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PARIS COURT OF APPEAL
Division 5 - Chamber 5
JUDGMENT OF 02 JUNE 2022
(No. 108 , 22 pages)

Registration number in the register of cases: **Case No. 19/10919 - Portalis No. 3SL7-V-B7D-CAAUT**

Decision against which the appeal has been lodged: Judgment of 18 April 2019 - **PARIS Commercial Court 04- Case no. J201600033**

APPELLANTS

Mrs Kerstin BACHMANN

born on 17 January 1967 in MUNICH (GERMANY)

8, rue Pernelle

75004 PARIS

represented by Maître Matthieu BOCCON GIBOD of SELARL LEXAVOUE PARIS-VERSAILLES, lawyer at the PARIS bar, ID no.: C2477, counsel, Assisted by Maître Mathilde LEFRANC-BARTHE of SELARL W & S, lawyer at the PARIS bar, ID no.: L0215, pleading lawyer -

SARL PERNELLE REAL ESTATE with sole shareholder, operating under the logo PRE, acting through its legal representatives resident in that capacity at the said registered office and registered with PARIS Trade and Companies Register under number 511 254 187

56 rue de Verneuil

75007 PARIS

Represented by Maître Matthieu BOCCON GIBOD of SELARL LEXAVOUE PARIS-VERSAILLES, lawyer at the PARIS bar, ID no.: C2477, counsel, Assisted by Maître Mathilde LEFRANC-BARTHE of SELARL W & S, lawyer at the PARIS bar, ID no.: L0215, pleading lawyer

SCP THEVENOT PARTNERS insolvency administrators, acting by Maître Aurélie PERDEREAU as commissioner for the implementation of the plan of PERNELLE REAL ESTATE

42, rue de Lisbonne 75008 PARIS

Represented by Maître Matthieu BOCCON GIBOD of SELARL LEXAVOUE PARIS-VERSAILLES, lawyer at the PARIS bar, ID no.: C2477, counsel, Assisted by Maître Mathilde LEFRANC-BARTHE of SELARL W & S, lawyer at the PARIS bar, ID no.: L0215, pleading lawyer

SELARL ACTIS mandataires judiciaires, acting by Maître Julie PERROT as court-appointed agent of PERNELLE REAL ESTATE

4 rue Antoine Dubois

75006 PARIS

Represented by Maître Matthieu BOCCON GIBOD of SELARL LEXAVOUE PARIS-VERSAILLES, lawyer at the PARIS bar, ID no.: C2477, counsel, Assisted by Maître Mathilde LEFRANC-BARTHE of SELARL W & S, lawyer at the PARIS bar, ID no.: L0215, pleading lawyer

RESPONDENTS

Mrs Miranda JUNOWICZ BOTHE

born on 24 March 1971 in MONTREAL (CANADA)
116 Stambaugh St REDWOOD CITY
CA 94063 UNITED STATES

Represented by Maître Arnaud GUYONNET, lawyer at the Paris Bar, ID number: L0044, counsel

Assisted by Maître Claude MIZRAHI, lawyer at the PARIS bar, ID no.: C0068, pleading lawyer

Mrs Kathryn BROWN

Born on 1 April 1961
2800 N Lake Shore Dr CHICAGO
IL 60657 UNITED STATES

Represented by Maître Arnaud GUYONNET, lawyer at the Paris Bar, ID no.: L0044, counsel

Assisted by Maître Claude MIZRAHI, lawyer at the PARIS bar, ID no.: C0068, pleading lawyer

Mr Jérôme CACARIE

Born on 24 June 1976
8 rue Duvivier
75007 PARIS

Represented by Maître Arnaud GUYONNET, lawyer at the Paris Bar, ID number: L0044, counsel

Assisted by Maître Claude MIZRAHI, lawyer at the PARIS bar, ID no.: C0068, pleading lawyer

HEDDY & COMPANY, a company incorporated under US law, represented by its legal representative choosing address for service in that capacity at said registered office

116 Stambaugh St REDWOOD CITY CA 94063 UNITED STATES

Represented by Maître Arnaud GUYONNET, lawyer at the Paris Bar, ID number: L0044, counsel

Assisted by Maître Claude MIZRAHI, lawyer at the PARIS bar, ID no.: C0068, pleading lawyer

COMPOSITION OF THE COURT:

The case was debated on 25 November 2021 in a public hearing before the Court composed of:

Mrs Marie-Annick PRIGENT, Presiding Judge

Mrs Nathalie RENARD, Presiding Judge

Mrs Christine SOUDRY, reporting judge

who deliberated on the case,

a report was presented at the hearing under the conditions provided for in Article 804 of the French Code of Civil Procedure.

Court Clerk, during the proceedings: Mrs Marie Gabrielle de La REYNERIE

JUDGMENT:

- in the presence of all parties
- by making the judgment available to the registry, the parties having been notified in advance under the conditions provided for in Article 450(2) of the French Code of Civil Procedure.
- signed by Mrs Marie-Annick PRIGENT, Presiding Judge, and by Mrs Yulia TREFILOVA, Court Clerk, to whom this decision was delivered by the signatory judge.

FACTS AND PROCEEDINGS:

Heddy & Company (hereinafter Heddy), a company with its registered office in the State of Delaware (United States), was established in 2005 by Mrs Miranda Junowicz Bothe.

Bothe & Company, a company established under French law in 2006 by Mrs Bothe, provided advice to individuals and companies, assistance to accommodation of foreigners in France, relocation and valuation activities. This company was removed from the Trade and Companies Register in February 2013.

Pernelle Real Estate (hereinafter Pernelle), domiciled at 8 rue Pernelle in Paris 4th then 56 rue de Verneuil in Paris 7th, was created by Mrs Kerstin Bachmann in 2009 and has as its activity the management of buildings and real estate transactions.

Mrs Bothe, a Canadian and American national, practised as a lawyer at the California Bar. After arriving in France in 2003, she developed an advisory activity for expatriates seeking to invest in or settle in Paris.

On 22 June 2006, Mrs Bothe registered the trade mark 'Paris Property Finders' (PPF) with the INPI. The same year, she registered a domain name for the website "Parispropertyfinders.com".

In 2007, Mrs Bothe registered a domain name for the websites "Parispropertygroup.com" and "fractionalparis.com".

From 2007 to the end of 2009, Mrs Bothe worked, through Bothe & Company, with the real estate agency "Côté Acheteur" by granting it the use of the brand and the PPF website and by putting it in contact with potential clients.

Mrs Bothe met Mrs Bachmann in 2007 through a mutual friend. Mrs Bachmann, after working in finance, wanted to work in real estate from 2008.

According to a letter of agreement dated 25 February 2009, Bothe & Company, using the PPF brand, and Mrs Kerstin Bachmann agreed that the company would provide assistance to PPF in the context of its relations with the real estate agency Côté Acheteur.

Mrs Kerstin Bachmann founded Pernelle Real Estate in April 2009 and was granted a licence to become a real estate agent in November of the same year.

It was under these conditions that Mrs Bothe stopped working with the real estate agency Côte Acheteur and entered into collaboration with Pernelle by granting it the use of the PPF brand and the PPF website.

On 8 February 2011, Mrs Bothe filed with the INPI the trademark "Paris Property Group" (PPG), the use of which she had granted to Pernelle, as well as the PPG website and the blog "This Paris Life".

