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Sudden breach of established business relationships: only the duration of the notice period should be taken into account, regardless of any facts or events that occurred after the notification of the breach

Article L. 442-6, I §5 of the French Commercial Code sanctions the fact of suddenly breaching, even partially, an established business relationship.

Pursuant to this Article, the sudden termination of a business relationship is characterized by the lack of a notice period or by the application of a notice period that is insufficient given the length of the business relationship and the commercial practices set forth by multi-sector agreements.

In addition to its length and applicable commercial practices, other features of the business relationship may be taken into account by the judge to assess the suddenness of the breach.

As such, judges will require the application of a longer notice period if the terminated party can demonstrate that it was in a state of economic dependence vis-à-vis its co-contractor⁽¹⁾, or that it was subject to an exclusivity clause during the business relationship, therefore needing a sufficiently long notice period to reorganize itself internally and prepare itself for the effective discontinuation of the relationship.

On the other hand, facts that occurred after the notification of the breach may not be taken into account to assess the suddenness of such breach.

This principle was recently recalled by the Commercial chamber of the *Cour de Cassation* (French Supreme

court) in a decision dated July 9, 2013^[2].

The commented decision concerns a dispute between two parties to an exclusive dealership agreement pertaining to the sale of agricultural and winegrowing equipment. After 12 years of contractual relationship, the principal notified the dealer of the termination of the agreement, subject to a one-year notice period. In addition, the two parties contractually waived the application of the exclusivity clause during the notice period.

The dealer then brought a legal action against the principal for sudden partial, if not total, breach of the business relationship.

The Court of Appeals of Rennes^[3] dismissed the dealer's claims, considering in particular that the reciprocal waiver of exclusivity as per contractual provisions was not tantamount to a partial breach of the business relationship.

The *Cour de Cassation* upheld the judgment of the Court of Appeals on this specific point.

In addition, the Court of Appeals dismissed the dealer's claim for indemnification because, in the days that **had followed the termination**, the dealer had undergone an economic conversion by operating a business going concern under a lease-management contract. The trial judges therefore considered that there had not been any break between the end of the dealership and the start of the new business.

The trial judges also substantiated their decision by the fact that, according to the dealer's accounting documents, the change of business activity had an impact neither on the dealer's share capital and reserve accounts, nor on its cash flow.

Lastly, the Court of Appeals also held that the dealer had failed to produce evidence that this change of business had been carried out in conditions that were unfavorable to him and that he had been deprived of the opportunity to carry out a more advantageous economic conversion because of the duration of the notice period.

The *Cour de Cassation* quashed the judgment of the Court of Appeals in this respect.

The *Cour de Cassation* ruled that the Court of Appeals should have examined whether the duration of the notice period was sufficient, notably by taking into account the length of the business relationship and other circumstances **at the time the breach was notified**. The fact that the change of business had been carried out in conditions that were favorable to the dealer and the fact that the dealer had failed to prove that he had been deprived of the opportunity to carry out a more advantageous economic conversion as a result of the breach were, therefore, irrelevant.

The *Cour de Cassation*, adopting a stand that is in line with its previous decisions in this type of cases, thus recalled that must be taken into account only the duration the business relationship and the other features of

such relationship at the time of the breach (cf. above-cited decisions), not facts that are unrelated to the business relationship and that occurred after the notification of the breach.

[1] See for instance: Commercial Chamber of the *Cour de Cassation*, November 2, 2011, n°**10-25323**.

[2] Commercial Chamber of the *Cour de Cassation*, July 9, 2013, n°12-20.468.

[3] Court of Appeals of Rennes, March 13, 2012, n° 10/07756

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