FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL

International commercial chamber
Division 5 - Chamber 16

RULING OF DECEMBER 15, 2020

(n° /2020, 11 pages)

Registration no. on the general roll: **N° RG 20/00220 – N° Portalis 35L7-V-B7E-CBGQH**

Decision deferred before the Court: judgment of December 03, 2019 – Paris Commercial Court –

APPELLANT:

SASU X
(formerly named V)
Registered with the PARIS registry of Trade and companies under the number
With its registered office at PARIS
Represented by its legal representatives,

Represented by and by, attorney at the PARIS Bar, with litigating and pleading attorney

RESPONDENT:

Z
A company governed by Californian law
With its registered office (USA)
Represented by its legal representatives

Represented by, attorney at the PARIS bar; litigating attorney
With pleading attorney at the PARIS bar

COMPOSITION OF THE COURT

The case was heard on November 02, 2020 in open court, pursuant to Article 805 of the Code of Civil Procedure, the parties not being opposed thereto, before the court composed of:

Mr. Francois ANCEL, President
Mrs. Fabienne SCHALLER, Judge

A report was presented at the hearing by Mrs. Fabienne SCHALLER in accordance with Article 804 of the Code of Civil Procedure

These judges reported the pleadings for the deliberation of the Court coposed of:

Mr. François ANCEL, President

Mrs. Fabienne SCHALLER, Judge
Mrs. Laure ALDEBERT, Judge

Court clerk during the proceedings: Katia FOULON

RULING:

- ADVERSARIAL
- made available at the Clerk's office, 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 signatory judge.

I. FACTS AND PROCEEDINGS:

Facts

1. X, (formerly named V) is a member of the X Group, which is active in the development of luxury brands in fashion, leather goods, jewelry and watches, and is a majority partner in the simplified joint stock company W.2. Z is a company under Californian law managed and owned by Mr Y, a photographer and fashion designer, whose object is to exploit his commercial rights.

3. From January 2012, Mr Y was entrusted by X with the creative and image management of the house of W in the field of couture.

4. On April 1, 2012, Mr Y and Z, on the one hand, and W, on the other hand, entered into a " creation and image consulting and management contract amended by addendum dated June 29, 2012.

5. Further to the renegotiations of their agreement, the parties entered into a serie of contrats on December 19, 2013 including:

- a creation and image consulting and management contract (the“consulting contract”),concluded between Mr Y and Z on the one hand, and W and V on the other hand, in the presence of X, with a term fixed at March 31, 2016, unless tacitly extended .
- a letter drawn up by X guaranteeing Z a minimum annual remuneration net of tax of 10 million euros (or 13 million US dollars);
- an appendix to the contract named "Shareholding", providing for the terms and conditions of the purchase and monetisation by Z of four lots of shares in W ("Lots n°1 to 4"), this shareholding being an element of remuneration of the consultancy contract
- a cash advance agreement offering Z the possibility of receiving cash advances from Xor the purchase of W shares;
- a shareholders' agreement of W, concluded between V and Z.

6. On December 2, 2014, Mr. Y notified his co-contractors of his intention not to renew the consultancy contract after March 31, 2016, the date of its termination.

7. On December 19, 2014 and August 12, 2015, Z acquired lots 1 to 3 of W shares and sold the first two lots of shares on May 4, 2016, remaining the holder of the third lot.

8. By letters dated April 21, and May 6, 2016, Z requested to exercise its right to information under Article 4 of the shareholders' agreement.

9. By two letters dated May 17, 2016, V provided Z with some of the requested information and at the same time notified the company of the termination of the shareholders' agreement.

10. Mr. Y took over the management of the T Couture house in February 2018 and joined group S, a competitor of group X.

Proceedings

11. Various proceedings have been initiated by Mr. Y and Z against X and W, invoking breach of various undertakings given in the context of the contracts mentioned hereinbefore.

12. More specifically, considering the termination of the shareholders' agreement to be unlawful and abusive, Z summoned V before the President of the Paris Commercial Court by writ of July 28,2016, for an order requiring V to continue the execution of the shareholders' agreement until the end of its term, which was granted by order of November 4, 2016.

13. V did not appeal against this order and proceeded with its provisional execution on November 16, 2016.

14. By writ of December 13, 2016, V brought an action on the merits to the Paris Commercial Court to have an order ruling on the validity of V's termination of the shareholders' agreement, with effects from June 30, 2016.

