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FRENCH REPUBLIC  
ON BEHALF OF THE FRENCH PEOPLE

**PARIS COURT OF APPEAL**  
**International Commercial Chamber**  
**Division 5 – Chamber 16**

**JUDGMENT OF 10 JANUARY 2023**

(No 8/2023, 10 pages)

General Directory Entry Number: **RG No.21/18655 – Portalis No. 35L7-V-B7F-CERXV**

Decision referred to the Court: Judgment of the Commercial Court of AUXERRE dated 11 October 2021

**APPELLANTS:**

**BASRACA B.V. Company**

A Dutch company, registered in the Trade and Companies Register under number 74085255, having its registered office at: [Address 3] (NETHERLANDS), represented by its legal representatives,

*Represented by Ms Audrey HINOUX LEXAVOUE PARIS-VERSAILLES ltd, a counsel with right of audience at the Bar Council of PARIS, bar number: C2477 and assisted by Mr Bruno LE CLERCQ, a trial counsel at the Bar Council of VALENCE, bar number: 140*

**ESBOR VASTGOED B.V. COMPANY**

A Dutch company, registered in the Trade and Companies Register under No. 24416465, having its registered office at: [Address 10] (NETHERLANDS), represented by its legal representatives,

*Represented by Ms Audrey HINOUX LEXAVOUE PARIS-VERSAILLES ltd, a counsel with right of audience at the Bar Council of PARIS, bar number: C2477 and assisted by Mr Bruno LE CLERCQ, a trial counsel at the Bar Council of VALENCE, bar number: 140*

**INTERSALES HOLLAND B.V.**

A Dutch company, registered in the Trade and Companies Register under No. 29039871, having its registered office at: [Address 11] (NETHERLANDS), represented by its legal representatives,

*Represented by Ms Audrey HINOUX LEXAVOUE PARIS-VERSAILLES ltd, a counsel with right of audience at the Bar Council of PARIS, bar number: C2477 and assisted by Mr Bruno LE CLERCQ, a trial counsel at the Bar Council of VALENCE, bar number: 140*

**RESPONDENTS**

## **GRANGE ARTHUIS COMPANY**

A simplified joint stock company (single shareholder company) registered in the Trade and Companies Register of Nice under No. 509 358 644, with its registered office at: [Address 2]

*Represented by Mr Frédéric LEPRETRE, a counsel with right of audience and a trial counsel of the Bar Council of AUXERRE*

AMENAGEMENT FONCIER ET D'ÉTABLISSEMENT RURAL (SAFER) a company of Bourgogne Franche-Comté, registered in the Trade and Companies Register of Dijon under No. 778 212 472 with its registered office at: [Address 1]  
represented by its legal representatives,

*Represented by Mr Arnaud Guyonnet of the SCP AFG company, a counsel with right of audience at the Bar Council of PARIS, bar number: L0044, and assisted by Mr Thierry Chiron of SELAS LEGI CONSEILS BOURGOGNE, a trial counsel at the Bar Council of DIJON.*

## **COMPOSITION OF THE COURT:**

The case was heard on 14 November 2022, in a public hearing, before the Court composed of:

Mr Daniel BARLOW, President  
Ms Fabienne SCHALLER, Judge  
Ms Laure ALDEBERT, Judge

who deliberated thereupon.

A report was presented at the hearing by Ms Laure ALDEBERT, under the conditions provided in Article 804 of the French Code of Civil Procedure.

**Court Clerk at the hearing:** Ms Najma EL FARISSI

## **JUDGMENT:**

- in adversarial proceedings
- upon availability of the judgement to the Court Clerk's Office, the parties having been notified thereon in advance under the conditions referred to in the second paragraph of Article 450 of the French Code of Civil Procedure.
- signed by Daniel BARLOW, President and Najma EL FARISSI, Court Clerk in charge to whom the minutes of the decision was handed over by the judge signatory.

