

Enforceable copy: Cabinet BEAUSSIER
BEAUQUIER & MARECHAL, Cabinet
WEIL GOTSHAL & MANGE, SCP
FOURGOUX ASSOCIES
Copies to plaintiffs: 2
Copies to defendants: 12

COMMERCIAL COURT OF PARIS
INTERIM ORDER ISSUED ON FRIDAY, 15/11/2013
BY Mrs RIGOLOT, PRESIDENT OF THE COURT,
ASSISTED BY Mrs. JAMOIS, COURT CLERK,
HANDED DOWN THROUGH THE CLERK'S OFFICE.

1

RG 2013064691
07/11/2013

BETWEEN:

SA COMPAGNIE M.I.29, having its registered office at 29 RUE DE MONCEAU 75008 PARIS – Paris Company and Trade register no. B 391503745
Plaintiff: represented by Maître Jean-Pierre VERSINI-CAMPINCHI Lawyer (P454) with SCP VERSINI-CAMPINCHI & Associates -

AND:

- 1) SA SOCIETE DE LA TOUR EIFFEL, having its registered office at 20-22 R DE LA VILLE L'ÉVÊQUE 75008 PARIS - Paris Company and Trade register no. B 572182269
- 2) Mr. Mark INCH, residing at 76 avenue Paul Doumer 75016 PARIS
- 3) Mr. Renaud HABERKORN, residing at 20-22 rue de la Ville L'Évêque 75008 PARIS
Defendants: represented by Maître Jean-Pierre MARTEL Lawyer (P134) and Maître Didier MALKA-WEIL Lawyer (L132).
- 4) Mr. Frédéric MAMAN, residing at 4 rue Mariette Martin 75016 PARIS
Defendant: represented by Maître BEAUQUIER Antoine Lawyer (R198).
- 5) Mr. Robert Guy WATERLAND, residing at 39 rue Cortambert 75116 PARIS
Defendant: represented by Maître Jean-Pierre MARTEL Lawyer (P134) and Maître Didier MALKA-WEIL Lawyer (L132).
- 6) Mr. Philippe PROUILLAC, residing at 6 Villa Pauline 92100 BOULOGNE BILLANCOURT
Defendant: represented by Maître FOURGOUX Jean Louis Lawyer (P69).
- 7) Mr. Aimery LANGLOIS-MEURINNE, residing at 8 rue de l'hôtel de ville 1204 GENEVA - SWITZERLAND
- 8) Ms Mercedes ERRA, residing at 7 avenue André Guillaume 92380 GARCHES
- 9) Mr. Richard Christopher NOTTAGE, residing at 3 rue Eugène Delacroix 75116 PARIS
Defendants: represented by Maître Jean-Pierre MARTEL Lawyer (P134) and Maître Didier MALKA-WEIL Lawyer (L132).

Pursuant to an order issued by the President of this court dated 28 October 2013, and in accordance with the provisions of Section 485 CPC, the M.I.29 SA company was granted an emergency injunction for a hearing on the present date, by the legal instrument dated 30 October 2013, for the reasons stated in said instrument, requested that the Court:

Having regard to articles L225-103 and R-225-65 of the Commercial code of Law

Having regard to articles 872 and 873 of the Code of Civil Procedure

- Appoint whatever administrator the Court may deem fit, as its ad hoc representative, tasked with:
 - convening, no later than sixty days after being appointed, the Ordinary and Extraordinary Combined General Meeting of Société de la Tour Eiffel, with the following agenda:
 - For the ordinary meeting
 - ◇ revoke and where applicable replace the directors,
 - For the extraordinary meeting:
 - ◇ withdraw any delegation of power granted to the Board of Directors to increase the capital in kind,
 - ◇ effect a capital increase by contribution in kind with cancellation of the pre-emptive subscription rights in the terms of the transaction referred to in the press release dated 20 September 2013 issued by Société de la Tour Eiffel,
- adjourn any meeting of the Board of Directors of Société de la Tour Eiffel whose agenda includes the exercising of any delegation of power to carry out a capital increase pending a future General Assembly,
- prohibit the directors, managing director, or deputy managing director of Société de la Tour Eiffel from using any delegation of power to conduct a capital increase pending a future General Assembly.