On 14 August 2013, Pernelle and Mrs Bachmann in her own name, on the one hand, and Heddy and Mrs Bothe in her own name, on the other hand, concluded a "letter of agreement" aimed at redefining the conditions of their collaboration in the context of research and sale of real estate in France.

The benefits of the cooperation were to be distributed at 50% for Pernelle and 50% for Heddy, except for the portion between €200,001 and €300,000 for which the benefits were to be distributed at 80% for Pernelle and 20% for Heddy.

A non-competition clause with a duration of five years from the termination of the partnership contract has been stipulated.

At the beginning of 2015, disputes arose between the parties regarding the distribution of profits and the balance due to Heddy for the financial years 2013 and 2014.

By registered letter with acknowledgement of receipt of 9 March 2015, Heddy gave formal notice to Pernelle to pay it a sum of €60,909.89 for the following invoices:

- invoice No.109-2015-R in the amount of €21,652.89 for the reimbursement of expenses,
- invoice No.110-2015-R in the amount of €9,699 for the balance due for the year 2013,
- invoice No.110-2015-R in the amount of €29,558 for the balance due for the year 2014.

By registered letter with acknowledgement of receipt dated 27 March 2015, Pernelle disputed the amounts claimed and noted the termination of the letter of intent at the end of the 2014 financial year as well as the end of all collaboration with Heddy as of 10 April 2015.

By order on motion of the President of the Commercial Court of Paris of 22 October 2015, Heddy obtained the appointment of a bailiff for the purposes of visiting the registered office of Pernelle to obtain documents likely to establish evidence concerning parasitical business practices and violation of the non-competition clause that it reported.

A report of findings was drawn up on 17 November 2015.

By a judgment of 25 October 2017, the Paris Court of Appeal upheld the order of the President of the Commercial Court of Paris of 25 March 2016 rejecting the application for withdrawal of the order of 22 October 2015.

By a deed dated 22 December 2015 (Case No. 20016001629), Heddy and Mrs Bothe took legal action against Pernelle and Mrs Bachmann before the Commercial Court of Paris for the purpose of having them ordered to pay the sums due under the partnership agreement of 14 August 2013, compensation for the damage suffered as a result of the termination of this agreement and compensation for the violation of the non-competition clause as well as for the cessation of any act of unfair competition.

By deeds of 15 and 19 April 2016 (Case No. 2016026803), Pernelle summoned Mrs Kathryn Brown and Mr Jérôme Cacarié, collaborators of Mrs Bothe, to appear before the Commercial Court of Paris for the purpose of having them ordered to pay Pernelle the following sums:

- €200,000 as damages for acts of unfair competition, denigration and obstruction;
- €10,000 as damages for moral damage, as a result of the alleged denigration.

By judgment of 13 March 2017, the Commercial Court of Paris joined cases RG no. 20016001629 and RG no. 2016026803 under the number RG J2016000336 and ordered Pernelle to produce a certified "pro-forma" balance sheet for the first three quarters of the 2015 financial year of Pernelle, for real estate transactions that were initiated before 27 March 2015 and that were settled before 1 September 2015, under penalty of €500 per day of delay from 60 days following the date of the judgment, for a period of 30 days.

By judgment dated 18 April 2019, the Commercial Court of Paris:

- Joined case RG: 2017037694 and case RG: J2016000336 and ruled by one and the same judgment;
- Dismissed the application by SARL Pernelle Real Estate and Mrs Kerstin Bachmann for inadmissibility and dismissal of the main claims of the US company Heddy & Company and Mrs Miranda Junowicz Bothe;
- Dismissed all of the counterclaims filed by SARL Pernelle Real Estate and Mrs Kerstin Bachmann;
- Ordered jointly and severally SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay Heddy & Company and Mrs Miranda Junowicz Bothe for the years 2013 and 2014 the sum of €88,800.02, plus legal interest as from the formal notice of 9 March 2015;
- Ordered jointly and severally SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the US company Heddy & Company and Mrs Miranda Junowicz Bothe for the year 2015 the sum of €79,211, plus legal interest from the summons of 22 December 2015;
- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann, in compensation for the damage suffered as a result of the sudden termination of the partnership agreement of 14 August 2013, to pay Heddy & Company and Mrs Miranda Junowicz Bothe the sum of €40,000;
- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sum of €50,000 to the US company Heddy & Company and Mrs Miranda Junowicz Bothe as compensation for the damage caused by acts of unfair competition;
- Ordered SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay in solidum the sum of €15,000 to the US company Heddy & Company and Mrs Miranda Junowicz Bothe in respect of the enforcement of the penalty payment ordered by the judgment of this court on 13 March 2017;
- Dismissed the claims of SARL Pernelle Real Estate and Mrs Kerstin Bachmann against Mrs Kathryn Brown and Mr Jérôme Cacarié;
- Dismissed the claims for damages filed by Mrs Kathryn Brown and Mr Jérôme Cacarié;
- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €10,000 to the US company Heddy & Company and €5,000 to Mrs Miranda Junowicz Bothe on the basis of Article 700 of the French Code of Civil Procedure.
- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €1,000 to Mrs Kathryn Brown and €1,000 to Mr Jérôme Cacarié on the basis of Article 700 of the French Code of Civil Procedure;
- Ordered the provisional enforcement;
- Dismissed all other, supplemental or counter claims of all parties;

- Ordered SARL Pernelle Real Estate and Mrs Kerstin Bachmann jointly and severally to pay all costs, including those to be recovered by the registry, in the amount of €169.16 including €27.98 of VAT.

By judgment of 14 May 2019, the Commercial Court of Paris declared the opening of a safeguard procedure against Pernelle and appointed SCP Thévenot Partners Administrateurs Judiciaires, represented by Maître Aurélie Perdereau, as administrator, and SELARL Actis Mandataires judiciaires, represented by Maître Julie Perrot, as court-appointed agent.

By declaration of 23 May 2019, Pernelle, SCP Thevenot Partners acting as court-appointed administrator of Pernelle, SELARL Actis acting as court-appointed agent of Pernelle and Mrs Bachmann lodged appeal against this judgment in that it:

- Dismissed the application by SARL Pernelle Real Estate and Mrs Kerstin Bachmann for inadmissibility and dismissal of the main claims of the US company Heddy & Company and Mrs Miranda Junowicz Bothe;

- Dismissed all of the counterclaims filed by SARL Pernelle Real Estate and Mrs Kerstin Bachmann;

- Ordered jointly and severally SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay US company Heddy & Company and Mrs Miranda Junowicz Bothe for the years 2013 and 2014 the sum of €88,800.02, plus legal interest as from the formal notice of 9 March 2015;

- Ordered jointly and severally SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the US company Heddy & Company and Mrs Miranda Junowicz Bothe for the year 2015 the sum of €79,211, plus legal interest from the summons of 22 December 2015;

- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann, in compensation for the damage suffered as a result of the sudden termination of the partnership agreement of 14 August 2013, to pay the US company Heddy & Company and Mrs Miranda Junowicz Bothe the sum of €40,000;

- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sum of €50,000 to the US company Heddy & Company and Mrs Miranda Junowicz Bothe as compensation for the damage caused by acts of unfair competition;

- Ordered SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay in solidum the sum of €15,000 to the US company Heddy & Company and Mrs Miranda Junowicz Bothe in respect of the enforcement of the penalty payment ordered by the judgment of this court on 13 March 2017;

- Dismissed the claims of SARL Pernelle Real Estate and of Mrs Kerstin Bachmann against Mrs Kathryn Brown and Mr Jérôme Cacarié;

- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €10,000 to the US company Heddy & Company and €5,000 to Mrs Miranda Junowicz Bothe on the basis of Article 700 of the French Code of Civil Procedure.

- Ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €1,000 to Mrs Kathryn Brown and €1,000 to Mr Jérôme Cacarié on the basis of Article 700 of the French Code of Civil Procedure;

- Ordered the provisional enforcement of this judgment;

- Dismissed all the other, supplementary or counter claims of the parties "but only when it dismisses the claims of SARL Pernelle Real Estate and of Mrs Kerstin Bachmann;

- Ordered jointly and severally SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay full court costs, including those to be recovered by the registry, in the amount of €169.16, including €27.98 VAT.

By judgment of 21 December 2020, the Commercial Court of Paris adopted the safeguard plan, imposed on Mrs Bachmann the obligation to implement the plan for a period of 8 years, appointed SCP Thévenot Partners Administrateurs Judiciaires represented by Maître Aurélie Perdereau as commissioner for the implementation of the plan, terminated the mission of SCP Thévenot Partners Administrateurs Judiciaires represented by Maître Aurélie Perdereau as Administrator, and maintained SELARL Actis Mandataires judiciaires represented by Maître Julie Perrot, as Court-appointed agent.

By interlocutory order of 28 May 2020, the pre-trial judge:

- Ruled that the enforcement of the judgment handed down would result in manifestly excessive consequences for the appellants;
- Ruled that there are no grounds to order the removal of the case;
- The costs and expenses are reserved.

Claims and arguments of the parties

In their last submissions notified by the RPVA on 16 November 2021, Pernelle, Thevenot in its capacity as court-appointed administrator of Pernelle, Actis in its capacity as court-appointed agent of Pernelle, as well as Mrs Bachmann asked the Court to:

Having regard to Articles 1 et seq. of law 70-9 of 2 January 1970,

Having regard to Articles 1128, 1162, 1188 et seq., and 1832(1) of the French Civil Code,

Having regard to Articles 5, 31, 125 paragraphs 1 and 2 700, 960 and 961 of the French Code of Civil Procedure,

Having regard to Articles L.223-22 and 442-6, I, 5° of the French Commercial Code,

Having regard to Article 700 of the French Code of Civil Procedure,

Having regard to Article 32-1 of the French Code of Civil Procedure,

As a preliminary issue:

- Declare inadmissible, on the basis of the provisions of Articles 960 and 961 of the Code of Civil Procedure, the submissions of Heddy and Mrs Bothe, Mrs Brown and Mr Cacarie, for having failed to mention the registered office and the actual domicile;
- Find that it has not received any claim from the respondents for the application of the non-competition clause;

And,

- Confirm the judgment rendered by the Commercial Court of Paris on 18 April 2019 in that it dismissed the claims of Heddy and Mrs Miranda Bothe under the non-competition clause;
- Set aside the judgment rendered by the Commercial Court of Paris on 18 April 2019 in its other provisions.

And, in a new ruling,

Primarily:

- Find and rule that Mrs Miranda Bothe and Heddy work as real estate agents without being authorised to do so;
- Find and rule that the claims of Mrs Miranda Bothe and Heddy are therefore inadmissible;

In the alternative:

- Reject all of the claims filed against Mrs Kerstin Bachmann and Pernelle as being ill-founded;

Therefore:

- Mainly rule that the letter of agreement is null and void and order Mrs Miranda Bothe and Heddy jointly and severally to pay Pernelle the sum of €37,379.36 in respect of the overpayment, with interest from the date of the summons;

- In the alternative, if the letter of agreement were to be deemed valid, rule that the distribution provided for in this letter relates to 50% of Pernelle's tax income, without restatement of the management's remuneration, and order Mrs Miranda Bothe and Heddy jointly and severally to pay Pernelle the sum of €46,874.36 in respect of the overpayment, with interest from the date of the summons;
- In the very alternative, order Mrs Miranda Bothe and Heddy jointly and severally to pay Pernelle the sum of €31,061.36 in respect of the overpayment, with interest from the date of the summons;
- In the further alternative, if the court were to interpret the Letter of Agreement in an overly strict manner, find that the amount still owed by the appellants cannot exceed the sum of €63,037.14;

As a counterclaim:

- Rule that Mrs Bothe and Heddy have violated their non-compete obligation and order them jointly and severally to pay Pernelle the sum of €220,000, in respect of the breach of the non-compete obligation, with interest from the date of the summons;
- Rule that Miranda Bothe, Heddy, Kathryn Brown and Jérôme Cacarié committed acts of unfair competition and denigration and order them jointly and severally to pay Pernelle the sum of €200,000 with legal interest from the date of the judgment to be handed down and pay Mrs Kerstin Bachmann the sum of €20,000 in compensation for her non-pecuniary damage;
- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié, jointly and severally between them, and without delay:
 - To restore Pernelle's: (i) access to the e-mail archives of Pernelle and (ii) the related exclusive capacity as administrator, subject to a penalty of €1,000 per calendar day of delay;
 - To restore Pernelle's: (i) access to the MailChimp account and (ii) the related exclusive capacity as administrator, subject to a penalty of €1,000 per calendar day of delay;
 - To remove references to transactions made under Pernelle's mandate from the website "Paris Property Group" and from all other media; subject to a penalty of €150 per infringement and per calendar day of delay.
- Prohibit jointly and severally Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié, any use of the telephone line and the fax line operated by Pernelle until 27 March 2015: +33 9 75 18 18 99 (FR) and +33 17277 00 39 (FR), + (917) 779-99S0 (US) and fax number: +33 1 72 70 38 69), subject to a penalty payment of €5,000 per infringement found;
- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié jointly and severally to justify the termination of the telephone line and fax line referred to above, subject to a penalty of €1,000 per infringement and per calendar day of delay;
- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié jointly and severally to remove all the articles posted between 1 January 2013 and 27 March 2015 on the Paris Property Group blog, including the articles subsequently posted by Mrs Miranda Bothe, but which Pernelle has ordered and paid; under penalty of €500 per calendar day;
- Order, at the expense of Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié, jointly and severally, up to a total amount of €15,000, subject to a penalty of €1,000 per day of delay or per day missing:
 - The publication of an extract from the judgment to be handed down, in two professional publications and in a national general-audience newspaper with a well-known real estate sale section, chosen by Pernelle.
 - The publication of an extract of the judgment to be handed down for a period of 90 days on the "home" page of the Paris Property Group website, without the insert occupying less than 50% of the space of the said home page.

