


French Court Declines Jurisdiction to Transfer Dispute Back to U.S. Court

On March 6th 2008, the Paris Court of Appeal agreed to decline jurisdiction in order to enable the plaintiffs to go back to California and resume the proceedings that they had initiated there. The U.S. Court had (almost) declined jurisdiction on the ground of forum non conveniens, but had fortunately made its decision conditional upon French courts retaining jurisdiction. Under French law, however, French courts did not have jurisdiction over the dispute, but it was hard to see how they could rule so without being petitioned by the defendants, who had no interest to do so. It seemed logical that the plaintiffs would apply to French courts for a declaration of lack of jurisdiction, but declaratory relief is traditionnally unavailable under French civil procedure.

The dispute arose after a Boeing 737-300 crashed in the Red Sea a few  minutes after leaving Egypt for Paris. All 135 passengers, most of whom were French (and who included leading arbitration scholar Philippe Fouchard and many members of his family), and the 13 crew members, died. This was on January 4th, 2004.

The airline (Flash airlines) was Egyptian, and so was its insurer. The aircraft was owned by Californian corporation International Lease Finance. The manufacturer of the aircraft was obviously American (Boeing), and so were a variety of its subcontractors: Honeywell International, Parker Hannifin.

Hundreds of plaintiffs decided to bring legal proceedings. A first group of 646 plaintiffs sued Flash Airlines and its insurer before French courts. A second group of 281 plaintiffs, some of whom also belong to the first group, sued the American parties before the U.S. District Court of the Central District of California.

In a judgment of 28 June 2005, the U.S. Court declared itself forum non conveniens. It held, however, that it would only decline jurisdiction if either the defendants were to agree to submit to the jurisdiction of French courts, or if French courts were to retain jurisdiction over the dispute.

The second group of plaintiffs decided to petition French courts to obtain a judgment declining jurisdiction. But this is a kind of declaratory relief that has traditionally been unavailable under French civil procedure. If you want a court not to retain jurisdiction, the received wisdom goes, you do not petition it in the first place. So the French first instance court held in a judgment of 27 June 2006 that the action was inadmissible.

The plaintiffs appealed to the Paris Court of Appeal which agreed to rule on its jurisdiction.

✘ It first ruled on the admissibility of the action and held that, because of the context of the action, an action seeking declaratory relief was admissible. The traditional rule is that parties may not ask courts to rule on issues if it is not immediately necessary for the resolution of the dispute. However, as the point of the action was to secure the jurisdiction of a foreign court which had made it conditional upon the decision of the French court, knowing whether French courts had jurisdiction was immediately necessary for the resolution of the dispute.

The Court went on to rule that it did not have jurisdiction over the dispute between the second group of plaintiffs and the American defendants. As the defendants were US based, the European law of jurisdiction did not apply and submitting to the jurisdiction of French courts was irrelevant, as it is only a head of jurisdiction under European law. The French common law of jurisdiction provides that French courts have jurisdiction in tort cases when either the domicile of the defendant or the accident took place in France, which was not the case here. Finally, article 14 of the Civil code provides that French courts have jurisdiction over disputes involving French plaintiffs, but this jurisdictional privilege can be waived by suing abroad and failing to challenge the jurisdiction of the foreign court, which is what had happened (indeed, the French plaintiffs had initiated the American proceedings and argued that U.S. courts had jurisdiction).

Interestingly enough, in an obiter dictum, the French court insists that the American court was the most appropriate court, as some of the witnesses reside “mostly” in the U.S., the evidence related to the plane is to be found in the U.S., and pre-trial discovery is available under U.S. civil procedure. The substance of the dictum might be questionable. But the mere fact that the judgment discusses

which court is the most appropriate is truly remarkable, because the jurisdiction of French courts is mandatory. French courts have no discretion in this respect, and whether the foreign court is the forum conveniens is meant to be irrelevant for the purpose of retaining or declining jurisdiction. Well, not completely irrelevant it seems.