arbitral proceeding, a debate arose between the parties on the authenticity of the litigious email of 27 July 2010, each of the parties accusing the other of providing a falsified version of this email.

49. The arbitration court under paragraph 154 of its award considered "*that none of the parties provides evidence that the emails submitted in the arguments by the other party constitute falsified exhibits*" and therefore dismissed the parties for their respective requests for dismissal of these documents.

50. The alleged falsified nature of these documents underwent a debate between the parties during the arbitral case, the decision of the court was not surprised by a fraud but proceeds from an assessment of the exactitude and scope of the documents that were submitted to it. It is not for the court to revise this assessment.



51. The grievance will be rejected.

On being against international public order due to disregard of the principle of execution of agreements under good faith:

52. Even if an award that gives effect to a contract executed in violation of the principle of good faith, may characterise a violation of international public order, which is not substantiated, it must be pointed out that in this case the grievance invoked does concern the principle of disregard of execution of an agreement in good faith but the procedural attitude with which AXON is reproached by the fact of alleged provision of a falsified document and a late submission of documents, considered incomplete.

53. However, as indicated above, the evidence of provision of a falsified document is not established and no disloyalty of AXON is characterised, in the provision of these documents whose relevance for ruling on the requests made to it was assessed by the court.

54. This grievance will therefore be rejected.

On being contrary to international public order due to existence of a significant imbalance between the parties:

55. The significant imbalance of the business relationship, which has not been proved that it may be contrary to international public order and which results, according to Mr. Z. from the general economy of the contract, cannot be characterised by the only reference to the content of the arbitration clause whereas to characterise such imbalance supposes a concrete and overall assessment of the contract to which Mr. did not indulge.

56. This grievance will therefore be rejected.

On being against international public order due to deprivation of access to a judge:

57. By this grievance, Mr. Z. contests, under the guise of a violation of international public order, the validity of the arbitration clause and therefore that of the arbitrator's jurisdiction, except that he did not raise this point before the arbitration court and that he did not expressly make and articulated in the framework of this petition for annulment.



58. Moreover, it must be pointed out that the arbitration procedure was initiated by Mr. Z. in 2016 and that a partial award on the jurisdiction was given by the arbitration court on 13 September 2017 who, on this point, agreed with Mr. Z. who argued the jurisdiction of this arbitration court to rule on his requests and therefore necessarily the validity of the arbitration clause.

59. In the light of these elements, the grievance will be rejected.

60. as all the ground raised for the annulment of the award, and therefore of the enforcement order, all the requests of Mr. Z. are dismissed.

On the counterclaim of AXON

61. Filing a legal action constitutes, in principle, a right and may turn into an abuse that may give rise to damages only in case of a fault that is likely to engage the civil liability of its author.

62. In this case, AXON will be dismissed in its request in this regard, in the absence of evidence provided by it of any fault or reprehensible levity on the part of Mr. Z., who may have legitimately misinterpreted the scope of his rights and to establish the existence of a harm other than that suffered due to the expenses incurred for defending himself.

On the costs and expenses:

63. Mr. Z, the losing party is convicted for expenses.

64. Moreover, he must be convicted to pay to the company AXON, who had to incur irrecoverable expenses to assert its rights, an indemnity under Article 700 of the Civil Procedure Code which is fair to fix at the sum of 30,000 Euros.

IV – MEANS:

On these grounds, the court:

- 1 - Dismisses the appeal for annulment made by Mr. Z.;
- 2 - Dismisses the company AXON ENTERPRISE Inc. in its request made for abusive proceedings;
- 3 - Sentences Mr. Z. to pay to AXON ENTERPRISE Inc. the sum of 30,000 Euros under Article 700 of the Civil Procedure Code;



4 - Sentences Mr. Z. for the costs.

Court Clerk

The President

C. GLEMET

F. ANCEL

I, the undersigned, Smita Mishra, Translator-Interpreter, Sworn before the Court of Appeals of Paris, professionally domiciled at 44 avenue du Président Kennedy, 75016 Paris (France), hereby certify that this document is a certified and accurate translation into English of the original multilingual document including French (copy attached).

Certification number: 3495-2020

Date: 10 November 2020

