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PARIS COURT OF APPEAL

Division 5 –16
International Commercial Chamber

JUDGMENT OF 10 NOVEMBER 2020

FIXED DAY ON JURISDICTION

(No. /2020, 8 pages)

General Directory Entry Number: **No. RG 20/04714 – No. Portalis 35L7-V-B7E-CBT54**

Decision referred to the Court: Judgment of January 24, 2019 – Commercial Court of PARIS - RG n° 2019000064

APPELLANTS:

THE PRESIDENT OF THE REPUBLIC OF THE STATE OF CAMEROON

Having its registered office at Palais de L'Unité Etoudi - 99 Yaounde (CAMEROON)
Represented by its legal representatives,

THE GOVERNMENT OF THE REPUBLIC OF THE STATE OF CAMEROON

Having its registered office at Building Etoile Rond Point Hilton - 99 Yaounde (CAMEROON)
Represented by its legal representatives,

THE MINISTRY OF FINANCE OF THE REPUBLIC OF CAMEROON

Having its registered office at Quartier du Lac - 99 Yaounde (CAMEROON)
Represented by its legal representatives,

All represented by (...)

RESPONDENTS:

HORIZONS MIDDLE EAST LIMITED

A Saudi company registered in the Commercial Register of the Kingdom of Saudi Arabia under the number IMC I 4030211166

Having its registered office at Avenue Talilia Jazira-Centre, 2nd floor - Office No. 22 BP-1673 21474 Jeddah (SAUDI ARABIA)

Represented by its legal representatives,

Represented by (...) having as pleading lawyer (...)

S.A.R.L. CS AVIATION

Registered in the Bobigny Trade and Companies Register under the number 950358838

Having its registered office at 86 Rue Voltaire – 93100 MONTREUIL

Represented by its legal representatives,

Represented by (...) having as pleading lawyer (...)

COMPOSITION OF THE COURT:

The matter was heard on October 05, 2020, in open Court, before the Court, composed of:

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

who deliberated and a report was presented at the hearing by Mr. François ANCEL in accordance with Article 804 of the Code of Civil Procedure.

Court clerk during the proceedings: Ms. Clémentine GLEMET

JUDGMENT:

- ADVERSARIAL
- judgment made available at the Clerk's office of the Court, with the parties having been previously informed under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.
- signed by François ANCEL, President and Clémentine GLEMET, Court clerk, who received the minutes of the decision by the signatory judge.

I – FACTS AND PROCEEDINGS

1. Horizons Middle East, a Saudi-owned company that brokers aircraft rentals, signed a contract on May 16, 2013 with the French company CS Aviation, a service company operating in the aeronautical field, an Aircraft Charter Agreement of a Boeing B777 aircraft belonging to Aviation Link and made available to the President of the Republic of Cameroon to make several flights between the cities of Yaounde, Geneva and Tokyo from May 20 to June 4, 2013 for an amount of 3,812,500 USD.
2. Horizons Middle East therefore issued the invoice no. C13-034 dated May 18, 2013, which was only settled for 1 million USD by CS Aviation, the latter claiming that it was awaiting payment for its services from the State of Cameroon.
3. On September 20, 2013, CS Aviation was given notice to pay the balance of the invoice in the sum of 2,812,500.00 USD in principal.
4. By writ dated May 14, 2014, Horizons Middle East summoned CS Aviation before the Commercial Court of Paris seeking that it be ordered to pay the sum of USD 2,812,500.00 in respect of the balance of the invoice dated May 18, 2013 and 250,000 € in compensation for the damage suffered.
5. By writ dated January 20, 2017, Horizons Middle East summoned the President, the Government and the Ministry of Finance of Cameroon for the settlement of the amount of 2,565,000 euros to be paid to the President of the Paris Bar as judicial receiver.
6. The President, the Government and the Ministry of Finance of Cameroon raised an objection of jurisdiction in favor of the Cameroonian courts.
7. In a judgment dated January 24, 2019, the Paris Commercial Court ruled that the objection to jurisdiction was admissible but had no merits, and found itself to have jurisdiction after ruling that the State of Cameroon did not prove that it was not bound by a commercial act, and referred the

case on the merits.

