PARISBABYARBITRATION

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French and foreign court decisions

Arbitral awards

Interviews with Sara Nadeau-Seguin and Maximin de Fontmichel

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FOREWORD

Paris Baby Arbitration is a Parisian association and an international forum aiming the promotion of young arbitration practice, as well as the accessibility and the popularizing of this field of law, still little known.

Each month, its team has the pleasure to present you the Biberon, an English and French newsletter, intended to facilitate the lecture of the latest and the most prominent decisions given by states and international jurisdictions, and the arbitral awards.

For this purpose, Paris Baby Arbitration encourages the collaboration and the contribution of the younger actors in arbitration.

Paris Baby Arbitration believes in work, goodwill and openness values, which explain its willingness to permit younger jurists and students, to express themselves and to communicate their passion for the arbitration.

Finally, you can find all the previously published editions of the Biberon and subscribe to receive a new issue each month on our website: babyarbitration.com.
We also kindly invite you to follow us in our Linkedin and Facebook pages and to become a new member of our Facebook group.

Have a pleasant reading!

FRENCH COURTS

COUR DE CASSATION

Cour de cassation, 1st civil Chamber,
2nd december 2020, n° 18-23.970,
Contributed by Max PABILLE and Toni LANDINI

In 2008, a subcontracting agreement was signed between Cerner Ltd and I-Capital S/E (M.A's sole proprietorship), the contract included an arbitration clause under the auspices of the International Chamber of Commerce (ICC). Without receiving payments due by I-Capital S/E, Cerner Ltd started an arbitration procedure. The same year, I-Capital is converted into a Limited Liability Company. (I-Capital LCC).

Cerner Ltd and I-Capital LCC signed a contract amendment with a new payment schedule. However, the new agreement included another arbitration clause that replaced the one from the original contract also under the auspices of the ICC. In the arbitration award, the arbitration tribunal summed jurisdiction towards M.A even though he has not signed personally the contract amendment as I-Capital that he represented has become a Limited Liability Company by the time the contract amendment was signed. According to the arbitrators, the contract amendment was signed by I-Capital LCC, a company that replaced I-Capital S/E and accepted to exercise its rights.

Moreover, I-Capital LCC did not have an «independent nature, will nor existence » from I-Capital S/E, sole property of M.A. Therefore, M.A who detains 99% of I-Capital LCC's capital should be considered as the « alter ego » of I-Capital LCC. The contract amendment's arbitration clause is therefore extended to M.A as a party « directly involved in the negotiation, conclusion and/ or termination of the contract amendment » in accordance with international commerce practices.

M.A appealed the award in front of the Paris Court of Appeal as judge acting in support of arbitration under the ICC's rules. The Court dismissed the award's cancellation and confirms the arbitration clause, regularly accepted by M.A through

his company. The Court therefore recognized the arbitration tribunal's jurisdiction over M.A. The latter appealed in front of the French Supreme Court (« Cour de cassation »).

In opposition to the Court of Appel, the « Cour de cassation » considers that the arbitration tribunal has no jurisdiction over M.A and that the Court violated the article 1520§1 of the civil code for the following reasons :

First, the extension of the arbitration clause to a person « directly involved in the negotiation of a contract » requires that this participation can be interpreted as this person's will to be a party to the contract. The Court disregarded the article 1520§1 of the civil code together with the article 16 of the French Declaration of the man and the citizen by considering that the mere participation of M.A to the negotiations of the contract amendment, in order to represent I-Capital LCC, can be interpreted as M.A's consent to be personally bound by that contract and its arbitration clause.

Secondly, the renonciation to national courts' jurisdiction in favor of arbitration must be « free, legal and without ambiguity ». In the matter, the arbitration clause has never been signed personally by M.A but by I-Capital LCC. As a consequence, the Court disregarded the article 1520§1 of the civil code together with the article 6§1 of the European Human Rights Convention by considering that M.A waived « without ambiguity » his right to bring the case before national courts.

Thirdly, the arbitration clause in the first contract would have been applicable to M.A but the new arbitration clause in the contract amendment cannot be applied to M.A because of the corporate veil. Indeed, the contract amendment was signed by I-Capital LCC and not by M.A or I-Capital S/E.

Fourthly, because of the corporate veil, M.A has not personally accepted the arbitration clause from the contract amendment even though he detained 99% of I-Capital's capital.