15. By judgment dated December 3, 2019, the Paris Commercial Court :
- Held that the shareholders' agreement signed between V and Z should be qualified as a fixed-term contract;
- Declared the unilateral termination of this shareholders' agreement notified by V to Z by letter dated May 17, 2016 to be irregular;
- Holds that the shareholders' agreement signed between companies V and Z is not null and void;
- Holds that the exercise by Z of the prerogatives arising from the shareholders' agreement signed between it and company V does not constitute an abuse of rights;
- Declared that the shareholders' agreement remains binding;
- Dismissed all of V's claims;
- Dismissed Z's claim under Article 32-1 of the Code of Civil Procedure
- Dismissed Z's claim for damages [for moral prejudice];
- Ordered V to pay €50,000 to Z under Article 700 of the Code of Civil Procedure, and to pay all costs.

16. Z appealed against this judgment by notice of December 18, 2019. Closure was ordered on October 27, 2020.

II- CLAIMS OF THE PARTIES

17.According to its latest submissions notified electronically on September 21, 2020, X asks the Court :

In the principal:

-**To reverse** the judgment of December 3, 2019 in all its provisions, except insofar as it dismisses Z's claim under Article 32-1 of the Code of Civil Procedure and dismisses its claim for damages;
- **To declare and judge** that the shareholders' agreement concluded on December 19, 2013 between V and Z must be qualified as an open-ended contract;
- **To declare and judge** consequently that, by letter sent to Z on May 17, 2016, V validly proceeded to terminate the shareholders' agreement, with effect from June 30, 2016;

In the alternative:

- To declare and judge that the shareholders' agreement concluded on December 19, 2013 between V and Z became null and void as of March 31, 2016;

In the further alternative:

- **To declare and judge** that the exercise by Z of the prerogatives arising from the Shareholders' Agreement concluded on December 19, 2013 between V and Z constitutes an abuse of rights;

- To declare and judge that X, formerly known as V, is therefore not bound by any obligation to inform Z with regard to W pursuant to the shareholders' agreement concluded on December 19, 2013;

In any event,

- Dismiss all of Z's pleas and claims;
- Reject the request for an order to pay a civil fine brought to the Court by Z against X;
- **Order** Z to pay X, formerly known as V, €80,000 under Article 700 of the Code of Civil Procedure, and to pay all costs.

18. According to its final submissions notified electronically on October 12, 2020, Z essentially asks the Court to :

- Confirm the judgment rendered by the Paris Commercial Court on December 3, 2019 in all its provisions and dismiss all of X's claims;
- Order X to pay a civil fine in accordance with the abusive nature of its appeal;
- Order X to pay Z the sum of € 10,000 in damages for its abusive appeal;
- Order X to pay Z the sum of € 80,000 under the Article 700 of the Code of Civil Procedure and to pay all the costs of the proceedings.

III- CLAIMS OF THE PARTIES AND REASONS FOR THE DECISION

Regarding the termination of the shareholder's agreement

19. X argues that the shareholders' agreement was validly terminated by V by letter of May 17, 2016, on the grounds that the shareholders' agreement at issue is an open-ended contract, which can be terminated unilaterally at any time. It points out that, under Article 7(1) of the agreement, it was concluded for the duration of W and that Article 5 of the statutes of W provides that the company is established for a period of 99 years, except in the event of early dissolution or extension provided for in the statutes . It considers that the possibility of early dissolution or extension of W makes the

duration of the company open-ended, pointing out that it is possible to extend a company indefinitely pursuant to Articles 1844-6 of the Civil Code and R.210-2 of the Commercial Code. It stresses that qualifying the agreement whose duration is modelled on the life of the company as a fixed-term contract that cannot be terminated unilaterally would contravene the prohibition on perpetual commitments, a principle which, in its view, applies indiscriminately to natural persons and legal persons, since Article 1210 of the Civil Code, codifying previous case law, makes no distinction in this respect.

20. **X** argues that, far from setting the company's termination at a precise and certain date, W's statutes simply provide that the company's duration 'is ninety-nine years from the date of registration, except in the cases of early dissolution or extension provided for in these articles', which reflects the open ended nature of the company's duration and therefore of the agreement.

21. **X** concludes that V had the option of unilaterally terminating the shareholders' agreement at any time, as the parties did not intend to bind themselves irrevocably until October 8, 2086, so that each of the parties to the shareholders' agreement had the right to terminate this agreement unilaterally and at any time, subject to reasonable notice, and that V therefore validly exercised this right by notifying Z, by letter dated 17 May 2016, of the termination of the agreement with effect from June 30, 2016

22. It stresses that the alleged possibility of terminating the agreement early does not show that the agreement was concluded for a fixed-term, on the contrary.