In any event:

- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié jointly and severally to pay the full costs of first instance and appeal, including the fee of SELARL Lexavoué Paris-Versailles, represented by Maître Matthieu Boccon-Gibod;
- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié jointly and severally to pay Mrs Kerstin Bachmann and Pernelle €30,000 and €70,000 respectively on the basis of Article 700 of the French Code of Civil Procedure;
- Order jointly and severally Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié to pay Mrs Kerstin Bachmann and Pernelle €15,000 in damages on the basis of Article 32-1 of the French Code of Civil Procedure;
- Order jointly and severally Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié to pay a civil fine on the basis of Article 32-1 of the French Code of Civil Procedure.

In their last submissions notified by the RPVA on 18 November 2021, Heddy, Mrs Bothe, Mrs Brown and Mr Cacarié asked the Court to:

*Having regard to Articles 1134 and 1147 of the French Civil Code,
Having regard to former Article 1382 of the French Civil Code,
Having regard to Articles 32-1 and 700 of the French Code of Civil Procedure,
Having regard to article L.622-28 of the French Commercial Code.*

- Dismiss the appellants' plea of inadmissibility invoked on the basis of Articles 960 and 961 of the Code of Civil Procedure;
- Set aside the judgment of the Paris Commercial Court of 18 April 2019 in that it dismissed the claims of Heddy et Mrs Bothe under the non-competition clause;
- Hold and adjudge that the submissions of Mrs Brown and Heddy are admissible;
- Confirm the judgment of the Commercial Court of Paris of 18 April 2019 in all its other provisions;
- Order Pernelle Real Estate and Mrs Kerstin Bachmann jointly and severally to pay the full costs of first instance and appeal, including the costs of appeal to SCP AFG Law Firm, represented by Maître Arnaud Guyonnet, in accordance with Article 699 of the Code of Civil Procedure;
- Reject the application filed on the basis of article 32-1 of the French Code of Civil Procedure;
- Order Pernelle Real Estate and Mrs Kerstin Bachmann to pay in solidum the sum of €50,000 to Heddy & Company, €40,000 to Mrs Miranda Junowicz Bothe, €10,000 to Mr Jérôme Cacarié and €10,000 to Mrs Kathryn Brown on the basis of Article 700 of the French Code of Civil Procedure.

The Court refers, for a more detailed presentation of the facts, claims and arguments of the parties, to the decision appealed to and to the aforementioned written submissions, pursuant to Article 455 of the Code of Civil Procedure.

The order closing the pre-trial review stage was delivered on 18 November 2021.

REASONS

On the plea of inadmissibility based on the non-compliance with the provisions of Article 960 of the French Code of Civil Procedure

Mrs Bachmann and Pernelle invoke the provisions of Article 960 of the French Code of Civil Procedure, which specifies the mandatory particulars for the appointment of a lawyer by the respondent, the natural persons having to indicate the place of their domicile and the legal persons having to indicate the place of their registered office, and those of Article 961 of the French Code of Civil Procedure, which adds, by reference, that the submissions "are not admissible until the indications mentioned in paragraph 2 of the preceding article have been provided".

They argue that the respondents' submissions do not include either a reference to the actual registered office of Heddy or a reference to Mrs Brown's actual domicile. They add that the respondents cannot indicate as their sole address the address of their counsel.

They contend that these irregularities adversely affect them because, by concealing their address, the respondents make it impossible to enforce a decision handed down in their favour.

The respondents reply that they mentioned their address in their last submissions and that no grievance resulting from the alleged irregularity is demonstrated.

Pursuant to the provisions of Articles 960 and 961 of the French Code of Civil Procedure, the submissions of a party who does not mention the current domicile are declared inadmissible.

This plea of non-admissibility is intended to safeguard the rights of the parties, which is ensured by the communication of the information referred to in paragraph 2 of Article 961 before the judge rules.

In the present case, the respondents' last submissions contain their current domicile so that the plea of inadmissibility raised cannot be accepted.

On the plea of inadmissibility based on the lack of interest in bringing proceedings

The appellants invoke Mrs Bothe's and Heddy's lack of interest in bringing proceedings, arguing that their action would contravene the provisions of the Hoguet law. They consider that Mrs Bothe and Heddy carried out a real estate brokerage activity without being domiciled in France, without holding a professional license, a financial guarantee or professional liability insurance.

Mrs Bothe and Heddy replied that their activity was limited to providing Pemelle with the use of domain names, websites, prospects, partners, brands, contracts and expertise in marketing, communication, public relations and legal sectors. Mrs Bothe denies having met with clients, made apartment visits, negotiated offers, signed documents.

According to Article 31 of the Code of Civil Procedure, the right to action is available to all those who have a legitimate interest in the success or rejection of a claim.

The provisions of Law No. 70-9 of 2 January 1970, known as the Hoguet Law, which, in article 1, determines its scope, provide that it applies to natural or legal persons who, usually, engage in or lend their assistance, even on an ancillary basis, to options relating to the property of others and relating, in particular, to the purchase, sale, research, exchange, rental or subletting, seasonal or otherwise, of built or unbuilt buildings, furnished or unfurnished.

It is undisputed that Mrs Bothe and Heddy act on the basis of a legal deed called "letter of agreement" concluded on 14 August 2013. At the end of this deed, the parties agreed to collaborate in the context of research and sales of real estate in France by making exclusive contributions and by sharing the profits after deducting the costs incurred by the parties. Thus, PPG undertook to provide: "The domain name www.parispropertygroup.com and the related website and blog (This Paris Life), the domain name www.fractionalparis.com and the related website, the prospects, partners and sources of prospecting of Paris Property Group inherent in the business, the PPG protected logos and trademarks, including, but not limited to, Paris Property Finders, Paris Property Group and Fractional Paris, the contracts, the PPG marketing material related to the business and the PPG legal expertise in legal matters. " and PRE provided: "The brokerage licence for the activity, the commercial lease of the shop located at 56 rue de Verneuil, 75007 Paris, the management and supervision of the day-to-day tasks inherent in the activity".

It follows from these stipulations that the role of Mrs Bothe and Heddy in the context of the research and sale of real estate in France was limited to making available to Pernelle their marketing and communication know-how, including a website, as well as their network of customers, prospects and real estate professionals. It is not disputed that Mrs Bothe and Heddy did not intervene in the assistance to customers and that this assistance was provided Pernelle. In addition, Heddy's remuneration did not consist of a percentage of the commission due to Pernelle, but of a sharing of the results of the activity less the costs borne by each of the parties. Thus, the services provided by Heddy and Mrs Bothe were well in advance of any particular real estate transaction.

Under these conditions, the Law of 2 January 1970 is not applicable here. Consequently, both Mrs Bothe and Heddy have a legitimate interest in bringing proceedings and their claims will be declared admissible.

Regarding the agreement of 14 August 2013

Concerning the nullity

Mrs Bachmann and Pernelle invoke the nullity of the letter of agreement of 14 August 2013 by stating that its purpose was to set up an illegal activity since it was intended to allow Heddy to carry out a real estate brokerage activity for which it was not authorised. They add that, in any event, this agreement aimed at the conclusion of a partnership agreement which would have been null and void because of fictitious contributions made by Mrs Bothe and Heddy.

Since the agreement in question was concluded on 14 August 2013, i.e. before the entry into force of Order No. 2016-131 of 10 February 2016 on the reform of the contract law, the provisions resulting from this order are not applicable to the dispute.

According to Article 1128 of the French Civil Code, in the wording applicable to the dispute, only things which may be the subject of legal transactions may be the object of agreements.