Finally, because of the corporate veil, M.A has not personally accepted the arbitration clause from the contract amendment even though he owned Belbadi Enterprises LCC.

Even though the « Cour de cassation » disagrees with the Court of Appeal's statements, the Court dismissed the case on the ground that « its nature is manifestly not leading to the cassation » of the Court of Appeal's decision in accordance with the article 1014 of the civil procedure code. This refusal leads to the refusal of the arbitration award's cancellation.

As a consequence, it seems that the « Cour de cassation » is reluctant to waive the corporate veil to consider consent to arbitration. Consent to arbitration by a corporate person does not lead to consent by the natural person behind it even though the legal person does not have an « independent nature, will nor existence ». The judge acting in support of the arbitration must prove a personal renonciation to courts' juridiction by the natural person which must be « free, legal and without ambiguity ».

Then, a person's participation to a contract's negotiations, that contained an arbitration clause, leads to the presumption of consent to arbitration by that person only if the participation reveals the willingness of that person to be personally bound by the contract and the arbitration clause.

However, the « Cour de cassation » already considered that « parties involved in a contract's execution » are presumed to have consented to the arbitration clause in the contract that they are implementing. (Cour de cassation, Civile 1, Alcatel Business Systems du 27 mars 2007) It is therefore surprising that the Court does not recognize a similar presumption of consent to arbitration to those implied in the negotiation and conclusion of a contract which contains an arbitration clause.

Cour de cassation, 1st civil Chamber,
2nd december 2020, n° 19-15.396,
Contributed by Julian MESTRE PENALVER

In a decision issued on December 2, 2020, the First Civil Chamber of the French Cour de Cassation held, on the basis of article 1466 of the French Civil Procedure Code, that a hearing on the arbitrators' jurisdiction before the arbitral tribunal did not prevent the subsequent submission of further evidence on this matter to the judge in charge of the cancellation of the arbitral proceedings.

The dispute involves several American investors (one individual and two companies) who took part through an American company in the share capital of three Polish companies. The investors subsequently created a Polish company to receive commissions paid by the three Polish companies with respect to management services provided. The three companies reported the commissions paid as tax-deductible charges under corporate income tax and VAT for the 1994 to 1997 fiscal years.

This declaration drew particular attention of the Polish tax authorities which, after several audits, objected to the existence of the management services for which these commissions were paid. The Polish tax authorities then notified an adjustment to one of the three debtor companies, which was subsequently declared bankrupt.

Investors accused the Polish state of illegal expropriation and brought the case before the ICSID on the basis of the U.S.-Poland bilateral investment treaty (BIT). The ICSID, with regard to the BIT, considered that it did not have jurisdiction over the investors' claims relating to tax matters and ruled only on claims relating to expropriation and transfers of funds. An appeal before the French courts has been filed with the aim of cancelling the award.

In a judgment of April 2, 2019, the Paris Court of Appeal rejected the plaintiff investors' claims alleging that there was a distinction between substantive acts and procedural acts, whereas the BIT did not distinguish between these types of acts. The plaintiffs argued, more specifically, that the tax proceedings initiated by the Polish State had not been conducted with good faith, and that, consequently, the arbitrators' lack of jurisdiction based on the exclusion of tax issues from the BIT

applicable to the case at hand was not justified. In addition, plaintiffs raised concerns about the risk of denial of justice if the Court of Appeal refused to provide a broader interpretation of the BIT, which the Court of Appeal did not do, ruling that "the arbitration proceedings resulting from a BIT are made effective by the consent of the states, and that the conditions attached to the arbitration proceedings delimit the arbitrators' power to judge. The allegation of a denial of justice cannot justify exceeding those limitations."

The plaintiffs, appealing to the Cour de Cassation, argue that under Article 1466, "a party who, consciously and without legitimate reason, refrains from invoking an irregularity before the arbitral tribunal in due time is deemed to have waived the right to rely on it", while specifying that the judge in charge of the cancellation of the arbitral proceedings must seek all elements in law or in fact in order to assess the provisions of the BIT and the arbitration agreement. Moreover, the plaintiff investors claim that invoking new elements of fact and law is admissible before the annulment judge, as the arbitrators consider themselves incompetent, wrongly according to the plaintiffs.