## **I/ FACTS OF THE CASE AND PROCEEDINGS**

1- Grange Arthuis is a French company that has offered for sale, through the Aménagement Foncier et d'Établissement Rural de Bourgogne-Franche-Comté Company (hereinafter referred to as SAFER),

agricultural lands with various buildings located in the municipalities of [Town 4] (45), [Town 5] (45), [Town 8] (58) and [Town 7] (89), under the procedure set forth by the provisions of articles L. 141-6 and R. 141-3 of the French Rural Code.

2- Therefore, by a private deed signed in [Town 9] on 12 November 2018, accepted by SAFER on 24 January 2019, and registered in [Town 6] on 28 January 2019, Grange Arthuis promised SAFER to sell real estate assets at the price of 3,000,000 euros with the possibility of substitution.

3- As part of the procedure for the allocation of assets, the application for the acquisition of the property by the Dutch company Basraca BV (hereinafter referred to as Basraca) has been accepted.

4- Basraca is part of a group of the Dutch companies owned by La Grange Arthuis Holding BV, within which the Dutch companies IBB Holding, Esbor Vastgoed BV, and Intersales Holland BV (hereinafter referred to as Esbor and Intersales) are incorporated. These companies were involved in the process of acquiring the agricultural property.

5- On 6 December 2018, Esbor and Intersales each contributed half of the amount of 300,000 euros, to SAFER on behalf of Basraca, which did not have the necessary funds.

6- The Dutch investment company IBB Holding, a sister company of Basraca, signed on 17 December 2018 a unilateral promise with SAFER to purchase with the possibility of substitution.

7- On 27 March 2019, a substitution protocol was signed between Basraca, Grange Arthuis, and SAFER. The protocol confirmed the Grange Arthuis' acceptance of SAFER substituting Basraca in its rights to acquire the property.

8- On the day of the signing before the notary, Basraca refused to reiterate the sales agreement due to a lack of the necessary funds.

9- On 11 April 2019, a deficiency report was signed. The report reserved 40,000 euros in notary fees. Such fees were deducted from the funds received by SAFER.

10- By letter dated 25 April 2019, Grange Arthuis, through its legal counsel, requested SAFER to return the deposited amount as a compensation for the breached contract by the purchaser. SAFER refused to do so without the agreement of both parties.

11- By letter dated 23 August 2019, Grange Arthuis requested Basraca's agreement for SAFER to remit the amount as a compensation for damages.

12- By summons dated 14 December 2020, Basraca BV, Esbor Vastgoed BV, and Intersales Holland BV summoned Grange Arthuis and SAFER de Bourgogne to appear before the Commercial Court of Auxerre. The main claim is to order SAFER, as the deposit holder of the amount of 260,000 euros, to pay Esbor Vastgoed BV and Intersales Holland BV the respective amounts of 130,000 euros each.

13- By summons dated 18 December 2020, Grange Arthuis summoned Basraca and SAFER before the same Court to pay the sum of 260,000 euros as a compensation for the damages suffered and corresponding to the security deposit. Grange Arthuis also requested to order SAFER to return the amount it had held since 14 December 2018 as a financial guarantee.

14- The proceedings have been joined.

15- By judgment dated 11 October 2021, the Commercial Court of Auxerre, after rejecting the application for the summons served on 18 December 2020 to be declared null and void, dismissed the Basraca's claims. The court ordered SAFER to pay Grange Arthuis the sum of 260,000 euros in its possession, originating from the security deposit paid by ESBOR VASTGOED B.V and INTERSALES HOLLAND B.V.

16- Basraca was ordered to pay the sum of 5,000 euros to SAS Grange Arthuis, and jointly with Esbor and Intersales, the amount of 3,500 euros to SAFER under Article 700 of the French Code of Civil Procedure.

17- Basraca BV, Esbor Vastgoed BV, and Intersales Holland BV were ordered to pay the costs.