At the hearing, the plaintiff's counsel indicated that they:

- waived their request to convene an extraordinary general meeting in so far as Patron Capital Partners had announced on 30 October 2013 that they had cancelled the transaction at issue, referred to in the press release of 20 September 2013,
- maintained their request to convene an annual general meeting with the above agenda, specifying they were prepared to request the appointment of two directors presented by [the company], and the revocation of only the three officers referred to in the criminal proceedings lodged before the public prosecutor;

Counsel for the SA SOCIÉTÉ DE LA TOUR EIFFEL and Mr. Mark INCH, Mr. Renaud HABERKORN, Mr. Robert Guy WATERLAND, Mr. Aimerv LANGLOIS-MEURINNE, Ms. Mercedes ERRA and Mr. Richard Christopher NOTTAGE filed various submissions in reply, requesting that the Court:

- dismiss all of the claims of the M.I.29 Company,
- order the M.I.29 Company to pay the sum of 50,000 euros under Article 700 of the Code of Civil Procedure,
- Award costs against the M.I.29 Company.

Counsel for Mr. Frédéric Maman has not filed any submission with the Court but has stated Mr Maman has been a director and employee of the company since 1999, is currently the Asset Manager, and has decided not to get involved in the case; he has asked the Court to take note that he has left the decision to the discretion of the Court;

Counsel for Mr. Philippe PROUILLAC, who is an independent director, has filed reasoned submissions requesting that the Court:

- record his protests and reservations about the pleas filed by the M.I.29 Company,
- acknowledge that the claim concerning the Patron Capital Partners transaction has no factual basis since it is henceforth devoid of purpose and that the request to convene an extraordinary general meeting is inadmissible,
- acknowledge that Mr. Philippe PROUILLAC has left the decision to the discretion of the Court with regard to the possible convening of an annual general meeting in the interest of the STE Company;

- order the M.I.29 Company to pay him the sum of 3,500 euros under Article 700 of the Code of Civil Procedure,

After hearing the explanations of the counsels for the parties, the Court announced that the order would be handed down by the Court clerk, on Friday, 15 November 2013 at 3:00 p.m.

WHEREUPON:

WITH REGARD TO THE CLAIM TO APPOINT AN AD HOC REPRESENTATIVE

The Court notes the following facts:

- Société de la Tour Eiffel, hereinafter referred to as STE, is a real estate investment company specializing in business property and is listed on NYSE Euronext Paris, its market capitalization being approximately € 300 million and its capital highly fragmented,
- The Board of Directors consists of eight directors: Mr. Mark INCH, Chairman of the Board of Directors, Mr. Renaud HABERKORN, CEO, Mr. Frédéric MAMAN, Mr. Robert Guy WATERLAND, Mr. Philippe PROUILLAC, Mr. Aimery LANGLOIS-MEURINNE, Ms. Mercedes ERRA and Mr. Richard Christopher NOTTAGE, the latter four being independent directors, the mandates of Mr. Mark INCH, Mr. Robert Guy WATERLAND and Mr. Philippe PROUILLAC were renewed for three years by the Combined General Meeting of 30 May 2013;
- In the autumn of 2012, Mr. Chuc HOANG, in his capacity as CEO of the M.I.29 Company approached one of the main shareholders of Société de la Tour Eiffel, the Eiffel Holding Company Ltd, to discuss the purchase of his shares, which discussions were authorized by the Board of Directors and allowed Mr. HOANG to carry out due diligence, but were interrupted by him in February 2013 without explanation,
- Nevertheless Mr. HOANG quickly contacted the Eiffel Holding company which agreed to a contract on 12 April 2013 with M.I.29 to purchase 535,901 STE shares representing 8.91% of the capital, the option being exercised at the end of September 2013 with effect at the beginning of October 2013,
- At the same time, the M.I.29 Company acquired more shares in STE and declared that it crossed the 5% threshold of capital on 17 April 2013, reaching 22.59% of the capital on 20 September 2013 and, after exercising the option of 8.91% on 26 September 2013, stated on 30 October 2013 that it held 25.39% of the capital,
- during the General Meeting of 30 May 2013, on behalf of M.I.29, Mr. HOANG questioned the company's management on the level of executive compensation, but the M.I.29 company still approved the associated resolutions, as well as those relating to the renewals of the mandates of the three directors, all of which were approved by more than 97% of the votes,
- By letter dated 25 September 2013, the M.I.29 Company wrote to the STE Company and to five of its directors, Mr. Frédéric MAMAN, Mr. Philippe PROUILLAC, Mr. Aimery LANGLOIS-MEURINNE, Ms. Mercedes ERRA and Mr. Richard Christopher NOTTAGE, on the one hand, denouncing the refusal of Messrs. INCH and WATERLAND to respect their verbal commitment to do everything possible for the M.I.29 Company to be offered two directorships and, on the other, the level of remuneration paid to executives stigmatized in a report by a legal expert appointed by the M.I.29 Company, and asked them to take legal action on behalf of the company or else it would do so itself,
- By letter dated 10 October 2013, STE clearly refuted these allegations and attached a counter-report established by another legal expert appointed by it,