Moreover, article 1131 of the French Civil Code states that "an obligation without cause, or with a false cause, or with an unlawful cause, may have any effect.

As stated above, the letter of agreement at issue does not contravene the provisions of the Hoguet law. Consequently, there is no nullity in this respect.

Mrs Bachmann and Pernelle further allege that the company contributions of Heddy and Mrs Bothe, as set out in the letter of agreement of 14 August 2013, were fictitious, which would result in the nullity of the partnership agreement.

In addition to the fact that the letter of agreement of 14 August 2013 does not constitute a partnership agreement for lack of *affectio societatis*, it appears from the documents submitted to the proceedings that the resources made available by Heddy and Mrs Bothe (use of trademarks, logos, websites, a blog, provision of marketing and legal know-how) were real.

No nullity may be pronounced in this respect.

Concerning the qualification

Pernelle and Mrs Bachmann assert that the letter of agreement of 14 August 2013 is only a preliminary contract and that the performance of the obligations set out therein by the parties was subject to the conclusion of a final agreement.

However, although the agreement at issue states in the final paragraph that:

"The intention of the Parties is that all the terms of this Letter will be the subject of a definitive contract, in due form, between PPG and PRE, containing all the usual legal provisions, including a purchase and sale contract and an estimation formula.", the fact remains that the letter of agreement contains specific obligations for each of the parties (contributions, distribution of costs, distribution of profits, etc.) whose entry into force was by no means postponed until the signing of a definitive contract. Article 8 of the letter of agreement states that "This letter represents the only legally binding agreement between the parties, to the exclusion of any other statement, undertaking or incitement, whether oral or written. "

Therefore, the letter of agreement does not constitute a preliminary contract but rather a binding contract between the parties.

Regarding the enforcement

As to the claim for payment

Pursuant to the agreement of 14 August 2013, Heddy and Mrs Bothe claim payment of the following amounts:

- €62,007 for the distribution of profits for the 2013 financial year, including the advance of €40,000 already received,
- €21,652.89 for the expenses incurred by Heddy and Mrs Bothe,
- €83,866.50 for the distribution of profits for the 2014 financial year, including the advance of €40,000 already received,
- €1,273.63 for the expenses incurred by Heddy and Mrs Bothe,
- €79,211 for profit sharing for the financial year 2015.

Mrs Bachmann and Pernelle challenge the claims for payment of the adverse party. They consider that the agreement must be interpreted as relating to a sharing of the tax result of Pernelle and that it is therefore appropriate to deduct the remuneration of the manager. In any event, they consider that the sharing of the results should only concern the operations carried out from the website and not all the results of Pernelle.

Article 2 of the Letter of Agreement, relating to costs, provides that:

"For the purposes of this Agreement, Costs means the following costs incurred on or after 1 January 2013:

- a. Salaries, rents, marketing material costs, public service costs, advertising cost, website maintenance and optimisation costs, domain name maintenance costs, commissions paid to third parties, travel, entertainment or Collaboration fees; and
- b. Other costs which are current and ordinary costs related to the participation of the Parties in the Collaboration, and in particular the costs of promotion, management and maintenance of the Collaboration and/or the costs related to the Contribution of each of the Parties to the Collaboration. Each Party shall bear the costs for the Collaboration at its discretion. That said, neither party shall incur any Costs in excess of €5,000 without the express approval of the other Party. "

Article 3 on the distribution of profits between the parties specifies that:

"For the purposes of this Agreement, the term "Profits" means the net income of the Collaboration, before personal taxes and payroll taxes, but after the Costs.

- a. The Parties agree that their Collaboration shall be governed by the following principle:

1. PRE undertakes to ensure day-to-day supervision and operations related to the Collaboration; and
2. PPG undertakes to exercise an advisory role in the context of the Collaboration, in particular with regard to the obligation to implement the content supply system and to ensure the general continuity of the blog.

The Profits will be distributed as follows:

Up to €200,000 in Profits: shared 50%/50% between PPG and PRE

Between €200,001 and €300,000: 80% PRE, 20% PPG, in order to compensate PRE for its daily contribution to the Collaboration

Above €300,001 euros: shared 50%/50% between PPG and PRE

b. In the event that PRE ceases to ensure the day-to-day supervision and the operations related to the Collaboration, the Parties agree that the profits shall be distributed on a 50%/50% basis between the Parties from the first euro. "

It follows from these stipulations that the term "profit" does not correspond to the tax result of Pernelle and that the remuneration of the manager of Pernelle cannot be included in the costs incurred in respect of the collaboration since Mrs Bachmann, like Mrs Bothe, was to claim the profits derived from the collaboration so that she could not combine the distribution of the profits and the remuneration as manager. It will also be specified that the daily contribution to the collaboration was part of Mrs Bachmann's contribution. Lastly, there is no provision in the agreement stating that the sharing of profits is limited to operations carried out from the website made available by Heddy and Mrs Bothe. It will also be noted that in an email dated 29 November 2014, Mrs Bachmann informed Mrs Bothe that Pernelle's entire real estate business - property management and property sales and research - was part of the agreement.

It also appears from the emails produced during the proceedings that Mrs Bachmann acknowledged the expense incurred by Mrs Bothe and Heddy in the amount of €20,379.27 for the 2013 financial year and €1,273.63 for the 2014 financial year. The claim for payment in this respect should therefore be granted.

Contrary to what Mrs Bothe and Heddy claim, there is no evidence that these costs were included in Pernelle's accounting years for 2013 and 2014. They should therefore be deducted from those accounts in order to determine the profit to be allocated between the parties in respect of those years.

In the light of the accounting documents submitted in the case, the profits to be distributed must be calculated as follows:

2013 financial year

Turnover:	€285,660
Of which to be deducted:	Purchases of raw material: -25
	Other purchases and expenses (subcontracting, renting, remuneration of intermediaries, other accounts): - 199,279
	Fixed assets expenses: -2,342
	Costs of Mrs Bothe/Heddy: - €20,379.27

Including the remuneration paid to Heddy and Mrs Bothe included in the amount of €199,279: + 40.000

Total profits to be distributed 50%/50%: €103,635/2= €51,817.50 from which the provision already received of €40,000 should be deducted, i.e. a balance due of €11,817.50.

2014 financial year

Turnover:	€353,761
Of which to be deducted:	Purchases of raw material: -25
	Other purchases and expenses (subcontracting, renting, remuneration of intermediaries, other accounts): - €222,749
	Fixed assets expenses: -€3,279
	Costs of Mrs Bothe/Heddy: - €1,273.63

Remuneration paid to Heddy and Mrs Bothe + €40,000

Total profits to be distributed 50%/50%: €166,460/2=€83,230 from which the provision already received of €40,000 should be deducted, i.e. a balance due of €43,230.

2015 financial year

According to the public accountant of Pernelle, the profit to be shared amounted in 2015 (for the period from 1 January to 31 August 2015), it being specified that it was accepted that all the transactions carried out in the first half of 2015 had an origin prior to 30 March 2015, date of the termination of the letter of agreement of 14 August 2013, to €158,423, or €79,211 each.

Consequently, the claims in this respect will be established in the operative part.

The other claims will be rejected.