18- By declaration dated 26 October 2021, Basraca, Esbor Vastgoed, and Intersales Holland BV lodged an appeal against the judgment.

19- The closing order was issued on 14 November 2022.

## **II/CLAIMS OF THE PARTIES**

20- In accordance with the latest submissions of appellant No. 2 notified electronically on 31 August 2022, BASRACA B.V, ESBOR VASTGOED B.V and INTERSALES HOLLAND B.V, request the Court, under Article 1103 of the French Civil Code, to:

DECLARE their appeal admissible and well-founded,

REVERSE the judgment of 11 October 2021 insofar as it relates to the following:

- the rejection of the request for nullity of the summons served by GRANGE ARTHUIS on 18 December 2020;
- the dismissal of BASRACA BV's claims;
- the order for SAFER to pay GRANGE ARTHUIS the sum of 260,000 euros which it holds from the security deposit paid by INTERSALES BV and ESBOR BV;
- the order for the BASRACA BV to pay GRANGE ARTHUIS the sum of 5,000 euros pursuant to Article 700 of the French Code of Civil Procedure;
- the order for BASRACA BV, INTERSALES HOLLANDBV and ESBOR BV to jointly pay SAFER the sum of 3,500 euros under Article 700 of the French Code of Civil Procedure;
- the order for BASRACA BV, INTERSALES HOLLAND BV and ESBOR BV to jointly and severally pay all the costs of the proceedings;
- Holds that provisional enforcement is applicable;
- Ordered the court fees to be paid in the sum of 226.26 euros.

- RECTIFY the failure to rule concerning judgment of 11 October 2021 insofar as it failed to rule on the claims of INTERSALES HOLLAND BV and ESBOR BV.

And in a further hearing,

-ORDER the nullity of the summons served by SAS GRANGE ARTHUIS on BASRACA on 18.12.2020.

-ORDER SAFER de Bourgogne Franche-Comté and GRANGE ARTHUIS to jointly pay ESBOR VASTGOED B.V and INTERSALES HOLLAND BV the sum of €260,000.00, i.e. €130,000.00 each.

-ORDER GRANGE ARTHUIS to pay BASRACA B.V., ESBOR VASTGOED B.V and INTERSALES HOLLAND B.V. the legal interest on the sum of € 260,000.00, under the summons of 11 and 14 December 2020 until the date of full payment.

-DISMISS GRANGE ARTHUIS and SAFER de Bourgogne Franche-Comté of their claims and applications in full.

Further,

- ORDER GRANGE ARTHUIS and SAFER de Bourgogne Franche Comté to jointly pay BASRACA B.V., ESBOR VASTGOED B.V. and INTERSALES HOLLAND B.V. the sum of €10,000.00 under Article 700 of the French Code of Civil Procedure.

- ORDER GRANGE ARTHUIS and SAFER to pay all the costs of the proceedings, which will be awarded to LEXAVOUE PARIS-VERSAILLES Ltd., lawyers at the Bar Council of Paris.

21-In accordance with its latest submissions notified electronically, on 11 November 2022, Grange Arthuis, requests the Court, under Article 1231-1 and 1104 of the French Civil Code, to:

CONFIRM the judgement handed down by the Commercial Court of AUXERRE on 11 October 2021

DISMISS BASRACA B.V., ESBOR VASTGOED B.V. and INTERSALES HOLLAND B.V. of all their claims and submissions

ORDER BASRACA B.V., ESBOR VASTGOED B.V. and INTERSALES HOLLAND B.V. to jointly and severally pay the sum of 10,000 euros pursuant to Article 700 of the French Code of Civil Procedure

ORDER BASRACA B.V., ESBOR VASTGOED B.V., and INTERSALES HOLLAND B.V. to jointly and severally pay all costs and expenses.

