

CASE TRANSLATION: FRANCE

CASE CITATION:

95-14251 Société Descamps, Banque Scalbert Dupont

NAME AND LEVEL OF COURT:

Commercial Chamber of the Cour de cassation (Cour de cassation chambre commerciale)

DATE OF DECISION: **Tuesday 2 December 1997**

MEMBER OF THE COURT:

M. Bézard, president

RAPPORTEUR: **M. Leclercq**

ADVOCATE GENERAL: **M. Raynaud**

ADVOCATES: **la SCP Monod, M. Spinosi**

French Republic

In the name of the French people

Considering that, according to the decision under challenge (Court of Appeal in Douai, 15 December 1994), Banque Scalbert Dupont, claiming that it had validly received, under the provisions of article 6 of the law of 2 January 1981,¹ a deed of acceptance of the assignment of a trade debt by facsimile issued by the Descamps company, commenced an action for payment against the latter company; that the company invoked the absence of an original written document bearing its acceptance and the bad faith of the bank, when discounting the debt, in rejecting the admissibility of the defence of non-compliance of the goods delivered by the vendor in relation to the order.

On the first submission, taken in its two branches:

Considering that Descamps criticises the judgment for admitting the facsimile as evidence of its acceptance of the assignment of the debt, whereas, according to the submission, on the one hand, a facsimile does not constitute a written document within the meaning of article 6 of the law of 2 January 1981, and that in deciding the contrary, the court of appeal violated this provision; and whereas, on the other hand, the photocopy of the deed of acceptance of an assignment of a trade debt is only a factor, or, if it comes from the party against whom it is raised, as a commencement of proof in writing of such acceptance; that by holding the photocopy of the facsimile as indisputable evidence of the acceptance contested by Descamps, the court of appeal violated the provisions of article 6 of the law of 2 January 1981.

But considering that the written document

constituting, under article 6 of the law of 2 January 1981, the deed of acceptance of the assignment or pledge of a trade debt, can be established and stored on any medium, including by facsimiles, as long as its genuineness and the attribution of its contents to its designated author were verified, or are not contested, and that analyzing the circumstances in which the facsimile in question was issued, the fake character of which has not been alleged, the court of appeal could infer that the written evidence of acceptance of the assignment of debt was established, that the submission has no grounds in any of its branches;

The second submission:

Considering that Descamps complains that the judgment did not accept the admissibility of the defence of non-performance against the assignee bank, whereas, according to the appeal, by basing itself on the absence of evidence that FTA, the vendor, was seriously in debt without investigating whether, if as argued by Descamps, the haste manifested by the bank in notifying the assignment of a debt the day immediately after the invoice was issued by FTA and two days after the writ to put the latter company in receivership by the URSSAF, was not characterized as being fraudulent, since the bank could not ignore the difficulties and the bank overdraft of FTA, its habitual customer, which was declared insolvent on 15 August 1990, the court of appeal deprived its decision of legal basis under the provisions of Article 1382 of the Civil Code.²

But considering that after having found that the position of the account of the vendor company and its use of debt assignments were not of concern to the

¹ *Loi n°81-1 du 2 janvier 1981 facilitant le crédit aux entreprises, Article 6 reads as follows:*

Sur la demande du bénéficiaire du bordereau, le débiteur peut s'engager à le payer directement; cet engagement est constaté, à peine de nullité, par un écrit intitulé: 'Acte d'acceptation de la cession ou du nantissement d'une créance professionnelle.'

Dans ce cas, le débiteur ne peut opposer à l'établissement de crédit les exceptions fondées

sur ses rapports personnels avec le signataire du bordereau, à moins que l'établissement de crédit, en acquérant ou en recevant la créance, n'ait agi sciemment au détriment du débiteur.

At the request of the beneficiary of the form, the debtor may agree to pay directly; this undertaking is set out, under pain of being null and void, in a written document entitled 'Deed of acceptance of the assignment or pledge of a trade debt.'

In such a case, the debtor cannot use against the

credit institution the defence based on its personal relationship with the signatory of the form, unless the credit institution acquiring or receiving the debt, has acted knowingly to harm the debtor.

² *Article 1382 du Code civil: Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer. Any act by a man that causes harm to others, requires that the fault be repaired*

bank, the court of appeal was not obliged to carry out the further investigation allegedly omitted, the allegations cited being insufficient, in themselves, to establish that the bank was informed of the irremediably compromised position of its client nor the absence of cause of the undertaking to make payment which it requested Descamps to give; the plea has no foundation.

BY THESE REASONS:

The appeal is rejected.

Publication: 1997 IV Bulletin No. 315 p. 271

Decision: Court of Appeal of Douai, December 15, 1994

Reasons and summaries:

- 1 ASSIGNMENT OF DEBT – Assignment of trade debt – Assigned debtor - Acceptance - Writing – Any medium.
- 1 The written document constituting, under article 6 of the law of 2 January 1981, the deed of acceptance of the assignment or pledge of a trade debt, can be established and stored on any medium, including by facsimiles; as long as its genuineness and the attribution of its contents to its designated author were verified, or are not contested; by analyzing the circumstances in which the facsimile in question was issued, the fake character of which has not been alleged, a court of appeal could infer that the written evidence of acceptance of the assignment of debt was established.
- 1 ASSIGNMENT OF DEBT – Assignment of trade debt – Assigned debtor - Acceptance - Writing – Facsimile
- 2 BANK – Liability - Assignment of trade debt – Notice to the assigned debtor – Undue haste – Position of assignee not of concern to the bank.
- 2 After having found that the position of the account of the vendor company and its use of debt assignments were not of concern to the bank, a court of appeal was not obliged to examine if the haste manifested by the bank in notifying the assignment of debt the day after the invoice was issued and 2 days after a writ was served to put the company into receivership did not constitute fraudulent action, these allegations being insufficient, in themselves, to establish that the bank was informed of the irremediably compromised position of its client nor the absence of cause of the undertaking to make payment which it requested the assigned debtor to give.

Previous jurisprudence:

Texts applied:

1° : Loi 81-1 1981-01-02 art. 6

The editor thanks Alistair McDonagh of SCP Triplet & Associés for improving this translation

<http://www.triplet.com>