French Supreme Court Keeps Flashairlines Case in France

In a previous post, I had reported how the Paris Court of Appeal had accepted to rule on its jurisdiction and to decline it in order to send back a case to the United States.

French victims of a plane crash in Egypt had first sued Boeing and some of its subcontractors in Los Angeles. The District Court had declared itself *forum non conveniens*, but made the dismissal conditional on "*a French Court's acceptance of jurisdiction*". The French victims had subsequently initiated proceedings in France for the sole purpose of obtaining a declaration that French courts lacked jurisdiction. The Paris Court of appeal had entertained the claim and had indeed accepted to decline jurisdiction.

Today, the French Supreme Court for private and criminal matters (*Cour de cassation*) reversed and set aside the judgment of the Paris Court of appeal. It did so, however, on very narrow grounds. It held that, as a matter of French civil procedure, no appeal was allowed from the first instance court to the Paris court of appeal. This is because the first instance court had only ruled on a procedural point (the admissibility of the jurisdictional challenge), and no appeal can be immediately lodged against such decisions under French civil procedure.

The consequence is that the parties are now back before the first instance court of Bobigny. The interim procedural decision had declared that a party could not possibly file suit before a court and then challenge its jurisdiction. Such challenge had been held inadmissible, and the Bobigny Court had directed the parties to argue the merits of the case. Instead, the parties had appealed. The appeal was dismissed and the parties are now meant to get back to where they were, i.e. the merits of the case.

After the judgment of the Court of appeal declining jurisdiction, the plaintiffs hoped to be able to get back to the U.S. Court and argue that, in fact, there was no available court in France, as French courts had declined jurisdiction. As of today, there is a French court available. The plaintiffs must now argue the merits of the case before the first instance court. An appeal will then be available where

the parties will have an opportunity to challenge the first instance decision, on the merits but also on the admissibility of the jurisdictional challenge (again).