On the non-competition clause

It will be noted that Mrs Bothe and Heddy seek the reversal of the judgment appealed in that it rejected their claims under the non-competition clause without, however, indicating, in the operative part of their submissions which is the only one binding on the court, a corresponding claim.

In these circumstances, there being no claim before the court, there is no need to rule on this ground.

Unfair competition

Heddy and Mrs Bothe alleged various acts of unfair competition against Pernelle and Mrs Bachmann.

- Acts of denigration

Denigration is the disclosure of information likely to discredit a competitor.

Contrary to what the respondents maintain, no malicious remarks result from the email sent by Mrs Bachmann on 3 April 2015 to Paris Perfect, drafted as follows:

"Good morning,

Following a service disruption completely beyond our control, our hosting provider is no longer able to transfer emails addressed to our former addresses "@parispropertygroup.com".

As a result, we haven't received your emails since Monday, March 30 at 9am local time. We apologise for this inconvenient and would be grateful if you could remove these invalid addresses and forward your latest messages to our new addresses now in place (see full contact details below).

We have also ceased our collaboration with the Paris Property Group brand, which is no longer entitled to use the services and products we offer.

Today, we are pleased to inform you that if our services remain unchanged, our assistance will evolve to better meet the demand of our customers and partners.

As you can notice, we have adopted a new name: 56Paris ®, and you will soon be provided with a new site that is more practical, more intuitive, with even more pleasant graphics and easily accessible by mobile devices.

You can of course always reach us on the usual mobile numbers and we are happy to continue to welcome you in our office at 56, rue de Verneuil, 75007 Paris"

The claim for liability in this respect will therefore be dismissed.

- **Acts of disruption**

Mrs Bothe and Heddy accuse Mrs Bachmann and Pernelle of claiming ownership of the "mailchimp" account, a direct mail site, and of blocking access to it. They state that this account contained all the clients and prospects brought under the letter of agreement and that Mrs Bothe held the rights of administrator of the account.

Mrs Bachmann and Pernelle claim that the "mailchimp" account is the property of Pernelle, that it contains all the clients and prospects to whom a monthly newsletter was sent, that this account had been opened by Mrs Faustine Cressot, an employee of Pernelle who had the rights of administrator, and that the invoices of the account were paid by Pernelle.

It follows from the documents submitted in the proceedings that the "mailchimp" account was created in November 2013 by Mrs Faustine Cressot, an employee of Pernelle, and that the invoices under this account were paid by Pernelle. However, it is also established that the account was called "Parispropertygroup", a trademark belonging to Mrs Bothe, that Mrs Bothe had the rights of administrator from the beginning and that this account was originally fed by the databases of clients and prospects brought by Mrs Bothe to the collaboration.

Consequently, in view of the dispute between the parties as to the ownership of this "Mailchimp" account on the occasion of the termination of the relationship, the claim of rights to this account by Pernelle cannot constitute an act of unfair competition.

Mrs Bothe and Heddy further allege that Mrs Bachmann and Pernelle enticed their customers.

Mrs Bachmann and Pernelle deny these allegations.

Unfair competition implies fault within the meaning of Article 1382 of the French Civil Code as it applies to the dispute.

In this case, Mrs Bothe and Heddy produce a bailiff's report of 17 November 2015 which would indicate that after the termination of the partnership, Pernelle would have retained 761 of their 1231 customers and prospects and 17 of the 40 business providers. However, in the absence of production of the initial file of customers and prospects of Mrs Bothe and Heddy, the alleged enticement of customers is not established.

Furthermore, the only email from Mrs Anne Pontabry to Mrs Sophie Perisic of 29 October 2015 cannot constitute a customer enticing since no unfair practice is established. The mere contact with a client of Mrs Bothe and Heddy is not reprehensible in view of the freedom of trade and industry.

- **Parasitical business practices**

Mrs Bothe and Heddy allege parasitical business practices on the part of Mrs Bachmann and Pernelle, who challenge them.

Parasitical business practices represent the act, for a professional, of following in the wake of a competitor and taking advantage, without compensation, of the results of its investments and its work or its reputation- without infringing a private right-, thus achieving savings considered as unjustified.

In support of their allegations, Mrs Bothe and Heddy produce exchanges of emails of June 2015 between Mrs Anne Pontabry, employee of Pernelle, and Mrs Jeanette Pena, former client of a business provider of Heddy. However, these email exchanges do not demonstrate any illegitimate and interested use of an economic value of Heddy, the result of specific know-how and intellectual work. Mrs Bothe and Heddy still avail themselves of a bailiff's report of 10 September 2015. Nevertheless, the fact that a customer of the 56Paris website mentions a sale made under the Paris Property Group brand or that photographs of sales made under the Paris Property Group brand appear on this site cannot constitute parasitical business practices, even though it is common ground that these sales were made in the context of the collaboration between the parties. Lastly, the use by Pernelle of selling instructions that do not have any specificity or particular know-how or intellectual work cannot be alleged against it as constituting parasitical business practices.

Consequently, the action for damages brought by Mrs Bothe and Heddy against Mrs Bachmann and Pernelle for acts of unfair competition will be dismissed and the judgment handed down will be set aside on this point.

On the sudden termination of commercial relations

Heddy and Mrs Bothe claim the payment of a compensation of €40,000 on the basis of Article L. 442-6 of the French Commercial Code, claiming that Pernelle and Mrs Bachmann suddenly broke off the commercial relations between them. They consider that six months' notice should have been given in view of the length of the relationship and the exclusivity granted.

The respondents replied that the relationship was precarious (irregular financial flows and business volumes, an agreement which had to become final), that the termination was to be expected given the growing disagreement between the parties, that Mrs Bothe and Heddy committed errors which led to termination and that, in any event, the 15-day notice given was sufficient.

Article L.442-6, I, 5° of the Commercial Code in its wording applicable to the dispute provides that the author is liable and is required to compensate for the damage caused when a producer, trader, industrial or person registered in the trades register suddenly breaks off, even partially, an established commercial relationship, without written notice having regard to the duration of the business relationship and respecting the minimum period of notice determined, by reference to usages of the trade, through trade agreements (...). The provisions above do not preclude the termination option without giving notice, in the event of non-performance by the other party of its obligations or in the event of force majeure.

The business relationship, in order to be established within the meaning of these provisions, must be of a continuous, stable and usual nature. The criterion of stability means predictable stability, so that the victim of the termination could reasonably anticipate in the future a certain continuity in the flow of business with its commercial partner.

In the present case, it follows from the foregoing that Mrs Bothe and Heddy began a business relationship with Mrs Bachmann and Pernelle in 2009 and that this collaboration generated, for the former, revenues of about €40,000 in 2013 and 2014. Although disagreements arose between the parties at the end of 2014/beginning of 2015, there was nothing to indicate the termination of business relations when the termination letter was sent by Pernelle on 27 March 2015.

Furthermore, Mrs Bachmann and Pernelle cannot reproach Mrs Bothe and Heddy for not having been involved in the day-to-day management of the business, when the agreement concluded provided for this obligation on the part of Pernelle and Mrs Bachmann. They cannot be accused either of having cut off access to the PPG website and the corresponding email addresses as of 30 March 2015, even though the letter of 27 March 2015 noted the termination of the retroactive letter of intent at the end of the 2014 financial year and the end of all collaboration as of 10 April 2015, so that Mrs Bothe and Heddy could deduce from its contradictory information that the termination took effect immediately.