22- In accordance with its latest submissions notified electronically, on 21 June 2022, SAFER requests the Court to:

NOTES that SAFER BOURGOGNE FRANCHE COMTE does not object to the remittance of the sum of 260,000 euros that it holds;

AUTHORISE SAFER BOURGOGNE FRANCHE COMTE to pay the sum of 260,000 euros to such beneficiary as the Court may hold;

ORDER BASRACA - ESBOR - INTERSALES HOLLAND to jointly pay SAFER BOURGOGNE FRANCHE COMTE the sum of 4,500 euros under Article 700 of the French Code of Civil Procedure,

ORDER BASRACA - ESBOR - INTERSALES HOLLAND to jointly pay all the costs;

### **III/ GROUNDS OF THE PARTIES**

23- The appellants contest the validity of the summons issued by Grange Arthuis in the first instance for formal defect on the grounds that it did not mention the existence of its registered office.

24- The appellants maintain that the respondent, whose activities have been temporarily suspended since June 2021, has a fictitious registered office at a registered address.

25- On the merits, Esbor and Intersales claim to order Grange Arthuis and SAFER to pay the sum which they paid corresponding to €260,000.00 remaining available in the SAFER books of accounts after payment of the notary's fees.

26- The appellants maintain that the sale has not been made, with SAFER having waived its fees. In this regard, the appellants maintain that they are entitled to a refund of the amount advanced on behalf of the purchasing Basraca, which has not made any payments.

27- The appellants state that, not being a party to the various agreements of the sale process, Grange Arthuis' claim for damages is unenforceable against them since there is no joint liability with Basraca, in the absence of an agreement between them.

28- The appellants conclude that the first judges without responding to their claim for restitution were mistaken in deciding to compensate Grange Arthuis with their own funds.

29- In the absence of any contractual mechanism for compensating, the appellants finally maintain that Basraca's liability could not be recognised since Grange Arthuis failed to demonstrate damage in connection with Basraca's refusal to buy the real estate easily sold shortly afterwards.

30- In this regard, the appellants state that Grange Arthuis quickly resold the real estate for the same price in August 2019 to a company called Panat. They also state that if Grange Arthuis agreed to take over the SAFER commission of €200,000.00 normally paid by the buyer, it is due to its own time and money constraints and not to the Basraca's failure to make payments.

31- In response, Grange Arthuis requests confirmation of the first instance decision that rejected the application for the summons to be declared null and void, and upheld the claim for compensation for the damage suffered under Basraca's liability for breach by the allocation of the amount deposited with SAFER.

32- Grange Arthuis opposes the claim for restitution from Esbor and Intersales by arguing that they have acted as a guarantor and that they are jointly engaged with Basraca.

33- On the liability of Basraca, Grange Arthuis maintains that Basraca demonstrated a lack of loyalty and a particular bad faith by refusing to make the sale to the notary on the pretext that the funds had not been released by the banks without notification or providing any credible explanation.

34- Grange Arthuis points out that it was long after the negotiation and during the procedure, that Basraca asserted for the first time that it could not buy because it could not install a photovoltaic power plant. This point had never entered the negotiation, and Basraca has demonstrated bad faith in claiming that it had not understood the scope of its commitment.

35- Grange Arthuis considers that this wrongful behaviour has caused damage resulting in the immobilisation of its real estate for several months and a loss of profits by having been forced to urgently sell agricultural land at a lower price.

36- SAFER reports to the court as to the recipient of the disputed sum that it still currently has in its possession.

37- SAFER confirms that it has a balance of €260,000.00 out of the €300,000.00 paid during the procedure to acquire real estate and to which it is not opposed to releasing.

38- SAFER specifies that the part of this amount corresponding to the deposit of €50,000.00 on the sale price does not have to be kept since the acquisition did not result in the proper signing of the authentic deed of sale.

39- Regarding the sum of €210,000.00, it corresponds to the provision of SAFER's fees which, in an effort to encourage reconciliation, it decided to abandon.

#### **IV/ GROUNDS OF THE RULING**

##### **On the nullity of the summons**

40- Pursuant to Article 54, b) of the French Code of Civil Procedure, for legal persons, the summons mentions their form, name, registered office, and the authority that legally represents them, otherwise it would be void.

