

WARNING: Whilst the following translation of the official publication of the Court reflects the spirit and intention of the judgement, it is of course the original document in French that is uniquely pertinent to the interpretation or resolution of any legal point whatsoever arising from the judgement.

APPEALS COURT OF AIX EN PROVENCE
15TH Chamber A

JUDGEMENT IN SUBSTANCE
28 SEPTEMBER 2007

N° 2007/579

Decision before the Court:

Judgement by the Judge of Enforcement of the District Court of GRASSE dated 02 May 2006 and registered in the General Repertory under the n° 05/6660.

APPELLANT

Monsieur Axxxx CHXXXXXXXX

Date of birth 22 April 1959 at PARIS (75), dwelling at 26, rue Bivouac Napoléon, 06400 CANNES

Represented by SCP DE SAINT-TOUBOL, solicitors to the court, assisted by Maître Franck GHIGO, replaced by Maître Joëlle HELOU-MICHEL barristers at the Bar of GRASSE.

RESPONDENTS

SARL CANNES ACCOMMODATION, in the person of its legal representative domiciled at 2, rue Lafayette, 06400 CANNES

Represented by SCP GIACOMETTI DESOMBRE, solicitors to the court, assisted by Maître Muriel MANENT barrister at the Bar of AIX EN PROVENCE

Monsieur Bruno DRAILLARD

Date of birth 08 October 1961 at LE CANNET (06), domiciled at ENSEIGNE ACCOMMODATION, 2, rue Lafayette, 06400 CANNES

Represented by SCP GIACOMETTI DESOMBRE, solicitors to the court, assisted by Maître Muriel MANENT barrister at the Bar of AIX EN PROVENCE

COMPOSITION OF THE COURT

In application of the provisions of Articles 785, 786 and 910 of the New Code of Civil Procedure, and the barristers not being opposed, the case was heard on

29 June 2007, in public audience, before Monsieur Christian COUCHET, Advisor, responsible for the report, who made a verbal report to the Court, prior to the pleading.

This magistrate gave an account of the submissions during the deliberations of the Court, made up of
Monsieur Bernard CHAUVET, President
Monsieur Christian COUCHET, Advisor
Monsieur Olivier BRUE, Advisor

Clerk to the Court for the hearing: Madame Sylvie MICHEL.

The parties were advised that the public pronouncement of the decision would be effected by making it available at the Office of the Clerk to the Court on 28 September 2007.

JUDGEMENT

In the presence of the parties involved

Pronouncement effected by making it available at the Office of the Clerk to the Court on 28 September 2007.

Signed by Monsieur Christian COUCHET, Advisor, substituting for the President who was unable to be present and Madame Sylvie MICHEL, Clerk to the Court, to whom the record of the decision was remitted by the signing magistrate.

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Here a number of paragraphs of the Temporary Injunction, which are not of general interest, have been omitted in this English version, so as to provide the reader with only those parts of the judgement likely to be of interest to him. These paragraphs can be consulted in their entirety on the French version posted on the Internet site www.cannes-accommodation.com.

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GROUNDS FOR THE DECISION:

In this particular instance, M. CHXXXXXXXXX undertook “no longer to use the expression Cannes-Accommodation for any purpose whatsoever (be it on an Internet site, in any documentation for commercial, advertising and publicity, correspondence ... purposes) (in any form whatsoever)” and no longer to use “the site www.Cannes-Accommodation.com” on pain of paying to M. DRAILLARD or to SARL CANNES ACCOMMODATION a lump sum

agreed between them, having a contractual signification integrated into the context of a contractual agreement, of €5 000 by breach committed, all the above recorded in an agreement signed by the parties on 07 December 2004, to which the President of the District Court of Grasse conferred executive force by an Order dated 21 December 2004.

