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Sudden breach of an established business relationship: The summary judge may order the continuation of the contract

Faced with the urgency of the situation and the risk of imminent damage caused by the sudden termination of an established business relationship, the terminated business partner may ask the summary judge to order the continuation of the relevant contract. This was recalled by the Cour de Cassation (French Supreme Court) in a decision dated June 24, 2020^[1].

In 2016, Technicolor responded to a call for tenders issued by Canal+ for the supply of ultra HD set-top boxes. Following the signature of a letter of intent, Canal+ placed in 2017 an order for several set-top boxes that were duly delivered by Technicolor.

However, explaining that it had to deal with a significant increase in the cost of the memory chips needed to manufacture the set-top boxes and that Canal+ refused to renegotiate the prices of the boxes, Technicolor notified Canal+ of the termination of their contractual relationship.

In these circumstances, Canal+ brought summary proceedings before the President of the Nanterre Commercial Court, arguing that it was necessary to prevent the imminent damage it was facing as a result of the termination of the contractual relationship by Technicolor. Canal + requested, in particular, that its supplier be ordered to deliver past and future orders, subject to a periodic penalty payment, until a decision on the merits of the case. Technicolor, for its part, considered that it was up to the Commercial Court to determine whether the imminent damage was unlawful and, in particular, to determine whether Canal+ was at fault in the occurrence of such damage.

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In accordance with Article 873 of the French Code of Civil Procedure according to which the President of the Commercial Court may order interim measures either to prevent imminent damage or to put an end to a manifestly unlawful nuisance, the President of the Nanterre Commercial Court dismissed Canal+'s claims.

Canal+ lodged an appeal and, in a decision dated December 6, 2018, the Versailles Court of Appeals overturned the order issued by the President of the Nanterre Commercial Court.

It ordered, as an interim measure, Technicolor to deliver future orders from Canal+, subject to a penalty payment of 10,000 euros for each observed infringement, it being specified that this penalty payment was intended to last for a period of 6 months and that the interim measure was to remain in effect until the Commercial Court renders its decision on the merits of the case. Technicolor appealed against this judgment.

The *Cour de Cassation* dismissed the appeal brought by Technicolor. It held that since the Court of Appeals had ruled in summary proceedings, it was not its role *"to determine the exact scope of Technicolor's obligations, and therefore to assess whether the imminent damage was unlawful or wrongful, [and further held that] the Court of Appeals, noting that Technicolor's behavior - which was at the origin of the alleged damage - was potentially unlawful as Technicolor had unilaterally and suddenly terminated its contractual relationship with Canal+, rightfully ordered, as an interim measure and under the conditions it defined, the continuation of this relationship"*.

As such, the *Cour de Cassation* confirmed that the summary judge may decide, in view of the imminence and seriousness of the damage, to grant a request that a company be ordered to immediately resume a business relationship that had been suddenly terminated, subject to a periodic penalty payment. In this particular case, the judge considered that the termination of the business relationship was unilateral and sudden, meaning that the behavior of the terminating party had potentially been unlawful.

This being said, the *Cour de Cassation* also recalled that the measure ordered must be circumscribed and that it is up to the summary judge to give to this measure a specific duration. In this particular case, although no duration had been expressly provided for by the summary judge, the latter had nevertheless set sufficient conditions for the interim relief by determining the monthly volume of orders and by referring to the price agreed between the parties in 2016.

An option to be kept in mind by terminated business partners...

[1] Commercial Chamber of the *Cour de Cassation*, June 24, 2020, No. 19-12.261

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