

litigation lawflash

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French High Court Limits Recovery for Wrongful Termination of Negotiations

Court holds that parties cannot be compensated for loss of opportunity to perform a contract where there is no firm and binding agreement.

On 18 September, the French Supreme Court for Judicial Matters (*Cour de cassation*) issued its ruling in *Paul Boyé technologies (Boyé) v. Sagem défense sécurité (Sagem)*,¹ finding that a wrongful termination of mere negotiations does not give rise to compensation for the loss of chance to perform a contract. This decision confirms the precedent set by the High Court in *Manoukian v. Stuck*,² in which the Court ruled that compensable damages in a case of wrongful termination of negotiations were limited to the loss suffered. As a result of this decision, the amount of damages that may be awarded to the aggrieved party in these cases is severely limited.

Background

Boyé, a French company manufacturing army combat uniforms, executed a contract with Sagem to design a uniform for the Directorate for Armament, the French defence procurement agency. After completing the design, Sagem and Boyé entered into negotiations to outsource the manufacturing of the uniforms, which occurred over the years 2003 and 2004. However, no contract regarding the manufacturing was executed.

Sagem later informed Boyé that it would not be working with Boyé to manufacture the uniforms. Sagem contended that Boyé was not able to provide the uniform prototypes by the requested date set by the Directorate for Armament. The manufacturing of the uniforms was then outsourced to cheaper competitors. Boyé filed suit claiming damages for the wrongful termination of the relationship.

High Court's Findings

In deciding the *Boyé* case, the Court confirmed its holding in *Manoukian*, which found that a wrongful termination of precontractual negotiations could not give rise to damages for the loss of chance to perform a contract, except where a firm and binding agreement existed between the parties.

In *Boyé*, the executed contract concerned the **design** of a military uniform only, while the subsequent terminated negotiations concerned the **outsourcing of the manufacturing** of the uniform. Because the design and the outsourcing of manufacture were **two different** projects and because there was no firm and binding agreement as to the outsourcing, the exception for firm and binding agreements raised in the *Manoukian* case was not applicable to the agreement in *Boyé*.

Implications

Prior to *Manoukian* and *Boyé*, when a sudden breach of negotiations occurred, certain court decisions allowed the aggrieved party to receive compensation for the loss of chance to enter into the contract with a portion of the anticipated profit from the performance of the contract. However, there had never been a clear solution as to the amount of damages that could be awarded if no firm and binding agreement had been reached by the parties.

1. Cour de cassation [Cass.] [supreme court for judicial matters] com., Sept. 18, 2012.

2. Cour de cassation [Cass.] [supreme court for judicial matters] com., Nov. 26, 2003, Bull. civ. IV, No. 186.

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Under the Court's recent decision, if there is no firm and binding agreement, the compensation for breach of the negotiations will be limited to the actual loss suffered, i.e. the costs incurred and, if any, the damage to the image of the affected party. Therefore, in order to protect their rights of recovery, parties involved in long negotiations should execute a preliminary contract setting forth the amount of damages that may be awarded in case of wrongful termination of the negotiations on the main contract.

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