Acting in virtue of this “*protocol of a compromise agreement signed on 07 December 2004, made enforceable by an Order... of 21 December 2004*” SARL CANNES ACCOMMODATION and M. DRAILLARD arranged delivery to M. CHXXXXXXXX of:

- By Act of 03 August 2005 an order to cease use immediately and without further delay of the expression “Cannes-Accommodation” and a distraint order for payment of the principal sum of €5 000.
- By Act of 17 August 2005 a distraint order for payment of the principal sum of €5 000 (2nd breach), then by Act of 07 September 2005 a further distraint order for payment of the principal sum of €5 000 and a notification of legal proceedings for seizure of associate rights or of marketable rights into the hands of SCI SUZANNE GIL as payment of the principal sum of €5 000 (2nd breach), notified by a further Act on 09 September 2005,
- By notification of legal proceedings on 09 September 2005 for seizure of associate rights or of marketable rights into the hands of SCI SUZANNE GIL as payment of the principal sum of €5 000, notified by a further Act on 14 September 2005,
- By Acts dated 14 and 20 September 2005 the seizure and attribution of the sums held in the hands of SA Barclays Bank Cannes Croisette and the BPCA at Mouans Sartoux as payment of the sum of €5 000 (2nd breach), with notification by Act dated 26 September 2005,
- A measure of seizure and sale by Act of 21 September 2005 concerning the principal sum of €5 000 notified by Act of 26 September 2005, an Act of 27 September 2005 confirming institution of legal proceedings for unavailability of a certificate of registration, and a notification of caveat-joinder dated 03 October 2005 concerning the seizure effected 21 September 2005 and notified by a further Act dated 05 October 2005.

Monsieur CHXXXXXXXX affirms in support of his appeal having, as required by the protocol of the compromise agreement, undertaken modification of his Internet address, and ceased use of the address “www.cannes-accommodation.com”, confirming at the same time that his new address is www.cannes-riviera-accommodation.com.

In fact, whilst he establishes in this respect having registered this domain name – as indicated by the records of the site host GANDI - with effect from 24 June 2004, he fails to demonstrate either a precise date or the steps allegedly undertaken in order to respect his obligation, having failed to produce at the hearing any documents whatsoever relating to the question.

On the contrary, it is clear from the certified statements established by Maître TREIBER, associate *huissier de justice*¹ in Cannes on 02 and 08 August 2005 that connection to the Internet site address www.cannes-accommodation.com allowed connection to the site www.cannes-riviera-accommodation.com, which represents violation by the appellant of his obligation, it being further noted on this point that the same huissier de justice was able to record in a certified statement of 31 August 2005 that, on that date, the address www.cannes-accommodation.com modified itself to become www.cannes-riviera-accommodation.com.

Given these infractions of the compromise protocol mentioned above, which was made enforceable by application of Article 1441-1 of the Civil Code by decision dated 21 December 2004, constitutive of a writ of execution in the sense of Article 3 of the law of 9 July 1991, the respondents disposing of claims based on their principle, were therefore in the right to demand application of the measures of enforcement considered, the validity of which is not otherwise contested, so that the judgement in the first instance will be confirmed in all its provisions.

Equity does not allow application of Article 700 of the New Code of Civil Procedure.

The claims for damages formulated by the parties are rejected in the absence of proof of the prejudices invoked.

ON THESE GROUNDS

**The Court ruling in public and by judgement in the presence of the parties,
Received the appeal,
Confirms the judgement in first instance in all its provisions,
Rules that there is no case for application of Article 700 of the New Code of Civil procedure,
Rejects all other claims,
Condemns Monsieur CHXXXXXXXX to pay all expenses, those of the appeal being recovered in conformity with the provisions of Article 699 of the New Code of Civil procedure.**

Signed by
The Clerk of the Court

The President

¹ a member of the legal profession whose responsibility includes formally bearing witness to events or situations (*constat d'huissier*); *signification*, a form of [service of process](#); making the decisions of the [courts](#) available to the public; and execution of the courts' decisions, such as [seizures](#) and [evictions](#).