

France—res judicata, interim measures and extension of the arbitration clause to non-signatories (Société [A] v SNC Legrand and SARL [G])

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Arbitration analysis: In a recent decision, the International Chamber of the Paris Court of Appeal rejected a set-aside application lodged against an ICC arbitral award rendered in a dispute opposing a French and two Tunisian companies, relying on two main arguments. First, the applicant, Société A, contended that SNC Legrand (the French party) renounced its right to invoke the arbitration clause in the contract when it applied for interim measures in Tunisia against Société A before the arbitration. The court rejected the argument, holding that the SNC Legrand's action in Tunisia was in fact not based on the same contract. Second, the court rejected Société A's argument that the sole arbitrator wrongfully extended the effects of the arbitration clause to it as a third-party non-signatory, holding that it actively participated in the performance of the contract. Written by Baptiste Rigaudeau, associate at LALIVE (Geneva).

Societe [A] v SNC LeGrand & Sarl [G] [CCIP-CA-RG 20/13575](#)

What are the practical implications of this case?

The decision should come as no surprise for practitioners following French arbitration law. In relation to Société A's first argument based on SNC Legrand's claim in Tunisia, the Paris judge refused to decide on the potential impact of interim measures sought before local courts on the jurisdiction of an arbitrator. Instead, it correctly held that the Tunisia claim did not relate to the contract or the contested invoices at issue in the arbitration but was based on another contractual arrangement between the Parties. In this regard, the decision provides a strict interpretation of the scope of application of each contractual arrangement, refusing to confuse two actions although these related to the same economic relationship.

The Paris Court's decision on Société A's third argument, ie, against the extension of the effects of the arbitration clause, is also expected. Following a constant line of case law on the issue, the court upheld the extension of the clause to Société A despite it being a non-signatory to the original contract. In doing so, it focused on the conduct of Société A during the performance of the Contract, holding that it participated actively in the performance of the contract, notably by providing a letter of guarantee to SNC Legrand committing to support SARL G's fulfilment of its own contractual obligations.

The decision thus is useful to practitioners to understand the Paris court's stance on (i) the interpretation of the effect of separate contracts relating to the same economic relationship; and (ii) the elements to be taken into consideration to determine whether an arbitration clause should be extended to a non-signatory.

What was the background?

The facts of the case

The dispute related to unpaid invoices that were issued under a distribution contract entered into between SARL G and SNC Legrand. Following SARL G's failure to pay the invoices, SNC Legrand initiated an arbitration against SARL G and Société A (the holding company of the group to which SARL G belonged). The sole arbitrator appointed to hear the case issued an award on 20 August 2020 rejecting Société A's jurisdictional challenge and upholding SNC Legrand's claim for payment against both respondents.

The challenge before the Paris Court of appeal

The challenge against the award brought by Société A rested on three grounds: (i) the sole arbitrator did not have jurisdiction to rule on SNC Legrand's claims; (ii) the sole arbitrator violated due process; and (iii) the award was contrary to international public policy. Regarding the first ground, Société A argued that SNC Legrand had renounced its right to arbitration under the contract since, before initiating the arbitration, SNC Legrand sought, before a Tunisian judge, to attach Société A's bank accounts as payment for the disputed invoices. Further, the Tunisian judge having rejected SNC Legrand's attempt, Société A argued that this judgment should have res judicata effect on the sole arbitrator's mandate, preventing him from ruling on SNC Legrand's claim. Regarding the second ground, Société A argued, according to the same facts, that SNC Legrand should have been estopped from initiating arbitration. Regarding the third ground, Société A argued that the sole arbitrator erred in extending the effects of the arbitration agreement to it, as it was not a signatory to the initial contract.

What did the court decide?

The Paris court rejected Société A's challenge. On Société A's first argument, the court decided that the claim brought in Tunisian courts, was not based on the contract, but on a distinct agreement relating to the global payment of invoices. Thus, this claim could not be taken as a renunciation by SNC Legrand of its right to arbitrate under the contract. The same rationale was used by the Paris court to reject Société A's argument that the Tunisian court's decision ultimately rejecting SNC Legrand's claim had res judicata effect on the Sole Arbitrator.

As to Société A's second argument, the Paris court held that Société A's participation in the performance of the contract justified the extension of the arbitration clause to it. Notably, the Paris judge relied on several factors demonstrating Société A's involvement in the contractual relationship on behalf of SARL G, such as correspondence between Société A and SNC Legrand about the contract and correspondence pledging Société A's commitment to step into SARL G's shoes for the payment of invoices issued by SNC Legrand.

The Paris judge also summarily dismissed Société A's due process argument relating to documents which were translated belatedly. The Paris judge held that Société A had (i) not sought to comment on those documents during the arbitration; (ii) not challenged

Case details:

- Court: Paris Court of Appeal
- Judges: François Ancel (President); Fabienne Schaller; Laure Albebert
- Date of judgment: 1 March 2022

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