23. X adds that if the parties had intended to conclude a fixed-term contract, this would have been expressly stipulated and the agreement would have had a precise and definite term. It maintains that it is clear from the exchanges between the parties that the common intention was that the agreement should be concluded for an open- ended period. It also considers inoperative Z's argument according to which any fixed-term contract can be extended or terminated early without changing its qualification as an open- ended contract, as well as the argument based on privity of contract.

24. In response, Z argues that the shareholders' agreement was concluded on the same day as six other fixed-term agreements, with which it constitutes a closely intertwined contractual whole, and maintains that it is therefore inconsistent to assert that the shareholders' agreement is an open-ended contract, as this would be tantamount to upset the complex contractual balance put in place on December 19, 2013. Its addsthat the parties intended to remain bound by the shareholders' agreement until all the W shares had been sold to X in accordance with the provisions of the "Shareholding" appendix and that the parties' intention was to enter into a fixed-term agreement without the possibility of unilateral termination.

25. It also argues that under Article 1134 of the Civil Code (former version), the binding force of agreements prohibits the unilateral termination of contracts of successive execution for a fixed term and that in the present case, the shareholders' agreement is, under Article 7. 1, subject to a term statutorily fixed for W duration, to October 8, 2086, the date shown on the Companies house extract and the date on which W shall be dissolved by the expiry of the term, unless its partners have previously agreed to its extension or early dissolution. It concludes that the agreement must therefore be qualified as a fixed-term contract that cannot be unilaterally terminated, in the absence of an express clause authorising this.

26. Z adds that the stipulation in a contract between two legal persons of a term coinciding with the 99-year duration of a company in no way contravenes the prohibition of perpetual commitments

since it is established in law that a commitment concluded between two legal persons for the duration of the existence of one of them is not perpetual and that there is no such thing as a perpetual commitment if there is a possibility of termination and that this is the case here, as the agreement expressly provides for its automatic early termination when Z ceases to be a shareholder in W, an event over which X has complete control insofar as it has a promise to sell all the W shares still held by the respondent to date and which can be exercised as of July 2022.

27. Z stresses that the fact that, like any fixed-term contract, the term of W may be extended in the future or brought forward by a decision to dissolve the company early, does not make the shareholders' agreement an open-ended contract. It further argues that the extension of W does not entail the extension of the shareholders' agreement, especially since there is no identity between the shareholders of W on the one hand and the parties to the shareholders' agreement on the other.

Thereupon,

28. Under Article 1134 of the Civil Code, in its wording prior to that resulting from the Order of 10 February 2016, applicable to the facts of this case, agreements legally formed can only be revoked by the mutual consent of the parties, unless they have reserved in the contract the right to terminate it unilaterally.

29. Agreements without a term may be terminated unilaterally, provided that the contractually agreed period of notice is observed or, if not, reasonable notice is given and that this right is exercised in good faith.

30. The term means the occurrence of a future and certain event, even if the date of its occurrence is uncertain, provided that its occurrence is beyond the control of the parties.

31. Moreover, according to Article 1157 of the Civil Code in the version applicable at the time of the facts, if a clause may have a double meaning, it must be understood in the meaning in which it can have some effect, rather than in the one in which it could produce none.

32. In the present case, the parties are disputing whether a term was stipulated, giving the shareholders' agreement the status of a fixed-term contract.

33. The shareholders' agreement concluded on December 19, 2013 between V and Z contains a duration clause stipulated in its article numbered 6 (sic) and entitled "Duration" as follows:

"7.1 The Agreement is entered into for the duration of the Company.

7.2 The Parties agree, however, that the Agreement shall terminate automatically and in advance [...] with respect to any Shareholder who ceases to hold directly or indirectly one or more shares of the Company. In any event, the agreements signed in execution of or in connection with the present Agreement shall continue to apply, as the case may be, in accordance with their terms and conditions."

34. W statutes annexed to the shareholders' agreement provide iunder Article 5 entitled "duration":

"The duration of the Company is ninety-nine (99) years from the date of registration of the Company in the registry of Trade and Companies, except in the event of early dissolution or extension as provided for in these Articles of Association.

35. It is common ground that on the date of termination of the agreement by V, on May 17, 2016, Z was still a shareholder of W, which did not authorise the automatic termination of the agreement provided for in Article 7.2 of the above-mentioned agreement.