The French Cour de cassation rejects the reasoning of the Paris Court of Appeal, stating that "the waiver presumed by the aforementioned article 1466 of the French Civil Procedure Code concerns concretely articulated grievances and not categories of means". Thus, the French Cour de Cassation considers that "when jurisdiction has been debated before the arbitrators, the parties are not deprived of the right to rely on new pleas and arguments before the annulment judge and to present new evidence relating to this issue".

The Paris Court of Appeal having declared these new arguments inadmissible, its judgment was overturned by the French Cour de Cassation, and the case and the parties were therefore referred for reconsideration to the Paris Court of Appeal with a different composition.

COURTS OF APPEAL

Paris Court of Appeal,
17th november 2020, n° 18/02568,
Contributed by Julian MESTRE PENALVER

In a decision issued on November 17, 2020, the Paris Court of Appeals upholds an extensive conception of its discretionary powers to enforce the French conception of international public policy, particularly when there is "body of reliable, accurate and consistent evidence" of corruption.

Société Orléanaise d'Electricité et de Chauffage Electrique (SORELEC) concluded a construction contract with the Libyan State in 1979. Due to disputes between the parties to the contract, a memorandum of agreement was signed in 2003, providing a settlement of nearly 37 million euros. Failure to comply with this agreement led SORELEC (plaintiff) to sue the Libyan State before the ICC, bringing the case before the arbitral tribunal and requesting payment of the sum of more than 109 million euros plus interests.

In 2016, while the proceedings were in progress, a new memorandum of agreement has been signed between SORELEC and the Libyan State, represented by the Ministry of Justice and for which the plaintiff company has applied to the arbitral tribunal for certification.

On December 20, 2017, the arbitral tribunal issued a partial award approving the memorandum of agreement and ordered the Libyan State to pay the claimant company the sum of 230 million euros within 45 days. Otherwise, the arbitral tribunal would render a final award condemning the Libyan State, the respondent, to pay more than 452 million euros.

The arbitral tribunal saw its partial and final awards challenged by the Libyan State, as claimant. Thus, on January 26, 2018, the partial award was challenged before the Paris Court of Appeal, with the Libyan State arguing that the approved memorandum of agreement had been concluded following the corruption of Libyan public officials for which the State had reliable, accurate and consistent

evidence. Consequently, the award would be a breach of the French conception of international public policy pursuant to article 1520 5° of the French Civil Procedure Code.

SORELEC, the respondent, argues that the plaintiff's claims for the annulment of the award are inadmissible since they were not discussed or even invoked before the arbitral tribunal.

The Paris Court of Appeal, considering that there is an "international consensus" due to existing conventional instruments, particularly the OECD Convention on Combating Bribery (1997) and the United Nations Convention against Corruption (2003), ruled that "the prohibition of bribery of public officials is one of the principles whose violation in the French legal order cannot be violated even in an international context. It is therefore a matter of international public policy".

This is how the Paris Court of Appeal rejects the respondent's claims, giving pre-eminence to respect of the French conception of international public policy. To do so, "The State judge in charge of the review [must] be able to assess the plea (…) even though it was not invoked before the arbitrators and they did not include it in the debate".

Consequently, the Paris Court of Appeal considers that the annulment judge must be able to "seek in law and in fact all the elements allowing him to rule on the alleged illegality" in order to ensure that the agreement complies with the French conception of international public policy.

To do so, the court will seek and highlight "reliable, accurate and consistent evidence", among which a globally advantageous agreement for the respondent without any proof of conducted proper negotiations for the conclusion of the memorandum of agreement (meetings, minutes, exchanges), in a deteriorated economic context in Libya as well as a climate of generalized corruption on the Libyan territory reported by several organizations.

Also, the Court of Appeal noted that the conclusion of the memorandum of agreement took place at a time when "the arbitration proceedings were sufficiently advanced", which could in this way be viewed as putting pressure on the plaintiff. Considering this "body of reliable, accurate and consistent evidence", the Paris

Court of Appeal holds that this memorandum of agreement was "obtained in an unlawful way". The partial award of the arbitral tribunal is therefore set aside.

Paris Court of Appeal,
1st december 2020, n° 19/08691,
Contributed by Thibault CARDONNE

According to the ICCP-CA, in its judgment of December 1, 2020, an arbitration clause covering "all disputes" arising in connection with the disputed contract does not render the arbitral tribunal incompetent if a prior amicable settlement clause is not complied with prior to its referral.

