ADMINISTRATIVE COURT

OF APPEAL OF LYON

No. 2907036

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Mr Charles DOUTREMONT

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Ms Laura MUSSET

Rapporteur

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Mr Julien BADIN-LOPEZ

Public rapporteur

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Hearing of 1 March 2030

Reading of 1 March 2030

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FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Administrative Court of Lyon

(1st Chamber)

Having regard to the following proceedings:

In an application filed on 23 January 2030, Mr Charles Doutremont, represented by Maître Krikorian, Maître Berrada, Maître Lahbabi, Maître Morin, Maître Joly and Maître Charreyron, asked the court:

1°) to cancel the refusal decision of the local public company PerfectPlace dated 1 October 2029.

2°) to order the restoration of the ART token destroyed by mistake on 10 April 2029.

3°) to order the local public company PerfectPlace to pay it the sum it should have received for the rental of the apartment linked to the ART destroyed for the period after 10 April 2029.

4°) to order PerfectPlace to pay the sum of 3,000 euros under Article L.761-1 of the Code of Administrative Justice.

Mr Charles Doutremont submits that:

- PerfectPlace did not fulfil the pre-contractual information requirements with respect to the contract it concluded with the plaintiff, constituting a failure to comply with the MiFID 2 European Directive, which applies when financial instruments such as ARTs are used, in accordance with Article L552-2 of the Monetary and Financial Code and in breach of the

principles of legal certainty, transparency and consumer protection reiterated in the judgment of the Court of Justice of the European Union of 12 January 2021 in Case C-6/9999;

- PerfectPlace, by ceasing to make the daily payments correspond to the days of rental of the apartment even though it had benefited from a 150 ETH investment by Mr Doutremont, who continued to meet his contractual obligations, upset the financial equilibrium of the contract.

- PerfectPlace, by no longer making the daily payments owed to the plaintiff, is enriching itself to the detriment of said plaintiff, which therefore constitutes unjust enrichment, which is recognised as a principle applicable to administrative law by a ruling of the French Council of State (*Conseil d'État*) dated 14 April 1961 "Ministry of Reconstruction and Housing vs Sud-Aviation":

- PerfectPlace has breached the principle of fairness and transparency in the contractual relationship with Mr Doutremont by contenting itself with mentioning the application of the ERC20 protocol with detailing its content, by stopping the daily payments without indicating that it was still receiving rent;

- PerfectPlace failed in its duty of care as recognised by the Administrative Court of Appeal of Bordeaux on 5 May 2012, by failing to inform the plaintiff about the risks inherent in the use of the ERC20 protocol for the contract they had concluded;

- PerfectPlace is guilty of fraudulent concealment as it deliberately omitted to inform Mr Doutremont of the risks of the ERC 20 protocol in the event of the incorrect use of the token which constitutes a defect in consent;

- The contract concluded with PerfectPlace contains an unreasonable clause, prohibited by the French Consumer Code, in that it deprives him of the payment of the sums owing for the rental of the apartment linked to his ART on the sole grounds of the destruction of the ART, whereas the apartment was indeed rented and it is not disputed that he indeed purchased an ART;

- The contract contains a clause creating an imbalance to the detriment of the consumer, by depriving the plaintiff of his daily payments while PerfectPlace continued to receive the rent on the apartment in which he has invested, which constitutes an unreasonable clause within the meaning of Article L. 212-1 of the Consumer Code;

In a statement of defence filed on 8 February 2030, the local public company PerfectPlace, represented by Maître Aimonetto-Martinetto, Maître Artu, Maître Badaoui, Maître Jamesse, Maître Lafarge and Maître Lerminiaux submitted that the petition should be rejected and that Charles Doutremont should be ordered to pay it the sum of 1,500 euros under the provisions of Article L761-1 of the Code of Administrative Justice.

The local public company PerfectPlace submits that:

- the arbitral award made by the Jur Court Layer on 1 July 2029 having force of *res judicata* by virtue of the New York Convention of 10 June 1958, the case cannot be brought

before another court, and therefore Charles Doutremont's petition must be declared inadmissible;

- Pre-contractual information requirements do not exist in matters relating to administrative contracts, so that the local public company was not under any obligation to provide such information and it was up to the co-contractor to make his own enquiries regarding the protocol applicable to the contract and, if appropriate, to propose a more suitable one;

- The local public company carries on a tourism-related activity essential to the public interest, which enables it to rebalance the contract and which does not breach the principle of the financial equilibrium of the contract by ceasing to provide its co-contractor with the financial and economic benefits arising out of the contract when the co-contractor, by his own fault, no longer meets the conditions to obtain the daily payments;

- As the disputed contract is an administrative contract and not a consumer contract insofar as it is not entered into by a consumer and a professional, it cannot contain an unreasonable clause within the meaning of the Consumer Code, all the more so as no precise clause is mentioned;

- The enrichment of PerfectPlace and the correlative impoverishment of the plaintiff, is not without cause but is the is the result of a failing by the latter, particularly since this enrichment cannot be disproportionate in view of the expense the local public company must incur to fulfil its public interest mission of promoting tourism;