36.Furthermore, it is induced from the express stipulation of a duration clause in the agreement and its reference to the duration of the company, which is affected by the term of 99 years, that the parties did indeed intend to apply a precise term to their commitments under the shareholders' agreement, which is supported by the wording of Article 7.2 insofar as it refers to the "early" termination of the agreement, the conditions of which are perfectly determined. Moreover, the possible extension of the company cannot result in the extension of the shareholders' agreement, especially if the parties to the agreement have not expressly provided for this.

37. Finally, as the shareholders' agreement is part of a coherent contractual whole including a document entitled " Annex-Shareholding" which provides that once Mr. Y's mission has come to an end, all of the share lots must be resold according to a precise timetable and no later than seven years after the purchase of the last lot, it follows that this constitutes a term, that the duration of the agreement is precise and determined and cannot in any way be assimilated to a perpetual commitment on the sole ground that the duration of the company is 99 years.

38. It should also be noted that the duration of 99 years does not appear to be excessive in the case of shareholders who are legal persons. Thus, X is wrong to maintain that such a duration would contravene the prohibition of perpetual commitments.

39. It follows from the above that the agreement at issue is a fixed-term contract.

40. Consequently, the judges of first instance rightfully held that V, the successor in title to X, could not unilaterally terminate the shareholders' agreement, the duration of which was fixed.

41. The judgment under appeal shall be uphold in this respect.

On the lapse of the shareholders' agreement

42. X argues in the alternative that the shareholders' agreement lapsed on March 31, 2016 because of Mr. Y's decision not to renew the consultancy contract after 31 March 2016 and the concomitant withdrawal of Z from the share capital of W, materialising the disappearance of the *affectio societatis* that existed with V, an essential element of the shareholders' agreement.

43. X states that the shareholders' agreement had no reason to exist apart from Mr. Y's effective participation in the creation of value of W in the context of the consultancy contract and specifies that, at the beginning of 2016 - less than four years after having begun to collaborate with W and group X – Mr. Y wished to terminate the contracts in progress and his Mission. At the same time, Z immediately began to divest itself of the capital of W, remaining a shareholder of only 0.88% of the capital, corresponding to share lot no. 3 , the only lot retained by Mr. Y via his company Z.

44. It criticises Mr. Y and Z for seeking to obtain confidential information in
execution of the shareholders' agreement, even though they have no *affectio societatis* with respect to W. It adds that the disappearance of any community of interest between the parties at the end of Mr. Y's and Z's mission within W and the absence of *affectio societatis* is a ground for the lapsing of the shareholders' agreement.

45. In response, Z contests the alleged lapsing and argues that *affectio societatis* between the signatories of a shareholders' agreement is not a condition for its existence or validity.

46. Z emphasises that the purpose of the agreement was above all to grant it guarantees as to the remuneration to be received for the performance of the consultancy contract, which is established, inter alia, by the fact that it would inevitably have been led, sooner or later, to hold shares in W, after the end of the contract, regardless of its duration.

47. Z concludes that the shareholders' agreement remains necessary untilì the monetisation of all of its shares so that it cannot be deemed to have lapsed.

Thereupon,

48. The praetorian notion of lapsing refers to an undertaking validly formed which ceases to exist following the disappearance of an element essential to its survival as enshrined in Article 1186 of the Civil Code resulting from the Order of 10 February 2016, not applicable to the facts.

49. Lapsing is thus the consequence of the disappearance of one of the conditions for the formation of the agreement after its conclusion.

50. In the present case, the parties are in dispute as to the reasons that determined the conclusion of the shareholders' agreement, X arguing that it was concluded because of Mr. Y's effective participation in the creation of value in W, so that the end of his collaboration, which puts an end to the *affectio societatis*, sets the agreement to lapse, whereas Z argues that the shareholders' agreement was concluded only to give guarantees on the fair value of its shareholding in W.

51. As recalled above, the shareholders' agreement is part of a coherent contractual whole and cannot be understood independently of the consulting and management contract for creation and image, which organises in Article 3, entitled "fees", the remuneration of Mr. Y and Z, consisting of a "fixed remuneration" (Article 3. 1) of 1.52 million gross per year and Z's "Shareholding" in W's capitalunder the conditions described in Appendix D of the contract (Article 3.2, incorrectly named 3.3), representing the major part of this remuneration since, according to Z, the whole was to ensure a remuneration of 10 million euros net of tax per year. This remuneration scheme was new, making way for the 2012 agreements that did not include equity participation.