- On 15 October 2013, the M.I.29 Company filed a complaint for misuse of corporate assets, abuse of power, complicity and receipt of stolen goods to the detriment of the company.

The Court has also noted:

- That the M.I.29 Company, which bases its request for the appointment of an ad hoc representative to convene a general meeting on the provisions of Article L.225 -103 of the Commercial Code of Law, asserts the claim that it is normal that a shareholder who is by far the largest, and holds more than a quarter of the capital, be represented on the Board, that many of its current members have lost their legitimacy by having sold the little capital they held and/or by allocating themselves extremely excessive levels of compensation, and that is not in the interest of the company for the crisis caused by disagreements between the majority shareholder and management to continue, and that the conflict situation having been made public is paralyzing the company's development,
- That the STE Company, Mr. Mark INCH, Mr. Renaud HABERKORN Mr. Robert Guy WATERLAND, Mr. Aimery LANGLOIS-MEURINNE, Ms. Mercedes ERRA and Mr. Richard Christopher NOTTAGE have retorted:
 - That Mr. Mark INCH did not formally promise M.I.29 in his letter of 12 April 2013 the position of director then claimed, but only ensured he would make his best efforts after crossing the 10% threshold and that the request to do so has never been formally presented,
 - that the accusations made against the company's officers in relation to their compensation are unfounded and that the filing of a complaint is not sufficient to accredit the aforesaid accusations, that that compensation was almost unanimously approved by the shareholders including M.I.29, after an explicit discussion initiated by M.I.29 during the combined general meeting of 30 May 2013,
 - that the alleged crisis to justify the company's interest in reconstructing its board of directors has been artificially created by M.I.29, in order to accelerate its takeover without waiting for the next combined general meeting, in the latter's own personal interest, in particular so that Mr. HOANG, in his capacity as a shareholder of M.I.29, is able to consolidate his position of "lead holding company" before 1 January 2014 and thus exclude his shareholding from the basis of assessment for wealth tax,
 - That, therefore, the claim is not based on the corporate interests of STE,
- That Mr. Philippe PROUILLAC has left the decision to the discretion of the Court; But after observing that the refusal by the director shareholders to respect their commitment to propose the appointment of a representative of the MI 29 Company on the STE Board of Directors has triggered the hostilities, and that the exchange of arguments through the media is having a devastating effect on the company both in terms of its image and its operation, he indicates that he considers that the recent worsening of relations and the persistence of the conflict are obviously liable to cause imminent harm to the company, and that it is important to prevent and stop that harm,
- That Mr. [Frédéric] MAMAN who has not filed any submission with the Court and has also left the decision to the discretion of the Court, also deplores the situation which is interfering with the operation of the company and has caused the abandonment of the Patron Capital Partners transaction, which had been approved almost unanimously by the shareholders at the combined general meeting of 30 May 2013 and was a good deal for the company,

The Court notes:

- That there is no need to discuss the question of whether it would be "desirable" or "normal" for the Board of Directors of Société de la Tour Eiffel to include one or two Directors nominated by the M.I.29 Company, that it is sufficient to note that no text stipulates that the board of directors of a public limited company must mirror the shareholder structure, that these positions were not formally promised and that by choosing to increase its stake as it did, the M.I.29 Company deliberately deprived itself of the opportunity to negotiate a shareholder's agreement or a stable investment agreement that could have guaranteed it such representation,