In 2006, Keppel Seghers Engineering Singapore Pte Ltd (hereinafter referred to as "KSES"), a company incorporated under Singaporean law and operating in the waste sector, won a call for tenders for the design, creation, operation and maintenance of a waste management center. To this end, on October 17, 2006, a contract was signed between the company and the limited partner, the Government of QATAR. The following month, design and construction work began and will continue until 2011.

At that time, due to difficulties during the execution of the work, KSES made claims for payment to the limited partner and/or engineer, but these were rejected. As a result, the company incorporated under Singaporean law-initiated arbitration proceedings against the Government of Qatar on 15 April 2015, ordering it to pay the sum of QAR 364,839,693.75 and S$ 613,216.13.

The limited partner made a partial payment in the arbitration proceedings in the amount of QAR 96,726,897.10, which was one of the claims made by the claimant. However, the defendant dismissed the company's claims on the grounds that some of the claims were inadmissible and, for some of them, that the Arbitral Tribunal simply lacked jurisdiction to rule on articles 20.1 to 20.5 of the construction contract terms (C1).

In its award of 31 January 2019, the Arbitral Tribunal, constituted under the ICC Rules, rejected the request of the Government of Qatar for dismissal of KSES's claims for lack of jurisdiction and inadmissibility, and subsequently granted the

majority of KSES's claims, ordering the Government of Qatar to pay a total principal sum of more than QAR 123 million and approximately USD 3.4 million in arbitration costs.

In response, the Government of Qatar has filed an action for partial annulment of the award with the Paris Court of Appeal. It asked the Court, on the one hand, to declare the Arbitral Tribunal incompetent to hear requests made by KSES that had not been the subject of the dispute resolution procedure that the parties had intended to establish as a condition of their consent to the jurisdictional power of the Arbitral Tribunal to hear the dispute.

On the other hand, to note the non-compliance of the arbitral tribunal with its mission. Indeed, he considers that the arbitral tribunal did not give any reasons for its decision on its jurisdiction, limiting itself to discussing the plea of inadmissibility, that the tribunal ruled *ultra petita* by granting KSES higher compensation than that requested for the work carried out in the entry zone, or that the arbitral tribunal arrogated to itself the powers of "amiable compositeur" instead of applying the rules of law chosen by the parties for having set aside the application of clause 20. 1 of the general terms and conditions even though the latter was unambiguous.

Finally, the Government of Qatar requests that the arbitral tribunal fail to comply with the principle of contradiction when it based several of its decisions on arguments that had not been raised by the parties during the arbitration proceedings or when it chose to make up for KSES's failure to establish its damages.

The Respondent, for its part, considers that the dispute relating to the performance of a contractual dispute resolution process prior to the referral to an arbitral tribunal does not fall within the scope of jurisdiction, while specifying that the parties intended to confer the broadest possible jurisdiction on the arbitral tribunal to hear all disputes.

It also submits that the arbitral tribunal gave good reasons for its decision, that exceeding the amount of a claim does not fall within the scope of *ultra petita* when the amount does not exceed the amount of the aggregate claim and that, in this case, the arbitral tribunal awarded less than the parties' claims, while pointing out

that it requested the arbitral tribunal to order the Government of Qatar to pay such sums as it may deem appropriate. Furthermore, the Respondent submits that the principle of contradiction does not require that the modalities for assessing damages be submitted to the parties, as they are within the sovereign power of the arbitrator.

In this case, the ICCP-CA rejected the argument for setting aside an award based on the alleged lack of jurisdiction of the arbitral tribunal, holding that the generality of the terms of the arbitration clause, which covered "all disputes" arising out of or in connection with the contract in dispute, did not support a finding that the arbitral tribunal lacked jurisdiction if this process had not been applied, without prejudice to the latter's assessment of the admissibility of applications that would not have been made in accordance with the said process, the latter issue not affecting the court's jurisdiction. On the plea alleging that the arbitral tribunal did not comply with its mission, the court pronounced a partial annulment of the award on one of the grounds that the tribunal had pronounced an award for a sum greater than that which had been requested. However, it rejected the other claims on this basis, stating that the fact that the arbitral tribunal relied on the principle of good faith recognized by Qatari law could not be equated with an assessment of the request for an amicable settlement.

