

# Exhibit 33

On: 12/23/2011

**Court of cassation**

**Civil chamber 3**

**Public hearing of January 6, 1993**

**Appeal no.: 91-13858**

Not published in the bulletin

**Presiding: Mr. BEAUVOIS, president**

**Rejection**

## **FRENCH REPUBLIC**

### **IN THE NAME OF THE FRENCH PEOPLE**

THE COURT OF CASSATION, THIRD CIVIL CHAMBER, has delivered the following judgment:

On the appeal brought by Mr. Bernard A..., residing at ... in Roissy-en-France (Val-d'Oise),

In annulment of a judgment delivered on January 22, 1991 by the Paris Court of Appeal (16<sup>th</sup> chamber, section A), in favor of the Actimetal company, whose registered office is ...(9<sup>th</sup> district),

defendant in the appeal; the plaintiff invokes, in support of its appeal, the single ground of appeal annexed to this judgment; THE COURT, at the public hearing of November 25, 1992, where the following were present:

Mr. Beauvois, president, Mr. Pronier, Advising magistrate-rapporteur, Mr. K..., B..., F..., Z..., I..., D..., H..., G..., Mr. X..., Y..., J..., H... E... Marino, counsel, Mr. C..., Ms. Cobert, advising counsel, Mr. Mourier, Advocate General, Ms. Pacanowski, Clerk of the Court; On the report of Mr. Pronier, advising magistrate, the observations of Ms. Blanc, attorney of Mr. A..., of Ms. Hennuyer, attorney for the Actimetal company, the conclusions of Mr. Mourier, advocate general, and after deliberating thereupon in accordance with the law; On the single ground:

Whereas, according to the challenged judgment (Paris, January 22, 1991), Mr. A..., owner of premises for commercial use, occupied by Actimetal, issued a summons to quit the premises; whereas Actimetal brought proceedings against Mr. A.... in order to have the summons declared void and to order the establishment of a proper commercial lease. Whereas Mr. A... brought complaint against the judgment for deciding that a commercial lease was concluded between the parties, since, according to the ground of appeal "the price which must be paid by the lessee is one of the essential elements of the leasing contract", whereas the court of appeal, which noted the absence of agreement of the parties on the amount of the rent, could not allow that a lease had been concluded, a violation of article 1709 of the Civil Code"; But whereas having maintained itself that Actimetal, which had been occupying the premises for more

than two years with the consent of the owner, paid, in the form of checks, installments or partial payments to be counted towards the rent, the Court of Appeal, which properly applied article 1716 of the Civil Code, legally justified its decision; FOR THESE REASONS:

REJECTS the appeal;

**Decision challenged:** Paris Court of Appeal of January 22, 1991

**Headings and summaries:** COMMERCIAL LEASE – Proof – Occupation for more than two years- Agreement of the owner- Payment of installments to be counted towards the rent – Sufficient elements – Absence of agreement of the parties on the amount of the rent – Absence of influence.

**Texts applied:**

Civil Code 1716