

Court of Cassation

First Civil Chamber

Public hearing of 7 November 2000

Appeal No.: 98-17731

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Rejection.

President: Mr. Lemontey, president

Reporter: Mr. Bague, contributing advisor

General advocate: Ms. Petit, general advocate

Lawyers: SCP Richard and Madelkern, Mr. Garaud, lawyer(s)

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

On the only ground of appeal, taken in its two parts:

Whereas Mr. Y..., surgeon, has his office at the disposal of his friend Mr. X..., creating with him a means of civil society; they then made an agreement on 15 May 1991 pursuant to which Mr. Y... ceded half of his customers to Mr. X... for the payment of 500,000 francs; the parties have also made a "guaranteed fee agreement" in which Mr. Y... undertook to provide Mr. X... a net minimum annual turnover; Mr. X..., who had paid part of the amount of the compensation, saying that his colleague had not complied with his obligations regarding his clients, has filed for annulment of their agreement; Mr. Y...asked for the payment of the remaining amount due to him under the agreement.

Whereas Mr. Y... criticizes the judgment (Colmar, 2 April 1998) that nullified the contract in dispute and having to repay Mr. X... the sum already paid by him and, having rejected his application for payment of the balance of compensation provided in the agreement, then, according to the appeal, firstly, that in deciding that the contract was void as infringing the free choice of doctor by patients, after stating that it required the parties to offer patients an "option limited to the choice between two practitioners or the acceptance of a different surgeon than the one that the patient's doctor had referred him to," what resulted was that the sick retained the full freedom to speak to Mr. Y...,Mr. X...or any other practitioner, so that his freedom of choice was not infringed, and the appeal court did not draw the legal consequences of its own findings, in violation of Articles 1128 and 1134 of the Civil Code; and then, secondly, that by not researching as it was asked if the contract was lawful in part, by requiring Mr. Y...to introduce Mr. X...to his clientele and to provide medical equipment, office equipment, and communication equipment so that the obligation of Mr. X...to pay compensation under the contract was

provided for cause, the Court of Appeal lacked a legal basis for its decision under Articles 1128, 1131 and 1134 of the Civil Code.

But given that if the sale of a medical practice, in the event that the constitution or sale of a liberal fund of a professional practice is not illegal, it is on the condition that the freedom of choice of the patient be safeguarded; in this respect, the Court of Appeal having sovereignly chosen, in this case, that freedom of choice was not respected, has legally justified its decision; Hence it follows that the wrong appealed in its first part is inoperative in the second;

FOR THESE REASONS:

REJECT the appeal.

Publication: Bulletin 1000 I No. 283 p. 183

Challenged decision: Court of Appeal of Colmar, 2 April 1998

Titling and summaries: MEDICAL AND PARAMEDICAL PROFESSION – Doctor surgeon; Doctor’s office – Sale – Customer transfer – Validity – Conditions – Safeguard freedom of choice of the patient. If the assignment of medical clientele, on the occasion of the constitution or transfer of a liberal fund of professional practice that is not illegal, it is on the condition that the freedom of choice of the patient be safeguarded. In this regard, it is in the exercise of its sovereign power that an appellate court holds that in this case the freedom of choice of the patient was not respected.

MEDICAL AND PARAMEDICAL PROFESSION – Surgeon doctor – freedom of choice of the patient – Infringement – Customer transfer – Condition POWER OF JUDGES – sovereign assessment – medical and paramedical professions – Medical office – Assignment – Customer transfer – Validity – Conditions – Safeguarding patient freedom of choice

Jurisprudential precedents: IN OPPOSING SENSE: First Civil Division, 1995-03-28, Bulletin 199, I, No. 145, p. 103 (rejection), and the cited judgment; First Civil Chamber, 1996-10-01, Bulletin 1996, I, No. 335 (2), p. 235 (rejection).