Finally, none of the claims invoked in support of the plea for annulment based on the principle of contradiction was upheld, the court holding in particular that, with respect to the assessment of damages, the arbitral tribunal is not required to consider only one or other of the proposals defended by the parties or to submit to them the details of its reasoning before the award is rendered.

Nîmes Court of Appeal,
3rd december 2020, no° 20/00485,
Contributed by Alexander MIRONOV

On 3 December 2020, the Nîmes Court of Appeal dismissed the appeal on the issue of a debt payment terms modification during enforcement of an arbitral award.

The company SMP Technologies, whose director is Mr. B X Y had an exclusive distribution contract for tasers with a company incorporated under American law, Axon Enterprise Inc. ("Axon"). In response to the breach of the contract, Mr. B X Y, claiming that compensation for breach was due to him, applied to ICC Paris arbitration. On 27 December 2018, the International Court of Arbitration ruled in favor of Axon.

On the basis of the arbitral award and the exequatur order granted by the Paris High Court, Axon ordered an attachment of the Mr. B X Y debts. In his turn, Mr. B X Y filed almost simultaneously two requests: the first is for the annulment of two above decisions justifying the attachment and the second is before the enforcement judge relating in particular to the nullity of the attachment.

In the first place, on 24 January 2020, the enforcement judge of the Carpentras High Court dismissed all Mr. B X Y claims and ordered him to pay the costs of the proceedings as well as Axon legal costs. On 10 February 2020 Mr. B X Y appealed the decision seeking to reform it in all its provisions.

In the second place, on 30 June 2020, the Paris Court of Appeal issued the judgment dismissing the appeal for annulment of the arbitral award and the enforcement order. Consequently, during the examination of the appeal filed on 10 February by Mr. B X Y before the Court of Appeal of Nîmes, the part of his claims concerning the nullity of the attachment had already been denied.

The challenge before the Nîmes Court of Appeal concerned the request of Mr. B X Y to grant him payment periods over two years for the surplus of his debt. According to Article 1343-5 of the French Civil Code, the judge may, taking into account the situation of the debtor and the needs of creditors, reschedule or postpone the debt for a maximum period of two years. Having regard to the said

article and the general principle of article 6 of the French Code of Civil Procedure, Mr. B X Y asserted the claims by referring to his serious state of health and to the "financial asphyxia" imposed by credits obtained, according to him in order to pay the debt due to the arbitration proceedings.

After considering the parties' arguments on Mr. B X Y's situation, the Court states the lack of financial information provided by Petitioner and notes that he did not justify "any effort to pay" the main conviction under the 2018 arbitration award. With respect to the issue of Axon's needs, the Court notes "the delays inherent in Mr. B X Y's proceedings to annul the arbitral award" admitting that it appears to be recognized that Mr. B X Y's situation doesn't improve. On this ground, the Court confirms the judgment of the Carpentras High Court of 24 January 2020, dismisses Mr. B X Y claims and orders Mr. B X Y to pay the costs of the proceedings as well as Axon legal costs.

Pau Court of Appeal, 2ème Chambre, Section 1,
8 december 2020, RG nº 18/03903
Contributed by Julian MESTRE PENALVER

The Court of Appeal of Pau rules that in spite of a succession of contracts, although drafted in identical terms, does not bind the lawsuits associated with these contracts into a single dispute, whether these proceedings take place before the state court or the arbitral tribunal alternatively. Thus, the estoppel invoked by the defendant company is denied.

CSF, on behalf of Logidis, a retail cooperative and subsidiary of Carrefour, entered into a supply contract with Société Anonyme DE (S.A. DE) on May 15, 2001. The contract was renegotiated before its term in December 2004, but in 2005 S.A. DE decided not to renew the contract again. Before the end of the contract (scheduled for December 31, 2005), Carrefour sent new model agreements to S.A. DE, which entered into parallel negotiations with the Casino group. CSF considered that S.A. DE's conduct was unfair and terminated the agreement with immediate effect. The Casino group replaced S.A. DE's suppliers and a contract was subsequently signed between Casino and S.A. DE for this purpose.