8. The President, the Government and the Ministry of Finance of Cameroon appealed this judgment.

9. By order of September 10, 2019, the lapse of the notice of appeal was pronounced.

10. By judgment of June 3, 2020, the Court of Appeal, on referral, put to naught the aforementioned order.

11. The President, the Government and the Ministry of Finance of Cameroon were authorized by order of the First President dated June 16, 2020, to summon Horizons Middle and CS Aviation for a hearing on September 7, 2020, which was postponed at the request of the parties to a hearing on October 5, 2020.

II – CLAIMS OF THE PARTIES

12. rUnder the terms of the motion filed electronically on September 8, 2020, the President, the Government and the Ministry of Finance of Cameroon request the pre-trial judge, under Article 909 of the Code of procedure, to:

- Declare inadmissible the submissions served in the interest of SARL CS AVIATION on August 07, 2020;
- Rule that, as a consequence, all the exhibits referred to by the SARL CS AVIATION shall be dismissed from the oral arguments;
- Order SARL CS AVIATION to pay the sum of 3,000 euros under Article 700 of the Code of Civil Procedure;
- Order SARL CS AVIATION to pay the costs of the motion proceedings.

13. Under the terms of their latest submissions on the merits filed electronically on September 30, 2020, the President, the Government and the Ministry of Finance of Cameroon request the Court to:

- Declare them admissible and well-founded in their appeal against the judgment of January 24, 2019 by the Commercial Court of Paris.
- Overturn the appealed judgment ,
- Find that the appellants are persons who don't have the quality of merchants,
- Find that the plaintiff doesn't justify that the act at issue in the present proceedings is a commercial act,

Accordingly,

- Rule that the Paris Commercial Court does not have jurisdiction, insofar as it violates a rule of subject matter jurisdiction , the defendants not being merchants pursuant to the provisions of Article L. 721-3 of the Commercial Code;
- Rule that the Paris Commercial Court does not have jurisdiction, the defendants being all domiciled in Cameroon, and this, in application of the provisions of article 42 of the Code of Civil Procedure.
- Refer the parties to better lodge their claims, in accordance with the provisions of Article 81 of the Code of Civil Procedure, in particular before the Tribunal of Yaoundé (Cameroon).

In any event,

- Rule ex officio that the Commercial Court of Paris does not have jurisdiction, in that the case does not fall within the knowledge of the French court, in accordance with the provisions of Article 76 of the Code of Civil Procedure.

- Order jointly and severally Horizons Middle East Limited to pay the sum of 30,000 euros to the President, the Government, the Ministry of Finance of the Republic of Cameroon, pursuant to Article 700 of the Code of Civil Procedure.
- Order jointly and severally Horizons Middle East Limited and CS Aviation to pay all the costs of the proceedings and declare that they may be recovered by Maître (...), lawyer at the Court, in accordance with the provisions of Article 699 of the Code of Civil Procedure.

14. According to its latest submissions filed electronically on September 22, 2020, Horizons Middle East requests the Court to:

- Uphold the judgment of January 24, 2019 of the Commercial Court of Paris;
- Dismiss the objections on jurisdiction raised by the State of Cameroon;
- Dismiss CS Aviation's claims against Horizons Middle East;
- Order the State of Cameroon through its President of the Republic, its Government and its Ministry of Finance jointly and severally in accordance with the provisions of Article 700 of the Code of Procedure to pay to Horizons Middle East compensation of 20,000 euros.
- Order them to pay all the costs of the proceedings.

15. According to its latest submissions filed electronically on September 28, 2020, CS Aviation requests the Court to:

- Dismiss the State of Cameroon's application for inadmissibility of its submissions served by RPVA (private virtual network for lawyers) on August 7, 2020;
- Note that CS Aviation refers to justice as regards the application for overturning the judgment of the Commercial Court of Paris of January 24, 2019 from the President of the Republic of the State of Cameroon, the Government as well as the Ministry of Finance of the Republic of the State of Cameroon;
- Order Horizons Middle East to indemnify and hold harmless CS Aviation against any order to pay that may be ruled against it;
- Order Horizons Middle East and the State of Cameroon to pay to it the sum of 30,000 euros each under Article 700 of the Code of Civil Procedure and to pay all the costs of the proceedings.

III. PLEAS OF THE PARTIES AND REASONS FOR THE DECISION

On the non-admissibility of the submissions of CS Aviation notified on August 7, 2020 by the “RPVA”,

16. The President, the Government and the Ministry of Finance of Cameroon request, under Article 909 of the Code of Civil Procedure, that the submissions of CS Aviation notified on August 7, 2020 along with the exhibits filed in support of its defence to be declared inadmissible and dismissed from the proceedings.

