

EXHIBIT 2.C



Date: July 15, 2021

To whom it may concern:

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- ECLI NL HR 2005 AR6809

Alexander Danesis, Project Manager in this company, attests to the following:

“To the best of my knowledge, the aforementioned documents are a true, full and accurate translation of the specified documents.”

Alexander Danesis
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ECLI:NL:HR:2005:AR6809

Court	Supreme Court
Date of ruling	02/11/2005
Date of publication	02/11/2005
Case number	R04/033HR
Formal relations	Findings: ECLI:NL:PHR:2005:AR6809
Areas of law	Civil law
Special features	Cassation
Content summary	11 February 2005 First Chamber Petition No. R04/033HR JMH/AT Dutch Supreme Court Decision in the case of: FROG PEOPLE MOVER B.V., with registered offices in Utrecht, PETITIONER in cassation, attorney: E. Grabandt, LLM versus STICHTING INTERNATIONALE TUINBOUWTENTOONSTELLING FLORIADE 2002, with registered offices in Vijfhuizen, municipality of Haarlemmermeer, RESPONDENT in cassation, attorney: M. Ynzonides, LLM. 1. The suit in the fact-finding instance...
Law references	Dutch Code of Civil Procedure (applies in case of digital litigation) 189
Sources	Rechtspraak.nl JOL 2005, 92 NJ 2005, 442 with annotation by W.D.H. Asser RvdW 2005, 27 JWB 2005/58 JBPR 2005/21 with annotation by Evelyne Groot, LLM

Judgment

11 February 2005

First Chamber

Petition No. R04/033HR

JMH/AT

Supreme Court of the Netherlands

Order

In the matter of:

FROG PEOPLE MOVER B.V.,

with registered offices in Utrecht,

PETITIONER in cassation,
attorney: E. Grabandt, LLM,

versus

STICHTING INTERNATIONALE TUINBOUWTENTOONSTELLING FLORIADE 2002,
with registered offices in Vijfhuizen, municipality of Haarlemmermeer,
RESPONDENT in cassation,
attorney: M. Ynzonides, LLM.

1. The suit in the fact-finding instance

By writ dated 21 January 2003, the Petitioner in cassation – hereinafter called Frog – summoned the Respondent in cassation – hereinafter called Floriade – before the Court of Haarlem and demanded compensation for damage in the amount of € 1,011,26.68, to be increased by the statutory interest rate.

By petition received on 21 May 2003 at the clerk's office of the Court of Haarlem, Frog petitioned the Court to order a preliminary hearing of witnesses.

By order dated 19 June 2003, the Court denied the petition.

Frog filed an appeal of this order with the Court of Appeal of Amsterdam.

By order dated 2 December 2003, the Court of Appeal upheld the appealed order.

The order of the Court of Appeal is attached to this order.

2. The action in cassation

Frog filed an action in cassation against the order of the Court of Appeal. The cassation petition is attached to this order and constitutes a part of it.

Floriade requested that the appeal be denied.

The findings of Advocate General E.M. Wesseling-van Gent indicate denial of the appeal.

3. Evaluation of the grounds for appeal

3.1 Frog summoned Floriade before the Court of Haarlem on 21 January 2003 in the matter of a claim for compensation for damages. Frog supported its claim in that matter – hereinafter the main action – by stating that Floriade fell short in the performance of various of its obligations vis-à-vis Frog arising from an agreement concluded between the parties, at least that Floriade had committed a tort vis-à-vis Frog, at least that Frog had nullified the agreement because of error.