41- In accordance with Article 114 of the said Code, nullity for failure of one of the particulars required for the designation of the applicant is incurred only if the addressee establishes that the defect causes the addressee a grievance.

42- According to Article 115, nullity is avoided by the subsequent regularisation of the act if no foreclosure has taken place and if the regularisation leaves no grievance.

43- In this case, it is common ground that in its summons Grange Arthuis mentioned a previous address of its registered office in [Town 7] that it had not had for several months, having ceased all activity since the sale of agricultural land.

44- However, it follows from the first instance procedure that it has registered its new address at Regus, [Address 2], in [Town 9], without causing harm to the appellant companies.

45- The latter maintains that this is not a genuine address and notes that the company no longer exercises activity and no longer has real estate in France.

46- However, there is no question to the existence of this address that does not in itself allow Grange Arthuis, even if it has ceased its activity, to escape its financial obligations.

47- This is a registered address that appears on their French Certificate of Incorporation (*extrait Kbis*) and resulting from their decision to transfer their registered office as the outcome of an extraordinary general meeting decision of 12 May 2021 that was not the subject of any dispute.

48- It follows from the foregoing that it was for reasonable grounds that the first judges rejected the application of the document prescribing the proceedings to be declared null and void.

49- The decision will be upheld on this ground.

**On the claim for the restitution of funds made by Esbor and Intersales against Grange Arthuis and SAFER**

50- Esbor and Intersales criticised the first judges for having failed to rule on their claim for the restitution of the amount deposited in SAFER's possession. Esbor and Intersales argue that the first judges did not dismiss them of their claim for the restitution of the amount they had paid to SAFER.

51- However, if the rejection of their claim does not expressly appear in the operative part of the judgement, it follows from its grounds. Therefore, by rejecting Basraca's application while holding that Esbor, Intersales and Basraca were jointly engaged, the court necessarily rejected at the same time their claim for the restitution of the amount in question.

52- The claim for redressing the failure to rule will therefore be rejected.

53- It is common ground that Esbor and Intersales were involved to make an advance payment to Basraca. Esbor and Intersales transferred for this purpose the sum of €300,000 on its behalf to cover a deposit on the sale price and the provision on the costs of SAFER as clearly specified by the parties in the protocol under the following clause:

*PAYMENT BY THE BUYER-SECURITY DEPOSIT.*

*Amount*

*As a security deposit, the purchaser has paid the sum of THREE HUNDRED THOUSAND EUROS (€300,000.00) in several transfers. These transfers were made by the various partners of BASRACA B.V.*

*The difference between this amount and the SAFER fees is intended to cover the costs of drafting a deed of an amount of FORTY THOUSAND EUROS (€40,000.00) and part of the price of an amount of FIFTY THOUSAND EUROS (€50,000.00).*

54- Esbor and Intersales request to order Grange Arthuis and SAFER to return the amount advanced to them for the failure to fulfil the sale.



55- However, not being parties to the sale, they cannot apply its effects and claim for the restitution of the amount that they have paid to SAFER on behalf of the purchaser to whom it belonged since they needed to request the refund at their expense and then to return the amount to the companies of the group to reimburse them with their advance.

56- Esbor and Intersales companies that do not assert any basis other than that derived from the deeds of sale to which they are not a party, must therefore have their claim for restitution against Grange Arthuis and SAFER rejected.

### **On the request for payment of Grange Arthuis under contractual non-fulfilment**

57- None of the parties disputes the absence of a contractual mechanism that automatically provided for the delivery of the sum deposited with SAFER to the seller in the event of a failure to fulfil the sale so that it is under contractual liability that the application will be examined

58- Under Article 1104 of the French Civil Code, agreements must be negotiated, executed, and fulfilled in good faith.