The arbitration clause in the contract between S.A. DE and CSF signed in 2001 provide that disputes relating to interpretation or execution shall be submitted to three arbitrators. It is stipulated that the president of the Commercial Court of Pau will appoint an arbitrator in case the parties or the appointed arbitrators fail to

reach an agreement. Nevertheless, the clause stipulates that in case of a controversy concerning pricing of the goods supplied, an independent and qualified expert shall be appointed by the president of the Commercial Court of Pau, upon the request of the most diligent party. This expert would assess the price of the goods supplied or any evolution of tariffs, and the parties should comply with it. Otherwise, article 8 of the contract constrains S.A. DE to accept the fixed prices and tariff evolution.

Following a request from S.A. DE, the Commercial Court, considering the arbitration clause in the 2004 contract, declared its lack of jurisdiction on February 15, 2006, under the terms of Article 1458 of the French Civil Procedure Code. This led CSF to initiate arbitration proceedings against S.A. DE on the grounds of its alleged unfair conduct on the basis of the arbitration clause of the 2004 contract. S.A. DE claimed that CSF had overcharged certain supplies since the first contract in 2001, although this claim was revised downwards since the arbitral tribunal had been formed on the basis of the arbitration clause of the 2004 contract. The arbitral tribunal ruled that S.A. DE's claims were inadmissible, as no request for an independent and qualified expert opinion had been made to the president of the commercial court in accordance with the terms of the 2004 contract.

An expert was appointed by order of the Commercial Court of Pau on January 14, 2008. Three years later, in 2011, the President of the Commercial Court of Pau withdrew his 2008 order by the summons of CSF, considering that the conditions for interim proceedings had not been satisfied and dismissed CSF's claim for damages, even though the expert, despite breaching the adversarial principle, had not completed his mission at the time of the request for interim proceedings.

After several appeals by CSF, which had been dismissed or rejected due to lack of means, S.A. DE (plaintiff company) sued CSF (defendant company) before the Commercial Court of Pau, claiming that CSF had failed to comply with the terms of the 2001 contract. The court rejected the objection to jurisdiction raised by the defendant company and dismissed the plaintiff company's claims in their entirety. S.A. DE appealed this decision.

The appellate plaintiff claims that the sale price dispute should not be submitted to arbitration but to an independent qualified expert appointed by the Commercial Court as required by the terms of the 2001 contract. The defendant company on appeal maintains that the commercial court lacks jurisdiction and points out that the jurisdiction of the constituted arbitral tribunal has never been contested by the plaintiff company.

The Court of Appeal of Pau recognized that the defendant company had invoked the principle of estoppel and considered that it was not applicable in the present case, recalling that the arbitration proceedings concerns the 2004 contract and that the proceedings before the Commercial Court are related to the 2001 contract. Therefore, these are two different proceedings.

Since subsequent litigious contracts are drafted in similar terms, the arbitration clauses are identically drafted. As the dispute concerns the sale price and the margin realized, the Court of Appeal considers that an independent qualified expert must be appointed. The Court of Appeal of Pau also considers the arbitration clause to be valid and applicable and therefore declares its lack of jurisdiction to the benefit of the arbitral tribunal in accordance with the provisions of the 2001 contract and rejects any abusive proceedings, dismissing the defendant's claims for damages.

INTERVIEW WITH SARA NADEAU-SEGUIN

Q1. Dear Sara, I wish you a happy new year 2021. Would you like to remind us of your background?

Thank you. I also wish you a wonderful New Year.

I am counsel with Teynier Pic in Paris, a boutique entirely dedicated to international dispute resolution. Prior to joining Teynier Pic, I worked in the international arbitration departments of North American firms for ten years (Woods in Montreal, Skadden, Arps, Slate, Meagher & Flom and Baker Botts in London and Paris).

I graduated from McGill University, in Canada, my hometown, in 2007 with a double degree in common law and civil law. I was then admitted to the Quebec Bar in 2008 before completing an LL.M. specialized in international business law at the London School of Economics. After my LL.M, I decided to stay in London to pursue a career in international arbitration. I was admitted to practice in England and Wales in 2012 and as a French avocat in 2016. I think that pretty much sums it up!

Q2. You have a triple hat of English, Quebec and French lawyer, what are the particularities in the practice and life of a lawyer in these 3 countries?

That's a great question. Luckily the practice of international arbitration is well, very international, so I find that it's easy to forget we are not all drawn from the same jurisdiction, or that I am as you say wearing three hats.

