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Clause compromissoire

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Clause compromissoire

REX ROTARY INTERNATIONAL CORPORATION A/S
v. SCANDINAVIAN BUSINESS MACHINES LTD.,
C.S. Montreal ; n° 741392,
1er février 1968, juge Harry BATSHAW.

Exception déclinatoire — Clause compromissoire — Obligation de se soumettre à l'arbitrage — Défaut de se conformer à cette clause — C.C. Article 13 ; C.P.C., art. 951.

THE COURT, seized of the Plaintiff's motion to dismiss the Defendant's cross-demand, having heard the parties through their Counsel and duly deliberated, now proceeds to render the following judgment :

In this case the Plaintiff is suing the Defendant for $18,283.31 for goods sold and delivered as well as on the bills of exchange accepted by the Defendant in payment of the purchase price. The defence does not deny the indebtedness except to state that the Plaintiff only delivered 300 machines instead of 400 as stipulated in the contract which had been illegally and unileterally cancelled by the Plaintiff. This caused the latter damage in the sum of $20,000 for loss of profit on 100 machines which the Plaintiff had failed to ship, in addition to $100,000 for loss of future profit during the time the contract was to have run. These damages of $210,000 are claimed by the Defendant by way of cross-demand in the plea.

The Plaintiff now seeks to have the cross-demand dismissed invoking an arbitration clause in the contrast which provides that : "Disputes and controversies concerning the fulfilment or understanding of the stipulations of this agreement or concerning any question arising thereof shall be submitted to arbitration with final and binding effect on either party." The clause further proceeds to outline how the arbitration should take place, its locate being in Copenhagen where the Plantiff's business is located.

Defendant contents that the cross-demand has been validly made on the grounds the arbitration clause is not binding under our law. This is disputed by the Plaintiff who submits that even if the jurisdiction of our courts cannot be excluded by such a clause, it represents at least a condition precedent which the Defendant was bound to comply with before instituting its claim against the Plaintiff by way of cross-demand.

After due consideration, the Court has come to the conclusion that the Plaintiff's motion cannot be maintained for the following reasons :

1. There is not doubt that the clause in question constitutes a "clause compromissoire," for it expressly states that the dispute shall be submitted to arbitration with final and binding effect on either party. This amounts therefore to an agreement in advance to cast the jurisdiction of the courts.
2. Whether such a clause is contrary to public order (Art. 13 C.C.) has been a most question for many years but the weight of opinion is to the effect that in the absence of any other text art. 13 C.C. must be deemed to exclude the validity of such a clause. This whole question was analysed and discussed in the case of *Vinet Construction Ltée* v. *Dame Dabronsky et al* [1] which, by a decision of 4 to 1 hold this type of clause to be unenforceable in our law.

[1] [1962] B.R. 62.

3. The question has arisen whether the enactment of the new Code of Procedure has changed the situation. The Codifiers have clearly stated in their report that the proposed text of the articles dealing with arbitration do not change the substantive law as far as the problem of validity is concerned. They did express the hope, as did the members of the Court of Appeals in the *Vinet case*, that the legislator might resolve the question of policy as to whether arbitration clauses of this nature should or should not be permitted in our law. Pending such a determination the undersigned subscribes to the view that they should not and that any tendency to cast the jurisdiction of the Courts even before any dispute occurs should not be encouraged.
4. In arriving at the foregoing decision, moreover, the Court concurs with the view of Mitchell J. in *Singer Plumbing & Heating Co.* v. *Richard & B. A. Ryan (1969) Limited*[2] in which a similar clause was held invalid.

FOR THE FOREGOING REASONS, therefore, the Court dimisses the Plaintiff's motion with costs.

Droit du travail

Intervention du tribunal civil dans la mise à exécution d'une convention collective

L'ASSOCIATION DES POLICIERS DE LA CITÉ DE GIFFARD v. LA CITÉ DE GIFFARD, C.S., Québec, nº 138726, 31 janvier 1967, juge R. HAMEL.
Inf. par L'ASSOCIATION DES POLICIERS DE LA CITÉ DE GIFFARD v. LA CITÉ DE GIFFARD, C.B.R., Québec, nº 7108, 12 juillet 1968, juge en chef TREMBLAY, juges PRATTE et MONTGOMERY.
[Commentée par P. VERGE, dans (1968) 23 *Rel. Ind.* 672-677].

Action en réclamation de salaire — Interprétation d'une convention collective — Compétence du tribunal civil — Code du travail, arts 1, par. g, 81, 88, 89.

COUR SUPÉRIEURE

LA COUR :

Après avoir entendu les parties par leur procureur respectif, sur le mérite de la présente demande, analysé la preuve, examiné le dossier de la procédure, les pièces produites et sur le tout délibéré :

Il s'agit d'une demande au montant de $8,373.11 formulée par l'Association des policiers de la cité de Giffard, pour le bénéfice de certains de ses membres. Le 8 octobre 1964, les parties aux présentes ont signé une convention collective de travail d'une durée de deux ans, soit du 1er février 1964 au 3 janvier 1966.

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[2] C.S. Montréal, nº 13460, *ex parte* 17 octobre 1967, juge MITCHELL. Confirmé, pour des raisons différentes, par [1968] B.R. 457.