52. Annex D to the consultancy agreement states in the preamble: "*A - Purpose: the Consultant [Z] is associated with the interests of the shareholder W by becoming itself a shareholder of W or of an equivalent representative economic capital generating the creation of value of W up to the amount of the shares of the same class received as a variable remuneration under the Shareholding*". This annex organises the right of Z to acquire from V four share lots in W at the end of each year of performance of the consultancy contract (1 April N/ 31 March N+1), with the right to acquire the fourth lot expiring on June 30, 2016, i.e. after the initial term of the consultancy contract set at March 31, 2016.

53. The monetisation of these rights is ensured for each of the lots by the benefit of promise to buy by X that can be exercised by Z within precisely defined periods depending on whether or not the consultancy contract is pursued. If Z fails to exercise the promise to buy on a given lot, X benefits from a promise to sell granted by Z on the said lot, which can be exercised at the end of a period of five or seven years following their purchase, the date of the end of theMissionbeing clearly part of

the contractual framework, and therefore of the will of the parties, regardless of whether or not the Mission is pursued after the term.

54. It is in this context that Z purchased three W share lots , then sold the first two share lots to X on May 4, 2016 for EUR 82 million, after notification on February 1, 2016, and then was unable to exercise its right to purchase the fourth lot due to a lack of financing, and remained the holder of the third lot for which it could only exercise the promise to buy from X between June 15 and 30, 2021, as expressly stipulated in the Shareholding schedule.

55. The correspondence between X, its advisors, Mr. Y and his company Z, their advisors, show that this remuneration system was proposed by group X and presented as advantageous for them in that it allowed them to reduce the impact of Californian taxation on their remuneration and offered them the possibility of benefiting from the value creation expected from the brand. X saw another advantage in that financing this remuneration through capital and not through the operating account of W, allowed the corresponding sums to be deducted from W's result, thus contributing to improving the profitability of the brand.

56. Thus, while the share-option scheme set up through the shareholding of Z in W may have strengthened Mr. Y's collaboration within W, it was above all organised at the initiative of X for tax optimisation reasons and as a profitability lever for W.

57. Moreover, this mechanism was not intended to be unwound at the end of the consulting contract, since on the one hand, the right to acquire the fourth lot could be exercised after the term contractually fixed in the consulting contract and on the other hand, Z could not sell all its shares at the end of the consulting contract, at the risk of being excluded from the Californian "capital gain" tax regime requiring a minimum holding period of 13 months. Moreover, Z could only be forced to do so by X several years after their purchase. According to this financial scheme devised and implemented by X, Z was therefore destined to retain its equity participation in W for at least seven years, even though the consultancy contract had come to an end, which X could not ignore, the *affectio societatis* being decorrelated from the planned scheme, and the rights linked to the shareholders' agreement being independent of whether or not the Mission was extended.

58. Furthermore, the shareholders' agreement, which is part of this particular remuneration mechanism, does not organise the working relationship between the partners, since this is precisely the purpose of the consultancy contract. Article 4 of the agreement provides for an enhanced right to information for the benefit of Z, the purpose of which is to enable it to be informed of any fact likely to modify the general operation of W, its financial situation and any fact likely to compromise the continuity of the operation of W. Furthermore, Article 5.3 of the agreement, entitled "unanimous decisions", allows it to oppose, in particular, any "operations substantially affecting the Company's strategy or its scope of activity".

59. It is common knowledge that the purpose of shareholders' right to information is to enable them to be aware of the financial health of the company and thus of the evolution of the value of their corporate rights, as well as to control the decisions taken by the corporate officers. In this case, the enhanced right to information organised by the shareholders' agreement for the benefit of Z is further justified by the remuneration scheme set up in the consultancy contract. Thus, the conclusion of the shareholders' agreement is essentially understood as having been concluded for the benefit of Z, in order to enable the company to optimise the value of its shareholding in W.

60. Furthermore, it is not established that the parties intended the fate of the shareholders'

agreement to depend on that of the consultancy contract, on the contrary. Indeed, no contractual stipulation was agreed to this effect, and the termination of the consultancy contract does technically make the performance of the shareholders' agreement possible, especially since the parties to the consultancy contract and the shareholders' agreement are not identical, since only Z and V were involved in the agreement.

