

## labour and employment lawflash

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### French High Court Rules on Parent Companies' Liability to Subsidiaries' Employees

*The court provides guidance on liability if a subsidiary goes bankrupt because of the misconduct and careless management of its parent company.*

Over the last few years, employees have increasingly sought to hold the parent companies of their employers liable for the subsidiaries' actions by trying to demonstrate that the parent entity is the employee's co-employer, i.e., that the employee has two employers: the company that hired him or her and its parent company.

To demonstrate this co-employment situation, the employee must prove either that

- there is a confusion of interests, activities, and direction between the two companies concerned; or
- the employee has worked under the supervision of the parent company, i.e., there is a subordination link between him or her and the parent company.

The co-employment claim has been used particularly in situations where the hiring company's bankruptcy has been organized by the parent company. Employees in these situations have made co-employment claims to obtain payment of their severance indemnities by the solvent parent companies.

However, the French Supreme Court is now interpreting the above criteria restrictively. In particular, it stated that co-employment supposes interference by the parent company in the social and economic management of the subsidiary beyond the traditional economical and political relationships inherent to the functioning of a group.

A recent decision from the French Supreme Court, however, offers an alternative to employees who would not be able to demonstrate a co-employment situation.

In this decision, the French Supreme Court has reminded employees that a parent company can be held liable by the employees of its subsidiary not only when the parent company is considered to be the co-employer of the employee, but also when misconduct from the parent company directly affects employment in the subsidiary.

#### Facts

In this case, a foreign investment fund purchased a French company that manufactured wooden furniture in 2008. The investment fund created a new subsidiary in France for the transaction, and all the shares of the French manufacturing company were transferred to the newly created subsidiary (the Subsidiary).

In 2010, the French manufacturing company went bankrupt, and all its employees were dismissed for economic reasons.

The High Court determined that the economic grounds used to justify the dismissal were sufficient, given the company's poor financial situation. The judges also held that the Subsidiary could not be considered to be the co-employer of the employees of the company.

The company's employees then claimed that the Subsidiary was liable to them for misconduct and careless management.

## The Supreme Court Decision

In deciding the issue, the French Supreme Court based its decision on article 1382 of the French Civil Code (and not on the provisions of the Labor Code). According to article 1382, "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it."

The French Supreme Court outlined that the Subsidiary had, with the help of a consulting firm, made several investments and expenses that were not in favor of the French manufacturing company's activity, but that were only profitable to the Subsidiary (e.g., the sale of brands without direct cash contribution to the company).

The French Supreme Court then stated that this misconduct and careless management had the direct consequence of the company not being able to offer its dismissed employees a favorable social plan at the time of the redundancy exercise.

The French Supreme Court therefore held that the employees had suffered a loss from the Subsidiary's misconduct and careless management, which corresponded to losing the chance to benefit from measures of a social plan that would have helped them find a redeployment position. The judges ordered the Subsidiary to pay €3,000 as damages to each employee.

This case will certainly draw the attention of group companies when structuring the modalities of management of their subsidiaries in France.

## Contacts

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