- The defence that the plaintiff has not performed his part of the contract allows PerfectPlace to cease the daily payments insofar as the co-contractor no longer the meets the condition of holding the token necessary to the payments;

- The principle of fairness cannot be considered as exempting the co-contractor from the need to make enquiries about the risks inherent in the use of the ERC20 protocol which PerfectPlace indicated that it was applying to the contract and which is available online;

- PerfectPlace having indicated that it was applying the ERC20 protocol, which is accessible online, it did not conceal information that would be decisive for the plaintiff's consent, the latter not being able to be legitimately unaware of it, so that the contract is not vitiated by a defect of consent due to fraudulent concealment;

- PerfectPlace is not responsible for the failings of the State in its transposition of European Directives, which, until they have been transposed, may not be relied upon by a private individual to dispute an individual measure.

Having regard to the other documents in the case file;

Having regard to:

- The New York Convention of 10 June 1958

- Directive 2014/65/EU of 15 May 2014 on markets in financial instruments

- The Monetary and Financial Code

- The Code of Administrative Justice.

The parties have been lawfully informed of the day of the hearing.

The following were heard at the public hearing:

- the report of Ms Laura MUSSET, judge,

- the conclusions of Mr Julien BADIN LOPEZ, public rapporteur,

- and the observations of Maître Krikorian, Maître Berrada, Maître Lahbabi, Maître Morin, Maître Joly and Maître Charreyron for Mr Charles Doutremont and of Maître Aimonetto-Martinetto, Maître Artu, Maître Badaoui, Maître Jamesse, Maître Lafarge and Maître Lerminiaux for the local public company PerfectPlace;

Whereas:

1. Mr Charles Doutremont entered into a contract of sale, of the type known as a "smart contract", with the local public company PerfectPlace governed by the Ethereum blockchain's ERC20 protocol. Under this contract, he acquired an "Apartment Revenue Token" (ART), a token corresponding to an apartment enabling him to receive the sum of 0.20 ETH - the ETH being the cryptocurrency generated by the Ethereum blockchain - for each day when the apartment is rented over a period of four years as from 1 January 2029. However, after an error in handling his token which led to its destruction on 10 April 2029, from that date Mr Doutremont ceased to receive the daily payments corresponding to the rental of the apartment linked to this token. The plaintiff asked PerfectPlace to resume the payments, which the latter refused to do, saying that it was enforcing the blockchain rules relating to the permanent destruction of the token.

2. In line with the arbitration clause in the contract of sale, Mr Charles Doutremont took the matter to the Jur Court Layer, an online dispute resolution mechanism, in order to obtain the payment of the apartment rental days owed to him since the destruction of his token. On 1 July 2029, the Jur Court Layer issued a decision dismissing his claim. Mr Doutremont then submitted a claim for compensation to PerfectPlace on 15 July 2029 seeking the payment of the sum of 0.20 ETH or the corresponding amount in euros for each day when the apartment was rented after 10 April 2029. This clam was rejected by PerfectPlace on 1 October 2029. Mr Doutrement then seised the Administrative Court asking that PerfectPlace be ordered to restore the token that had been destroyed and pay him the sums not received since 10 April 2029. In the alternative, he is asking that the daily payments for the period after 10 April 2029 be paid to him in the form of ethers or the corresponding amount in euros, on the grounds of unjust enrichment.

<u>On the motion to dismiss the petition:</u>

3. PerfectPlace has filed a motion to dismiss the petition on the grounds of non-admissibility due to the arbitral award made by the Jur Court Laye on 1 July 2029, which rejected his claim.

4. Mr Doutremont argues that he was not given the comprehensive information that should have been provided to him prior to signing the contract pursuant to the MiFID 2 European Directive, from which he deduces that PerfectPlace, as a distributor of financial instruments, had a duty to provide him with all the information pertaining to the risks of the financial products, so that he could enter into the investment contract in full knowledge of the facts. He submits in particular that PerfectPlace did not provide him with sufficient information on the risks inherent in the use of the ERC20 protocol, in particular in the event of an error in handling the ART and that it was not possible for him to understand, simply by reading the contract documents, that in such an eventuality he risked losing his entire investment. In so arguing, Mr Doutremont must be regarded as invoking a defect of enlightened consent at the time of signing the contract and therefore as challenging its validity.

5. When the parties seise a judge with a dispute relating to the performance of a contract between them, in principle it is the judge's duty, with regard to the requirement of fairness in contractual relations, to apply the contract. However, if, and only if, the judge finds that there is an irregularity invoked by one of the parties or if one is raised by the judge of his own motion, relating to the illegal nature of the content of the contract or a particularly serious defect relating in particular to the conditions under which the parties gave their consent, he must set the contract aside and will not be able to settle the dispute within the terms of the contract.

6. Consent is considered as having been given under unlawful conditions if there was violence, error or deceit, which can be considered the case in the event of the deliberate concealment by one of the contractors of some information which that contractor knows to be of a decisive nature for the other party.