Overall, I would say that having these three hats has been a great asset for me. The common law training, in particular, has helped me become a more effective advocate. The civil law training, on the other hand, has taught me to present my arguments in a very structured way. But most importantly, I would say that the main advantage is being able to adjust to how your audience – be it an arbitral tribunal or your client – thinks.

There are of course times when we are reminded of the differences in the practice of law in England, France and Canada. The examples I encounter the most in my day-to-day practice relate to the rules of conduct and ethics that dictate how lawyers should conduct themselves. For instance, English law imposes severe restrictions on how a lawyer may prepare a witness to testify at trial, in contrast to Canadian principles, or even to the French approach. Privilege rules are also very different – in France, for instance, confidentiality covers verbal or written communications between lawyers, which is not the case in England and Wales or in Canada.

Q3. What motivated your choice to join France and particularly the arbitration boutique TeynierPic?

I first moved to Paris in December 2015, while I was still attached to the London arbitration team of Skadden. I was able to work on cases with both the French teams and the English teams and would often go back and forth between London and Paris. Paris is a very special place to practice international arbitration, not least because it is the historical centre of international arbitration. The arbitration community is incredibly diverse and closely knit – there is a true sense of community.

After a short stint in Canada, returning to Paris seemed natural to me. I chose Teynier Pic first and foremost for the talent of the firm's lawyers and the quality work it attracts. I knew the firm for its excellent reputation in international arbitration on the French and European markets and had met some of the members of the Teynier Pic teams socially at arbitration events. As I got to know them better, it quickly appeared to me that we would work well together as a team – not only because we have complementary skill sets, but also because we share the same work ethic of excellence, rigour and fellowship.

Q4. Can you tell us more about your pre-litigation activity, particularly in Canada? How does this activity interact with your arbitration practice?

I have taken a very keen interest to dispute resolution from the very early days of my career, so there is no such thing as my "pre-litigation activity", other than my seats in corporate law as part of my training contract, which was extremely informative.

From time to time, I have however been given to work on particularly complex matters that had nothing to do with your runoff the mill commercial litigation or arbitration, including matters involving aspects of insolvency and corporate law. It can be terrifying to venture out of your comfort zone, but once you do and manage to trust your instincts as a lawyer, you gain so much by looking at things from a different perspective. These are the sort of experiences that help you become a well-rounded and ultimately better disputes lawyer.

Q5. Do you have any tips for young people who want to start their career in international arbitration?

Of course, there is the usual "work hard", "stay focused" and "don't give up". These are all true and valid, but in the spirit of originality, I would like to venture two pieces of advice from my own experience.

The first one is to treat everyone you work with politely and respectfully. There will be times when you are stressed and sleep-deprived, and when getting a document out may seem more important than basic rules of politeness. That's one of the great challenges of our profession. But at least try, not only because it's the proper thing to do as humans, but also because you never know what the future is made of. The stagiaires that you are working with now may eventually become chief legal officers for major international corporations, and when they do, you will be more than happy you always treated them with respect.

The second one would be to find yourself a mentor. I would say preferably someone you do not work with every day and will be an outsider to the issues you will discuss with him or her. This should be someone you feel comfortable calling when you have an important strategic decision to make or would like to discuss career choices. I have benefited tremendously from the generous time and advice of a few mentors along the years. And if you think there is no one in your network to fill that role, there are plenty of great mentorship programmes in arbitration to which I would encourage you to sign up.

INTERVIEW WITH MAXIMIN DE FONTMICHEL

Q1. Dear Professor, I wish you a happy new year 2021. Would you please like to remind us about your background?

I also wish you an excellent and successful year 2021 and express my best wishes to the whole PBA team.

I began my law studies both abroad and at Paris I Panthéon-Sorbonne in the French-Spanish double master's degree program. We were not necessarily the best against the English and Germans but certainly the most friendly!

After a Master II research in private law where I discovered arbitration with Professor Thomas Clay, I shot in various directions: first I passed the Paris bar; then I enrolled in a thesis at the University of Versailles under the supervision of Professor Clay on the subject of the weak and the arbitration; finally I did an LLM at McGill University in Canada. I defended my thesis during my second year ATER, that is to say, during my 5th year of doctoral studies. The combination of these three experiences has been extremely rewarding.

Q2. Can you present us the "CUPA" your new training course launched this year?