The aforementioned text aims to punish, not the termination itself, but its sudden nature characterised by the absence of written notice or the lack of notice.

The notice period must be understood as the time necessary for the abandoned company to reorganise according to the duration, nature and specificities of the established commercial relationship, the product or service concerned...

In the present case, it is known that the commercial relations between the parties were established at the end of 2009 and that an exclusivity had been stipulated. Therefore, in view of these facts, the notice that should have been observed should be set at 6 months.

As regards the damage resulting from the sudden nature of the termination, this consists of the lost profit during the insufficient notice period and is therefore assessed in consideration of the expected gross margin during this period.

It follows from the foregoing that the revenue net of costs obtained by Heddy from its collaboration with Pernelle amounted to €51,817.50 in 2013 and €83,230 in 2014.

Under these conditions, the lost profit resulting from the absence of notice must be estimated at €33,761.88 ($(€51,817.50 + €83,230 = €135,047.50 / 2) / 12 \text{ months} \times 6 \text{ months}$).

On the applications for convictions against Mrs Bachmann in her personal capacity

It follows from the foregoing that only the action for payment in respect of reimbursement of costs and sharing of profits resulting from the collaboration, the action for liability for sudden termination of commercial relations, were allowed. However, although the letter of agreement of 14 August 2013 specifies that the term 'PPG' means Mrs Bothe and Heddy together and that the term 'PPR' means Mrs Bachmann and Pernelle together, the fact remains that the commercial relationship was established between Heddy and the Pernelle and that the sharing of the profits from the collaboration was to take place between Heddy and Pernelle. This is moreover what results from the exchanges of official letters between the counsel of the two companies dated 9 March 2015 and 27 March 2015, by which Heddy (and not Mrs Bothe) claims the payment of invoices for the reimbursement of costs and the sharing of profits and Pernelle (and not Mrs Bachmann) breaks the relationship with Heddy.

Thus the convictions for the reimbursement of costs and the sharing of profits as well as the sudden termination of commercial relations will be decided between Heddy and Pernelle. The claims against Mrs Bachmann on these counts will be dismissed. The judgment handed down will be reversed on these points.

Regarding the enforcement of the penalty payment

Mrs Bachmann and Pernelle ask the court to overturn the judgment in particular in that it assessed the penalty payment ordered by judgment of 13 March 2017.

Mrs Bothe and Heddy request confirmation of the judgment on this point.

It will be noted that the judgment of 13 March 2017 used as a basis for the enforcement of the penalty payment was not produced.

According to the submissions of the parties, the Commercial Court of Paris ordered the production of a certified "pro-forma" balance sheet for the first three quarters of the 2015 financial year of Pernelle, for the real estate transactions that were initiated before 27 March 2015 and that were settled before 1 September 2015, under penalty of €500 per day from 60 days following the date of the judgment, and for a period of 30 days.

However, Pernelle produced a certificate from its public accountant attesting to the impossibility of producing such a pro-forma document. In addition, Pernelle produced its balance sheet for the entire 2015 financial year and provided a certificate from a public accountant establishing the sums due to Heddy for the 2015 financial year.

Consequently, it must be deduced that Pernelle and Mrs Bachmann have complied with the order for the production of documents made to them under penalty and Mrs Bothe and Heddy's application for its enforcement will be dismissed. The judgment will be reversed on this point.

On the counterclaims

On the violation of the non-competition clause

Pernelle accuses Ms Bothe and Heddy of having violated the non-competition clause stipulated in the letter of agreement of 14 August 2013 by continuing to use the brand and the website created specifically for it and by improperly taking credit for the commercial background of PERNELLE (former sales on the "PPG" website, reviews of Internet users on Google).

Article 4 of the letter of agreement dated 14 August 2013 states:

"The Parties confirm that they have no current contracts or obligations inconsistent with the provisions of this agreement or likely to prevent the said Party from complying with the provisions of this agreement. From the signing of this agreement and for a period of 5 years following its termination, neither party shall engage or become directly or indirectly involved as principal, agent, manager, employee, partner, shareholder, director, counsel or otherwise - in any concurrent activity of the collaboration unless otherwise agreed between the parties.

The breach of this paragraph by either party shall be deemed to be a material breach, and the other party shall be entitled to 50% of any income earned by the defaulting party in connection with such competing activity. "

The letter of agreement defines the activity, which is the subject of the collaboration, as consisting of research and sales of real estate.

However, it appears that following the termination of the letter of agreement of 14 August 2013, Pernelle continued to carry out an activity of research and sale of real estate so that, by virtue of the exception of non-performance, it cannot accuse Mrs Bothe and Heddy of having continued to use, with other real estate agencies or negotiators, their resources (websites, brands, blog...) for the research and sale of real estate.

The claim for compensation in this respect cannot therefore be successful.

Unfair competition

Mrs Bachmann and Pernelle allege various acts of unfair competition against Mrs Bothe, Heddy, Mrs Brown and Mr Cacarié.

- On the misuse of emails

Contrary to what they maintain, Mrs Bachmann and Pernelle do not demonstrate any misuse, by Mrs Bothe, of emails addressed to them and in particular of the use of Mrs Faustine Cressot's email address by Mrs Bothe to obtain the rights of administrator on the "Mailechimp" account.

Indeed, it follows from the foregoing that Mrs Bothe had the rights of administrator of this account from the outset. The mere evidence provided by Mrs Cressot, an employee of Pernelle, which refers only to assumptions or deductions is not conclusive.

- On the misuse of telephone lines and fax numbers

Pernelle claims that the telephone lines (+33 9 15 18 18 99 (FR) +33 1 72 77 00 39 (FR). +(917) 779-9950 (US) and the fax number (+33 1 72 70 38 69) it used were misused by Mrs Bothe, Heddy, Mrs Brown and Mr Cacarié.

However, Mrs Bothe provides evidence of the opening of these lines in her name in 2010 and 2011.

No unfair practice by Mrs Bothe and Heddy is therefore established for having continued the use of the lines belonging to them after the termination of the collaboration with Pernelle and Mrs Bachmann. As Mrs Brown and Mr Cacarié continued to work with Mrs Bothe and Heddy, no fault can be attributed to them for using the lines belonging to them.

- Enticing customers and prospects

Furthermore, Pernelle accuses Mrs Bothe and Heddy of having attempted to entice four of its clients.

However, the certificates it produces in this regard are contradicted by the certificates produced by the respondents.

No evidence of the alleged unfair procedures is therefore provided.

- Attempts to misappropriate fees

Mrs Bachmann and Pernelle allege that Mrs Bothe attempted to misappropriate fees from them.

However, it appears from the documents submitted in the proceedings that the two facts invoked are linked to the dispute between the parties in the context of the termination of relations and in particular to the payment of fees linked to business initiated during the collaboration. No unfair practice can be established against Mrs Bothe in this respect.

- Misuse of press articles

Pernelle claims that, on 30 March 2015, Mrs Bothe misused two press articles it had ordered from a journalist in order to publish them on its website.

However, the sole attestation of Mrs Anne Pontabry, a negotiator working with Mrs Bachmann, cannot suffice to provide proof of the ordering of articles and their misuse by Mrs Bothe.

