



Damage Resulting From the Non-Performance of an Assignment Contract

SITUATION

An investor signed a contract for the sale of several shopping centres. The buyer eventually cancelled the sale on the grounds that certain conditions precedent had not been fulfilled.

The seller contested the cancellation of the sale and commenced international arbitration proceedings (ICC) to claim payment of the compensation of several tens of millions of euros provided for in the penalty clause of the contract.

OUR ROLE

FTI Consulting was appointed by the seller to value, as an independent expert, their losses in order to check that the contractual indemnity was not manifestly overvalued.

Our work focused on the following aspects:

- analysis of the evolution of the buyer's financial situation between the signing and the closing of the contract;
- evaluation of the payments that would have been received by the seller in the event of completion of the transaction;
- analysis of the evolution of market conditions since the price was negotiated between the parties;
- assessment of the loss resulting from the loss of value of the assets under several scenarios;

- assessment of the loss resulting from the loss of liquidity (holding of an illiquid asset vs. cash).

Finally, we prepared an independent expert report detailing our analyses and conclusions and testified at the hearing.

OUR IMPACT



The use of factual and dated documents from the time of the events (in tempore non suspecto) allowed us to robustly demonstrate the existence of a loss far in excess of the amount of the penalty clause.

Our work also strengthened the claimant's position by highlighting changes in the purchaser's circumstances that could explain its decision to withdraw from the transaction.

The arbitral tribunal awarded our client 100% of its claim, including the reimbursement of its costs.



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