61. For all of these reasons, and the precise and concordant reasons given by the judges of first instance, X's plea that the shareholders' agreement had lapsed has beenrightly dismissed

62. The judgment of the court of first instance shall therefore be upheld on this point.

On the claim that Z improperly exercised its right to information as stipulated in the shareholders' agreement

63.In the further alternative, **X** argues that the exercise by Z of the right to information stipulated in the shareholders' agreement constitutes an abuse of rights and a breach of the contractual obligations of good faith and loyalty, insofar as it was exercised at a time when Mr. Y's mission within W had already ceased and Z had significantly withdrawn from the capital of W, that no shareholder's prerogative was exercised from that date and that these requests, relating to highly confidential information, were, according to the company, intended solely to fuel the proceedings it had just initiated against the companies of the group and were presented in disregard of the corporate interest of W.

64. In response, Z argues that the exercise of the prerogatives derived from the shareholders' agreement was perfectly legitimate insofar as the information whose communication was provided for by the agreement was necessary to enable it to have the elements needed for the valuation of its shareholding until the monetisation of the latter. The information was also necessary to determine the appropriate time to resale Lot No. 3, which constituted the particular feature of Mr. Y's remuneration with a 18.9 million cash in advance from X, an amount that remains due today.

Thereupon,

65. Abuse of rights may be defined as exceeding the limits of the exercise of a right by diverting it from its purpose with the aim of harming others or without legitimate reason. The person who invokes an abuse of right shall prove it.

66.X asks to be discharged from its obligation to provide information as stipulated in Article 4 of the shareholders' agreement on the grounds that the exercise by Z of its right to information would be an abuse of rights, which it considers to be characterised by the fact that Mr. Y has terminated his mission, that his company has massively withdrawn from the capital of W to retain a holding of only 0.88% and because of the numerous legal disputes between the parties.

67. However, as explained above, the facts of the case show that the shareholders' agreement, and in particular Article 4 thereof, which provides for an enhanced right to information for the benefit of Z, was concluded above all with a view to enabling the latter, which was intended to retain a stake in W at the end of Mr. Y's collaboration with W, and for a maximum period of seven years, to monitor the development of the value of its participation.

68. Consequently, it does not appear abusive for Z to exercise its right to information, especially since the amount of its shareholding, estimated by Z at 36 million, remains substantial, within the

limits of the stipulations of Article 4 of the shareholders' agreement, and in particular subject to the condition that, with regard to the operation of the company, it limits itself to making reasonable requests. In this respect, it has not been established by X that the requests for information formalised by Z in its letters of 21 April and 6 May 2016 and 21 February 2017 were of a highly confidential nature and/or had the sole purpose of obtaining documents useful for legal proceedings.

69. Thus, in the absence of proof by X demonstrating that Z misused its right to information, and in particular that it exercised it with the intention of harming it, it must be dismissed from this claim.

70. The judgment under way will therefore also be upheld on this count.

On the claim that the appeal is of abusive

71. Z argues that the appeal lodged by X is abusive in that it is based on the utmost bad faith, on the grounds that it persists in claiming in court the recognition of the indeterminate nature of an agreement that it itself drafted and expressly included a term, while being informed of the weakness of its argument. It therefore requests that X be ordered to pay the sum of 10,000 euros in damages, in addition to the payment of the civil fine provided for in Article 559 of the Code of Civil Procedure.

72. X argues that the exercise of a right to appeal may be considered abusive if a party intends to obtain recognition of its rights by spurious means or because of the futility of the arguments presented in support of its claims, and that this is not the case here. It maintains that V was forced to initiate proceedings on the merits following the summary proceedings initiated by Z and that the fact that the Paris Commercial Court only makes its appeal more legitimate.

Thereupon,

73. The exercise of legal action is in principle a right and only degenerates into an abuse that can give rise to damages in the event of a fault that could engage the civil liability of its author.

74. In the present case, Z shall be dismissed from its claim in this respect, failing to prove any fault on the part of X in the action brought and to establish the existence of a loss other than that suffered as a result of the costs incurred in its defence.

75. Lastly, X, which has lost the case, shall be ordered to pay all the costs of the proceedings and to pay Z the sum of EUR 50,000 under Article 700 of the Code of Civil Procedure.

FOR THESE REASONS, THE COURT,

1. Upholds the judgment of the Paris Commercial Court in all its provisions,
2. Dismisses Z's claim for damages on the ground of abusive proceedings,
3. Orders X to pay Z the sum of €50,000 under Article 700 of the Code of Civil Procedure,
4. Orders X to pay all the costs of the appeal.

Court clerk *President*
C. GLEMET *F.ANCEL*