- that the Board was duly appointed by successive general assemblies, the last of which was held on 30 May 2013, without M.I. 29 which, it is true, at that time only accounted for just over 5% of the capital, having requested to serve on the Board,
- that nothing accredits the argument developed by the M.I.29 company that the Board is no longer qualified to manage the business, that no text requires directors to retain their shareholdings and that the criticisms concerning the level of compensation, despite being voted almost unanimously by the combined general meeting of 30 May 2013, including by M.I.29, are insufficient evidence of misconduct, the filing of a complaint in itself being insufficient grounds for an accusation,
- That in any case it is not within the powers of the Judge hearing applications for interim measures to take position on the reality of the alleged failings, that the judge only being entitled to determine whether the conditions for applying the provisions of Article L225 -103 invoked by M.I.29 are met, that the appointment of an ad hoc representative to convene a general meeting can only be ordered if such a measure is consistent with the corporate interests of the company,
- That if it is clear how the measure sought is of interest to M.I.29, which could crown its rapid increase in its stake, from 5% in April 2013 to 25.39% in October 2013, by joining the board without waiting for the combined general meeting in May 2014, there is no evidence of the interest of this procedure for the M.I.29 Company,
- that while there is no doubt that all of the recent attacks on the management in October 2013, published in the press, and the display of these dissensions, may harm the image of STE and handicap its development activities as evidenced by the renunciation of Patron Capital Partners, it would be paradoxical to admit it is sufficient for a new shareholder holding a quarter of the capital to open hostilities and display its ambitions before claiming there is a conflict situation thus created, in order to claim it is entitled to ask the judge to disrupt the normal operation of the corporate bodies and alter the normal schedule of ordinary general meetings,
- That finally, if Mr. PROUILLAC mentions the fact that the persistence of the conflict is liable to cause the STE Company imminent damage of a kind permitting the judge to act on the basis of article 873 of the Code of Civil Procedure, an article to which M.I.29 simply refers, it is clear that it is not considered to be sufficiently serious by the plaintiff,
and consequently:
 - That the request to appoint an ad hoc representative to convene the annual general meeting of Société de la Tour Eiffel is unfounded and that the request of the M.I.29 Company will therefore be dismissed,

With regard to Article 700 of the Code of Civil Procedure,

The Court notes that Société de la Tour Eiffel, which seeks to have the M.I.29 Company pay it the sum of 50,000 euros under Article 700 of the [French] Code of Civil Procedure, has incurred irrecoverable costs in its defence against the claim, a sum that it would be unfair to have it bear, and assesses these costs to be EUR 10,000,

- orders the M.I.29 Company to pay Société de la Tour Eiffel the sum of 10,000 euros under Article 700 of the Code of Civil Procedure, and dismisses the remainder,

The Court notes that Mr. Philippe PROUILLAC seeks to have Société de la Tour Eiffel pay him the sum of 3,500 euros under Article 700 of the Code of Civil Procedure, but notes that there are no grounds to have Société de la Tour Eiffel bear the irrecoverable costs he has incurred to assert his point of view in the present proceedings and will dismiss his claim;

With regard to costs:

As the unsuccessful party, the M.I. 29 Company shall bear the costs of the proceedings.

FOR THE ABOVE REASONS,

Ruling after hearing both parties and subject to appeal, the Court:

Having regard to Article L 225-103 of the Commercial Code and Articles 872 and 873 of the Code of Civil Procedure,

- Takes cognizance of the M.I.29 Company's waiver to request the convening of an extraordinary general meeting,
- Takes cognizance of Mr. Philippe PROUILLAC's protests and reservations concerning the pleas by the M.I.29 Company and of the fact that he leaves the decision to the discretion of the Court,
- Takes cognizance of the fact that Mr. Frédéric MAMAN leaves the decision to the discretion of the Court,
- Dismisses the M.I.29 Company's request to have an ad hoc representative appointed to convene the annual general meeting of Société de la Tour Eiffel,
- Orders the M.I.29 Company to pay Société de la Tour Eiffel the sum of 10,000 euros under Article 700 of the Code of Civil Procedure, and dismisses the remainder,
- Dismisses Mr. Philippe PROUILLAC's claim under Article 700 of the Code of Civil Procedure,
- Awards costs against the M.I.29 Company, including those to be recovered by the clerk of the Court for the sum of € 157.97 including € 25,89 VAT.

This decision is fully enforceable without further formality under article 489 of the Code of Civil Procedure

The original of the order is signed by Mrs. Rigolot, President of the Court, and by Mrs Jamois, Court clerk.