7. Although the application of the ERC-20 protocol and the "standard rules" of the blockchain was mentioned in the contract, PerfectPlace did not specify their content, in particular with regard to the risk of losing the entire investment in the event of a mistake leading to the destruction of the token. However, the public company PerfectPlace decided to apply these rules rather than those prevailing in other applicable protocols, in particular the ERC-223 protocol, which protects the investor better in that it includes a feature allowing the loss of incompatible tokens to be avoided. It was therefore necessarily aware of the risk to which its co-contractor was exposed. In failing to provide the plaintiff with this information, when information relating to the risks incurred is necessarily decisive when making an investment, PerfectPlace deliberately omitted to provide its co-contractor with decisive information of which the latter could legitimately be unaware given the complexity of the recent development of the technologies involved in blockchain and smart contracts.

8. It follows that the contract entered into by Mr Doutrement and PerfectPlace was vitiated by a defect of consent, justifying that it be set aside. The Jur Court Layer having been seised in, application of this invalid contract, the arbitral award made by this arbitral tribunal therefore cannot be enforced. Consequently, the motion to dismiss the claim based on the existence of this award must be set aside.

On the submissions seeking the restitution of the token and the ordering of PerfectPlace to pay compensation:

9. The application of the contract entered into by Mr Doutremont and PerfectPlace being precluded as set out in point 8 above, due to a defect of consent, Mr Doutremont cannot usefully claim the restoration of the ART in which he had invested, since the latter was allocated in performance of that contract. Nor may he demand the continuation of the contractual relations or, therefore, the payment of the sums owed under the contract at issue.

10. However, when the judge seised with a dispute relating to contractual liability is obliged to find that there is no contract or that the contract is null and void, the parties that considered themselves bound by that contract may pursue the dispute between them relying on the arguments relating to the unjust enrichment that the application of the contract by which they considered themselves bound has brought to one of them. Mr Doutremont may be regarded in the case in point as seeking compensation for his loss on the grounds of unjust enrichment.

11. The action for unjust enrichment (*de in rem verso* action) founded on the principle of equity which prohibits one person from enriching himself at the expense of another must be admitted in all cases where one person's assets having been augmented without any legitimate cause to the detriment of those of another person, the latter, to obtain the redress due to which he is due, has no means of action based on a contract, a quasi-contract, a tort or an unintentional tort.

12. In the case in point, PerfectPlace has been enriched by the investment of 150 ETH made by the plaintiff as well as by an amount of 0.20 ETH per day's rental of the apartment to which this investment is attached, whereas this amount should have been allocated, under an unlawful contract, to the plaintiff whose assets have been diminished by 150 ETH and the missing income of 0.20 ETH per day's rental.

13. It results from these findings that PerfectPlace, which has enriched itself at the expense of Mr Doutremont, owes the latter compensation equivalent to the enrichment or the impoverishment, whichever is the lowest at this time.

14. It results from the examination of the case that the apartment was rented for thirty-two days without Mr Doutremont receiving the 0.20 ETH in return. The local public company was therefore enriched by 6.4 ETH, namely 8,562.95 euros, whose payment Mr Doutremont has grounds to claim.

15. On the other hand, as Mr Doutremont has not sought compensation for the loss of his investment, the sum of 150 ETH, namely 209,257.20 euros, this cannot be paid to him.

16. It follows from the above that Mr Doutremont has grounds to ask that PerfectPlace be ordered to pay him the sum of 8,562.95 euros.

On the submissions seeking the application of Article L. 761-1 of the Code of Administrative Justice:

17. Article 761-1 of the Code of Administrative Justice provides that "in all proceedings, the judge orders the party liable for the costs or, failing that the losing party, to pay to the other party the sum that he/she determines as corresponding to the expenses incurred but not include

in the costs. The judge takes account of the needs of equity or of the economic situation of the losing party. He may, even ex officio, for reasons that derive from the same considerations, find that there are no grounds to make such an order."

18. The aforementioned provisions preclude Mr Doutremont, who is not the losing party, making any payment to PerfectPlace in relation with the costs incurred as a result of the proceedings. On the other hand, it is necessary to award the sum of 3,000 euros sought by Mr Doutremont in respect of the same expenses against PerfectPlace.

D E C I D E S:

Article 1: PerfectPlace is ordered to pay the sum of 8,562.95 euros to Mr Charles Doutremont.

Article 2: PerfectPlace is ordered to pay the sum of 3,000 euros to Mr Charles Doutremont under Article L.761-1 of the Code of Administrative Justice.

Article 3: The rest of the claims in the parties' submissions are dismissed.

Article 4: Mr Charles Doutremont and PerfectPlace will be notified of this judgment.

Deliberated upon after the hearing of 1 March 2030, before:

Ms Thevenot, presiding judge,

Ms Musset, judge,

Ms Barthélémy, judge

Delivered at the public hearing held on 1 March 2030

The rapporteur, The presiding judge,

L. Musset C. Thevenot

The clerk,

A. Le Colleter

The Republic summons and orders the Ministry of the Interior, as far as it is concerned, and all judicial officers, as herein required, concerning ordinary procedures between private parties, to enforce this ruling.

Certified execution copy,

A clerk of the court