17. CS Aviation argues in response that the President, the Government and the Ministry of Finance of Cameroon are wrongly relying on the rules of standard procedure, whereas in the case of a judgment ruling exclusively on jurisdiction, only the provisions of the fixed-day procedure can be applied. The company adds that under Article 921 of the Code of Civil Procedure, it had to appoint a lawyer before September 7, 2020, so that its appointment and the notification of its submissions on August 7, 2020 are regular, especially as it has complied with the time limit set forth in the order of June 16, 2020 for the respondents to file their submissions, which expired on August 10, 2020.

Thereupon,

18. The decision of the judge may be appealed under the conditions provided in Article 83 et seq. of the Code of Civil Procedure when he has ruled on jurisdiction without ruling on the merits of the

case.

19. Pursuant to Article 85 of the Code of Civil Procedure, the appeal shall be heard and ruled as in a fixed-day procedure if the rules applicable to appeals from the court from which the judgment under appeal emanates require the appointment of a lawyer. Otherwise, the appeal shall be heard and held as provided in Article 948.

20. In the fixed-day procedure, the appellant shall summon the respondent for the day fixed by the order of the first president and on the day of the hearing the president shall ensure that sufficient time has elapsed since the summons was issued to allow the summoned party to prepare its defence.

21. Unless the President of the Chamber decides to refer ~~remit~~ the case to the pre-trial judge pursuant to Article 925 of the Code of Civil Procedure, the case shall be argued on the day fixed.

22. It follows from these provisions that motions addressed to the pre-trial judge since he has not been appointed are wrongly addressed and cannot be examined by the Court which is not seised neither.

23. Consequently, the appellant's application to dismiss the submissions of CS Aviation shall be dismissed.

On the admissibility of the objection on jurisdiction raised by the President, the Government and the Ministry of Finance of Cameroon,

24. Horizons Middle East argues that the objection on jurisdiction raised by the President, the Government and the Ministry of Finance of Cameroon before the Paris Commercial Court is inadmissible because it was raised late, as it was raised in the submissions of April 13, 2018, after their initial written submissions lodged on March 21, 2018 before the Commercial Court.

25. The President, the Government and the Ministry of Finance of Cameroon argue in response that pursuant to Article 76 of the Code of Civil Procedure, lack of jurisdiction may be raised *sua sponte* if the case is within the jurisdiction of a foreign court so that the court will be able to raise that the Paris Commercial Court does not have jurisdiction, even on its own motion.

Thereupon,

26. If, pursuant to Article 74 of the Code of Civil Procedure, "*the objections must, in order to be admissible, be raised simultaneously and prior any defence on the merits or plea of inadmissibility*"; this article also provides that "*the request for communication of documents does not establish a ground of inadmissibility of the objections*".

27. It follows from the judgment of the Commercial Court that it clearly organised the written exchanges between the parties under the provisions of Article 442-6 of the Code of Civil Procedure. The court also noted that the submissions filed on March 21, 2018 by the President, the Government and the Ministry of Finance of Cameroon had not been repeated and were therefore considered as abandoned at the hearing of April 13, 2018.

28. Furthermore, these submissions were an application for disclosure of a document by Horizons Middle East, namely a commercial contract concluded with CS Aviation.

29. Subsequently, this request for disclosure of documents, which does not constitute a defence on the merits or a plea of inadmissibility, cannot be a ground for inadmissibility.

30. Consequently, this plea shall be dismissed.

On the plea of lack of jurisdiction of the Paris Commercial Court

31. The President, the Government and the Ministry of Finance of Cameroon argue that they are not merchants and are not bound by a commercial act, so that the Commercial Court does not have jurisdiction. They also raise the lack of jurisdiction "*ratione loci*" of the French Court in favour of the jurisdiction of Cameroon under Article 76 of the Code of Civil Procedure, the latter having jurisdiction in application of "*the law of the forum of the defendant under Article 42 of the Code of Civil Procedure*".

32. Horizons Middle East claims that the State of Cameroon did not disclose all the necessary documents for the examination of its application and therefore that the Commercial Court rightly ruled that it had not provided the proof that it was not bound by a commercial act. In this regard, it states that it is up to the State of Cameroon to disclose the contract binding the State of Cameroon with CS Aviation. It adds that the State of Cameroon is not a defendant in the main proceedings in the present dispute and that it has been joined the proceedings as a third party so that the Courts of Cameroon cannot have jurisdiction to hear this dispute.