59- Article 1231-1 of the said Code provides that the debtor is ordered, if necessary, to pay damages either because of the non-performance of the obligation or the delay in performance, if the debtor does not justify that the fulfilment has been prevented by force majeure.

60- In this case, it is established that it is without mentioning any of the suspensive conditions or claiming a reasoned justification in the parties' speculations that Basraca refused to sign the sale, forcing Grange Arthuis to look for a new buyer after immobilising the real estate for 5 months.

61- It was, in fact, after three appointments for signing the deed over a period of one month, arranged by the notary on 27 March 2019, 3 April 2019 and 11 April 2019, Basraca waited until the deadline after having signed a memorandum of substitution. In addition, Basraca did not either notify the seller or send them an explanation, in order to indicate that it did not have the funds and then no longer provide any follow-up.

62- Basraca, which was aware of the necessary financing since the beginning of the negotiations, did not provide any justification on the grounds, which prevented the banks from releasing the funds.

63- It follows from the procedure that Basraca provided much later another explanation before the first judges in order to justify its abstention. Basraca claimed that it could not actually proceed with the purchase because of the impossibility for it to install a photovoltaic power plant without this condition ever being mentioned.

64- It follows from the above, without further discussion, that Basraca has committed misconduct involving its liability.

65- The appellants dispute the existence of damage to Grange Arthuis in a cause-and-effect relationship with the fault of Basraca. They argue that Grange Arthuis has sold the agricultural land "in haste" and that it results from its act that Grange Arthuis has borne the costs of SAFER.

66- However, it is due to the refusal to sign the sale on 11 April 2019 that Grange Arthuis was forced to place on sale again the agricultural land for the acquisition of which Basraca's application had been selected as part of the SAFER allocation procedure since 15 November 2018.

67- Grange Arthuis cannot be criticised for having, in terms of the elapsed time and the immobilisation of the real estate for five months, quickly sought a new buyer, arranged and held in August 2019 the sale by agreeing to bear the fees of SAFER equivalent to a price reduction of 200,000 euros.

68- It follows from the above that Grange Arthuis justifies the existence of a financial damage in connection with the Basraca's failure that the first judges have precisely estimated at the sum of 260,000 euros corresponding to the loss on the sale price and the immobilisation of the real estate.

69- Therefore, the claim for compensation for the misconduct committed by Grange Arthuis against Basraca should be granted. SAFER should accordingly be ordered by compensation to release from the amount it holds on behalf of Basraca for the benefit of Grange Arthuis.

70- The judgement will therefore be upheld for the foregoing grounds in all its provisions.

### **On the costs and expenses**

71- Esbor Vastgoed BV and Intersales Holland BV (hereinafter referred to as Esbor and Intersales) and Basraca, which constitute the losing party, should be ordered to pay the costs of the proceedings.

72- In addition, they must be ordered to pay Grange Arthuis and SAFER compensation under Article 700 of the French Code of Civil Procedure, which should fairly be fixed at the amount as specified in the operative part of the judgment.

### **V/ ON THESE GROUNDS**

The Court hereby:

- 1- Dismisses Esbor Vastgoed BV and Intersales Holland BV of their claim for redressing the failure to rule.
- 2- Upholds all the provisions of the judgement of the Commercial Court of Auxerre dated 11 October 2021 before the Court.
- 3- Orders Esbor Vastgoed BV and Intersales Holland BV and Basraca BV to pay Grange Arthuis the total sum of €5,000.00 under Article 700 of the French Code of Civil Procedure.
- 5- Orders Esbor Vastgoed BV and Intersales Holland BV and Basraca BV to pay to Aménagement Foncier et d'Établissement Rural (SAFER) Company of Bourgogne Franche-Comté the total sum of €3,000.00 under Article 700 of the French Code of Civil Procedure.
- 6- Orders Esbor Vastgoed BV and Intersales Holland BV and Basraca BV to pay all costs of proceedings.

THE COURT CLERK, THE PRESIDENT,