In the petition commencing the present proceedings, received by the clerk's office of the Court on 21 May 2003, Frog petitioned the Court, after Floriade had submitted its response in the main action, to order a preliminary hearing of witnesses with respect to a number of specific facts about which the parties had different opinions in the main action. In its petition, Frog argued that a preliminary hearing of witnesses prior to taking the statements of reply and rejoinder would offer the parties a more complete starting point so that they could come closer to each other, but additional that it would accelerate the progress and the course of the main action in the first instance. The Court denied the petition by order of 19 June 2003 due to conflict

with due process. The Court of Appeal dealt with the case at its session of 2 December 2003 and upheld the order of the Court by order of the same date, based on the opinion that Frog had an insufficient interest at that moment in holding a preliminary hearing of witnesses. The Court of Appeal considered that, according to communications from the parties, the exchange of briefs in the main action had been completed and closing arguments were set for 8 December 2003, so that if the petition were granted, the witnesses could not reasonably be heard before the (interim) judgment in the main action would be pronounced and that any possible interim judgment would create clarity with respect to the arguments to be proven and the related burden of proof.

3.2.1 Section 4, which the Supreme Court will deal with first, contains the complaint that the Court of Appeal denied the petition based on an incorrect standard because the lack of a sufficient interest at Frog did not justify the denial. According to this section, the petition can only be denied if there is an imbalance of interests meaning that abuse of the relevant authority occurs, or there is conflict with due process, about which the Court of Appeal did not determine or decide anything.

3.2.2 This complaint is based on an incorrect understanding of law and thus cannot lead to cassation. A petition to hold a preliminary hearing of witnesses as set forth in Art. 186 of the Dutch Code of Civil Procedure can be denied, if it otherwise satisfies the requirements for granting, based on the reason that the authority to employ this remedy was abused, which can be the case, inter alia, when the petitioner cannot be allowed to apply this authority due to the imbalance of the interests involved on both sides (Dutch Supreme Court 6 February 1987, No. 7081, NJ 1988, 1), but that is not the only possible reason for denial, as is also apparent from the order of the Supreme Court of 19 February 1993, No. 8128, NJ 1994, 345. Just as was decided with respect to the preliminary expert investigation, granting the petition can be withheld, as the section also recognizes, if it is in conflict with due process, or it must be frustrated by another objection considered to be weighty by the judge (cf. Dutch Supreme Court, 13 September 2002, No. R 02/005, NJ 2004, 18). Furthermore, there is no reason to consider a petition as set forth in Article 186 of the Dutch Code of Civil Procedure separately from the rule set forth in Article 3:303 of the Dutch Civil Code that no one is entitled to a legal claim without an interest.

3.3.1 The sections 2, 3, and 5 encompass justification complaints Sections 2 and 3 complain that the Court of Appeal was not able to base its denial on the circumstance and/or assumption that it used as a basis, since it was not clear when the Court would issue its judgment in the main action, nor whether there would be an interim judgment with an order to produce evidence with respect to all relevant facts and circumstances, so that the Court of Appeal's conclusion that Frog had an insufficient interest at that moment in holding a preliminary hearing of witnesses is not understandable.

3.3.2 The Court of Appeal considered that the parties had communicated that closing arguments in the main action were to come on 8 December 2003 – that is to say: six days after the order by the Court of Appeal – and that the witnesses to be heard in the preliminary hearing of witnesses in case of granting the petition therefore could not reasonably be heard before the (interim) judgment would have been pronounced in the main action. By deliberating in this way and following it with the statement that it assumed, just as the parties did according to their remarks to the Court of Appeal, that a possible interim judgment would create clarity with respect to arguments to be proved and the related burden of proof, the Court of Appeal justified in a comprehensible manner why it was of the opinion that Frog had an insufficient interest in the granting of its petition at that moment. It follows, after all, from what the Court of Appeal considered that, according to the expectations of both the Court of Appeal and the parties, the course of the main action was such that granting the petition was superfluous at that stage. The complaints therefore fail. The same applies to Section 5, which builds upon the foregoing sections.

3.4 The complaint in Section 1 also cannot lead to cassation. Considering Article 81 of the Judiciary Organization Act (RO), this does not require any further justification since the complaint does not require an answer to legal questions in the interest of unity of law or legal development.

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