33. CS Aviation refers to justice regarding the oral arguments submitted to the Court, after having mentioned the existence of two memorandums of understanding between the parties, which according to it, were executed and should have led to the discontinuance of the proceedings of Horizon Middle East pending before the Commercial Court and of the appeal of the President, the Government and the Ministry of Finance of Cameroon.

Thereupon,

On the plea of lack of international jurisdiction of the Paris Commercial Court

34. It is common ground in this case that the State of Cameroon was summoned to be joined as a party on January 20, 2017 by Horizons Middle East, a company incorporated under Saudi law, in its dispute with CS Aviation, a company incorporated under French law having its registered office in Paris, which it had initiated before the Paris Commercial Court by writ of summons on May 14, 2014.

35. In the case of a dispute of an international nature, jurisdiction must be determined pursuant to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as "Brussels I (recast)" which Article 6 provides that "*If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State*".

36. Under French law, international jurisdiction is determined by extension of the rules of internal territorial jurisdiction.

37. While in this context, the appellants may invoke the application of Article 42 of the Code of Civil Procedure, it should be noted that in this case, as opposed by Horizons Middle East, they have been summoned to be joined as a party in a dispute already pending before the Paris Commercial Court.

38. Regarding this, pursuant to Article 333 of the Code of Civil Procedure, the third-party must

proceed before the court hearing the original claim , without being able to decline territorial jurisdiction of that court, even by invoking a jurisdictional clause.

39. Article 333 of the Code of Civil Procedure is also applicable in the international order unless the third party claims a jurisdictional clause or an arbitration clause, which is not the case here.

40. The President, the Government and the Ministry of Finance of Cameroon shall therefore be dismissed on this ground.

On the plea of lack of subject matter jurisdiction of the Paris Commercial Court;

41. If, pursuant to Article L. 721-3, 3° of the Commercial Code, the Commercial Courts hear disputes relating to commercial acts between any persons, in the event of a dispute between two parties, only one of whom is a merchant, the party who is not a merchant has the right to be tried by the Courts having jurisdiction in civil matters.

42. In the present case, it is common ground that the President, the Government and the Ministry of Finance of Cameroon are not merchants, so that even if the contract concluded with CS Aviation was considered as a commercial act, the former cannot be compelled to be sued before a Commercial Court and are therefore entitled to raise the lack of jurisdiction of the commercial court in their regard.

43. Regarding this, the subject matter jurisdiction of the Commercial Courts is not subject to the mechanism of extension of jurisdiction provided in the aforementioned Article 333, since this article applies only to territorial jurisdiction.

44. Furthermore, as indicated above, the President, the Government and the Ministry of Finance of Cameroon are not entitled to request the referral of the case to a Court of Cameroon, as the international jurisdiction of the French Courts is admitted.

45. The judgment of the Commercial Court shall therefore be overturned as it found itself as having jurisdiction to hear the claim against the President, the Government and the Ministry of Finance of Cameroon, and the examination of this action shall be referred to the Paris Judicial Court as a Civil Court under ordinary law.

On Article 700 of the Code of Civil Procedure;

46. Horizons Middle East, the losing party as regards jurisdiction of the Commercial Court, shall be ordered to pay the costs of the proceedings, which shall be recovered pursuant to Article 699 of the Code of Civil Procedure.

47. However, regarding the present decision, each of the parties shall be dismissed from their claims under Article 700 of the Code of Civil Procedure.

IV – ON THESE GROUNDS, THE COURT HEREBY

1. Overturns the judgment of the Paris Commercial Court of January 24, 2019

Ruling additionally:

2. Dismisses the request of the President, the Government and the Ministry of Finance of Cameroon seeking to set aside the submissions of CS Aviation;

3. Rules that the Paris Commercial Court has no jurisdiction to hear the action brought by Horizons Middle East Limited against the President, the Government and the Ministry of Finance of Cameroon in favor of the Paris Judicial Court;
4. Refers the file of the case to the Paris Judicial Court;
5. Dismisses the claims of the parties for the remainder, including their claims based on Article 700 of the Code of Civil Procedure
6. Orders Horizons Middle East Limited to pay the costs of the proceedings, which shall be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure.

Clerk
G. Clément

President
F. Ancel