This University Certificate is a new, light and flexible university degree, which is the first of its kind in arbitration law. It is the result of a close collaboration between the University of Versailles - Paris Saclay and four partners of considerable practical and research renown: Orrick, Norton Rose Fulbright, Shearman & Sterling and LexisNexis.

The training includes 4 modules of 4 hours each as well as a 4-hour arbitration simulation and evaluation. These modules can be taken individually or in blocks. If the trainee wishes to follow only one module, for example the module on updating

standards and case law over one year, he or she will receive a certificate of continuing education. On the other hand, in order to obtain the University Certificate, it will be necessary to validate the 4 modules, as well as the evaluation that results from them.

The training is innovative in several aspects. First of all, in order to adapt to the new evolutions of our world, it is proposed in hybrid mode with a mix of distance and in-person courses. Secondly, it is "à la carte", with trainees being able to choose to follow a single module or the entire diploma.

The design of the modules is oriented to be adapted as closely as possible to the requirements of the professional world allowing, in a short and smooth formula over four months at the rate of one module per month, to have the fundamental practical bases to move in the world of arbitration.

Finally, it is designed in interaction with MACI's initial training students.

It is important to specify that the training will be given in Paris intramuros in the premises of the 4 partners, thus allowing our trainees to easily access the places of teaching thanks to the various ways of transport that interconnect the French capital.

Q3. What are some of the main objectives of this program?

The skills developed will enable to master the fundamental practical rules of arbitral litigation at all stages, from its initiation to the final award.

The first module, led by Yann Schneller of Orrick, will be devoted to the drafting of the arbitration agreement. It will provide the trainees with keys to drafting a functional arbitration agreement.
The second module, led by Janice Feigher of Norton Rose Fulbright, will cover the course of the arbitration proceedings, from the request for arbitration to the conclusion of the proceedings. In particular, the issues involved in the constitution of the arbitral tribunal as well as the essential acts of the arbitral proceedings will be discussed.

The third module, led by Benjamin Siino of Shearman & Sterling, will cover procedural incidents. This module will provide an overview of the difficulties faced by arbitral tribunals in the course of the proceedings and how to remedy them, while ensuring the effectiveness of the award and its enforcement.

In the fourth module, Professor Jérémy Jourdan Marques and I will present a two-part module on the current year's legislative and case law developments in domestic and international arbitration as well as an introduction to the research tools of our partner LexisNexis.

The most undeniable aspect of this training is the prestigious partners who supervise the modules and the obtention of a French academic title from a nationally and internationally recognized university.

Q4. Will some synergies are going to be set up between the "CAPU" and its older brother the "MACI"?

Yes, this is one of my strongest motivations. This new training is thought in interaction with its big brother, the initial training of the Master in Arbitration and International Trade of the University of Versailles - Paris Saclay so that the two feed each other. Thus, it will be possible, on an optional basis, for the trainees to follow the preparation of a mock arbitration and to sit in a mock arbitral tribunal. Moreover, always with a view to reinforcing the synergies between initial and continuing education, the trainees will be invited to the various events organized by the Master such as the MACI lecture.

The objective of the module on simulated arbitration conducted with the MACI is to enable CAPU trainees to familiarize themselves in a concrete manner with the drafting of the arbitration acts that punctuate an arbitral procedure and with the form of an arbitration hearing. For MACI students, it is to enable them to prepare for the challenging arbitration moot courts of Science Po and Montpellier.

Q.5 Do the expectations of this new professional certificate appear to reflect a global evolution in the arbitration world?(professionalization, legitimization, youth)

Indeed, both domestic and international arbitration is developing.

New fields and actors with multiple facets are now attracted by this jurisdictional dispute resolution mechanism without having been trained in this specific mode of dispute resolution.The certificate is thus aimed at lawyers, jurists, notaries, professionals from the world of affaires, experts who wish to practice both domestic and international arbitration, both commercial and more specific such as family, real estate or labor law.

The CUPA is part of a training/professionalization movement for arbitrators initiated notably by the law 2019-222 of March 23, 2019 of programming 2018-2022 and reform for justice which requires a validation of skills for arbitrators officiating online. In addition, the new arbitration centers, particularly in family law, require their arbitrators to justify their training in this area.

For lawyers, this training can be recognized to obtain the arbitration law specialization recognized by the CNB in order to gain credibility with their clients in an increasingly competitive field.