No unfair practice is established in this respect.

The counterclaims of Mrs Bachmann and Pernelle in respect of the acts of unfair competition will be rejected. The judgment appealed will be upheld on this point.

FOR THESE REASONS

The court,

Ruling publicly and in the presence of both parties,

DECLARES admissible the submissions of Heddy & Company, Mrs Miranda Bothe, Mrs Kathryn Brown and Mr Jérôme Cacarie;

REVERSES the judgment handed down except in that it rejected the plea of inadmissibility raised by Pernelle and Mrs Bachmann for lack of interest in bringing proceedings, in that it rejected the counterclaims of Pernelle and Mrs Bachmann, in that it rejected the claims of Pernelle and Mrs Bachmann against Mrs Brown and Mr Cacarié, in that it ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €10,000 to the US company Heddy & Company and €5,000 to Mrs Miranda Junowicz Bothe under Article 700 of the French Code of Civil Procedure, in that it ordered in solidum SARL Pernelle Real Estate and Mrs Kerstin Bachmann to pay the sums of €1,000 to Mrs Kathryn Brown and €1,000 to Mr Jérôme Cacarié under Article 700 of the French Code of Civil Procedure and in that it ordered SARL Pernelle Real Estate and Mrs Kerstin Bachmann jointly and severally to pay the costs, including those to be recovered by the Registry, of €169.16, including €27.98 in VAT;

And, in a new ruling on the overturned grounds,

REJECTS the application for annulment of the letter of agreement of 14 August 2013 filed Mrs Bachmann and Pernelle;

SETS the claim of Heddy to the liabilities of the collective proceedings against Pernelle in respect of the costs incurred for the 2013 financial year at a sum of €20,379.27;

SETS the claim of Heddy to the liabilities of the collective proceedings against Pernelle in respect of the costs incurred for the 2014 financial year at a sum of €1,273.63;

SETS the claim of Heddy to the liabilities of the collective procedure against Pernelle in respect of the distribution of profits derived, in 2013, from the collaboration resulting from the letter of agreement of 14 August 2013, at a sum of €11,817.50;

SETS the claim of Heddy to the liabilities of the collective procedure against Pernelle in respect of the distribution of profits derived, in 2014, from the collaboration resulting from the letter of agreement of 14 August 2013, at a sum of €43,230;

SETS the claim of Heddy to the liabilities of the collective procedure against Pernelle in respect of the distribution of profits derived, in 2015, from the collaboration resulting from the letter of agreement of 14 August 2013, at a sum of €79,211;

REJECTS the action for damages brought by Mrs Bothe and Heddy against Mrs Bachmann and Pernelle for acts of unfair competition;

RULES that Pernelle has suddenly terminated its business relationship with Heddy and declares it liable for such termination;

SETS the claim of Heddy to the liabilities of the collective proceedings against Pernelle in respect of compensation for the harm resulting from this sudden termination of commercial relations at a sum of €33,761.88;

FINDS that Pernelle has complied with the order for the production of documents made to it under penalty payment by judgment of the Commercial Court of Paris of 13 March 2017;

The requests for injunction

Mrs Bachmann and Pernelle ask that Mrs Bothe, Heddy, Mrs Brown and Mr Cacarié be ordered:

- to restore PERNELLE's access to PERNELLE's e-mail archives and the exclusive capacity of administrator thereof, subject to a penalty of €1,000 per calendar day of delay;
- to restore PERNELLE's access to the MailChimp account and the exclusive capacity of administrator thereof, subject to a penalty of €1,000 per calendar day of delay;
- to remove any reference, on the PARIS PROPERTY GROUP website and on any other medium, to operations carried out under PERNELLE mandate, subject to a penalty of €150 per infringement and per calendar day of delay;
- to delete all articles published on the PARIS PROPERTY GROUP website, dated between 1 January 2013 and 27 March 2015, including articles subsequently added by Miranda BOTHE, but which PERNELLE ordered and paid, subject to a penalty of €500 per calendar day;
- not to make use of the telephone line and fax line operated by Pernelle until 27 March 2015: +33 9 75 1818 99 (FR) and +33 1727700 39 (FR),+(917) 779-9950.(US) and fax number: +33 1 72 70 38 69), subject to a penalty of €5,000 per infringement found;
- justify the termination of the telephone line and fax line referred to above, subject to a penalty of €1,000 per infringement and per calendar day of delay;
- Order Mrs Miranda Bothe, Heddy, Mrs Kathryn Brown and Mr Jérôme Cacarié jointly and severally to remove all the articles posted between 1 January 2013 and 27 March 2015 on the Paris Property Group blog, including the articles subsequently posted by Mrs Miranda Bothe, but which Pernelle has ordered and paid; under penalty of €500 per calendar day;

It follows from the foregoing that there is no cause to grant the abovementioned requests.

On the publication of the decision

There is no reason to grant this request.

On the abuse of process

Mrs Bachmann and Pernelle furthermore accuse Mrs Bothe and Heddy of having improperly filing a cross appeal tending to strike out the appeal while Pernelle was the subject of a safeguard measure.

In the absence of evidence of abuse of process, the claim for damages in this respect will be rejected. There is no reason to impose a civil fine.

On court costs and Article 700 of the French Code of Civil Procedure

The provisions of the judgment relating to court costs and non-recoverable expenses will be confirmed.

The claims of Mrs Bachmann, Pernelle, Mrs Bothe and Heddy will be partially rejected. They shall bear in solidum the costs of appeal which may be recovered in accordance with the terms of Article 699 of the Code of Civil Procedure. Their claims for non-recoverable expenses will be rejected. Mrs Bachmann shall be ordered in solidum to pay Mrs Brown and Mr Cacarié the sum of €3,000 on the basis of article 700 of the French Code of Civil Procedure.

DISMISSES the applications for enforcement of the penalty payment made by Mrs Bothe and Heddy;

And adds that it:

REJECTS Pernelle's claim for compensation under the non-competition clause;

DISMISSES the requests for an injunction made against Mrs Bothe, Heddy, Mrs Brown and Mr Cacarié;

DISMISSES the request for publication of this decision;

REJECTS the claims under Article 32-1 of the Code of Civil Procedure;

ORDERS Mrs Bachmann to pay Mrs Brown and Mr Cacarié the sum of €3,000 on the basis of article 700 of the French Code of Civil Procedure;

REJECTS the other claims of the parties on the basis of Article 700 of the French Code of Civil Procedure;

ORDERS in solidum Mrs Bachmann, Pernelle, Mrs Bothe and Heddy to pay the costs of appeal, which may be recovered in accordance with Article 699 of the French Code of Civil Procedure;

DISMISSES the other applications of the parties.

The Clerk

[signature]

The French Republic therefore hereby requests and orders all bailiffs, on the basis of this request, to enforce said decision, all attorneys general and public prosecutors of the Republic attached to the high courts to provide all assistance, to all law enforcement officers to assist with the enforcement, whenever required to do so by law. In witness whereof this decision has been signed by the President and the Court Clerk. This enforcement order has been signed by the head of the office of registry attached to the Paris Court of Appeal.

The director of the registry

THE PRESIDING JUDGE

[signature]

[seal of the Paris Court of Appeal]
[signature]