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Areas of law	Civil law
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Excerpt

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judgment

AMSTERDAM COURT

Private law department

Judgment of 3 July 2024

in Case C/13/705132 / HA ZA 21-687 of

the foundation

EMISSION CLAIM FOUNDATION,

based in Amsterdam, plaintiff,

Advocate Mr C. Jeloschek of Amsterdam,

at

1. the public limited company

STELLANTIS N.V.,

based in Amsterdam,

2. the private limited liability company

STELLANTIS NETHERLANDS B.V.,
based in Amsterdam,
defendants 1 and 2,
Advocate Mr A. Knigge of Amsterdam,

and

in Case C/13/712754 / HA ZA 22-71 of

the foundation
CAR CLAIM FOUNDATION,
based in Rotterdam, plaintiff,
Advocate Mr P. Haas of Rotterdam,

against the defendants referred to above under 1 and 2 and against

4. the legal person under foreign law

STELLANTIS AUTO S.A.S., formerly **PSA AUTOMOBILES S.A.,**
based in Poissy, France,

5. the legal person under foreign law

AUTOMOBILES PEUGEOT S.A.,
based in Poissy, France,

6. the legal person under foreign law

AUTOMOBILES CITROËN S.A.S.,
based in Poissy, France,

7. the legal person under foreign law

GM DEUTSCHLAND HOLDINGS GMBH, formerly **ADAM OPEL GMBH,**
based in Frankfurt am Main, Germany,

8. the legal person under foreign law

OPEL AUTOMOBILE GMBH,
based in Rüsselsheim am Main, Germany,

9. the legal person under foreign law

GENERAL MOTORS HOLDINGS LLC,
based in Detroit (Michigan), United States of America,

10. the legal person under foreign law

GENERAL MOTORS COMPANY,

based in Detroit (Michigan), United States of America, defendants 4 to 10,

Advocate Mr A. Knigge of Amsterdam,

and against

Defendants 11 to 137,

the Car Dealers,1

Advocate M.J. van Joolingen of s-Hertogenbosch,

and

in Case C/13/712812 / HA ZA 22-72 of

the foundation

DIESEL EMISSIONS JUSTICE FOUNDATION,

based in Amsterdam, plaintiff,

Advocate Mr J.D. Edixhoven of Amsterdam,

against the defendants named above under 1, 2 and 4 to 137

Plaintiffs will hereinafter be referred to separately as SEC, SCC and SDEJ. Collectively, they will be referred to as the Foundations. Defendants 1, 2 and 4 to 10 will hereinafter be collectively referred to as Stellantis et al. Defendants 11 to 137 will hereinafter be collectively referred to as the Car Dealers.

1 The procedure

in Case C/13/705132 / HA ZA 21-687

1.1. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 29 November 2023,
- Defendants 1 and 2's phase 2 reply, with exhibits,
- court notice dated 25 March 2024,
- Mr Knigge's letter of 10 April 2024 with a further procedural order proposal,
- the letter from Mr Edixhoven, with annexes, dated 19 April 2024 on behalf of the Foundations requesting

under section 22 Rv and a proposal for the procedural order,

- Mr Knigge's message of 22 April 2024,
- Mr Edixhoven's letter of 23 April 2024 on behalf of the Foundations,
- Mr Knigge's letter of 7 May 2024,
- Mr Edixhoven's letter of 10 May 2024 on behalf of the Foundations,
- Mr Knigge's letter of 13 May 2024,
- Mr Edixhoven's letter of 15 May 2024 on behalf of the Foundations.

1.2. Finally, judgment was rendered.

in Case C/13/712754 / HA ZA 22-71

1.3. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 29 November 2023,
- Stellantis et al's Phase 2 response, with exhibits,
- The Autodealers' Phase 2 Statement of Reply, with exhibits,
- the incidental claim for summons to indemnity under Section 210 Rv of the Motor Dealers,
- court notice dated 25 March 2024,
- The statement of reply in SCC's safeguard case,
- SCC's deed statement in response to defendants' application for injunction against SCC under Section 22 Rv to submit financing agreement,
- Mr Knigge's letter of 10 April 2024 with a further procedural order proposal,
- the letter from Mr Edixhoven, with annexes, dated 19 April 2024 on behalf of the Foundations requesting
under section 22 Rv and a proposal for the procedural order,
- Mr Knigge's message of 22 April 2024,
- Mr Edixhoven's letter of 23 April 2024 on behalf of the Foundations,
- Mr Knigge's letter of 7 May 2024,
- Mr Edixhoven's letter of 10 May 2024 on behalf of the Foundations,
- Mr Knigge's letter of 13 May 2024,
- Mr Edixhoven's letter of 15 May 2024 on behalf of the Foundations,
- the judgment in the incident in remand of 22 May 2024.

1.4. Finally, judgment was rendered.

In Case C/13/712812 / HA ZA 22-72

1.5. The conduct of the proceedings is evidenced by:

- the interlocutory judgment of 29 November 2023,
- Stellantis et al's Phase 2 response, with exhibits,
- The Autodealers' Phase 2 Statement of Reply, with exhibits,
- The incidental claim for summons to indemnity under Section 210 Rv of the Motor Dealers,
- court notice dated 25 March 2024,
- The statement of reply in SDEJ's safeguard case,
- SDEJ's reply deed in response to defendants' request for refusal
claim increase, also containing conditional request for change of claim,
- Mr Knigge's letter of 10 April 2024 with a further procedural order proposal,
- the letter from Mr Edixhoven, with annexes, dated 19 April 2024 on behalf of the Foundations requesting
under section 22 Rv and a proposal for the procedural order,
- Mr Knigge's message of 22 April 2024,
- Mr Edixhoven's letter of 23 April 2024 on behalf of the Foundations,
- Mr Knigge's letter of 7 May 2024,
- Mr Edixhoven's letter of 10 May 2024 on behalf of the Foundations,
- Mr Knigge's letter of 13 May 2024,
- Mr Edixhoven's letter of 15 May 2024 on behalf of the Foundations,
- the judgment in the incident in remand of 22 May 2024.

1.6. Finally, judgment was rendered.

2 The further assessment

in Case C/13/712754 / HA ZA 22-71

Request by Stellantis et al. for order to submit financing agreement to SCC

2.1. Stellantis c.s. asks the court to order SCC to submit its financing agreement with CF ND Car Ltd. to the court and Stellantis c.s. in its entirety and without any parts rendered illegible, so that this agreement can still be examined in its entirety in relation to the guarantee requirement. According to Stellantis c.s., the recent interlocutory judgment in another class action gives rise to this. Indeed, in the interlocutory judgment of 24 January 2024 in the case against Mercedes-Benz c.s.2, the court ruled that three parts of the financing agreement, which SCC had to submit in those proceedings, (possibly) contradict the guarantee requirement. In that case, SCC was given the opportunity to delete these parts, or at least amend them in such a way as to overcome the court's objections. According to Stellantis et al, it is noteworthy that in the present proceedings, which concern the same financing agreement of the same foundation, the financing agreement was not brought into the proceedings and that agreement was not tested by the court against the guarantee requirement. Therefore, this must still be done. The Car Dealers joined the application of Stellantis et al.

2.2. SCC finds that the application by Stellantis et al and the Car Dealers should be rejected.

2.3. The court considered as follows. SCC's admissibility, including the guarantee requirement, was assessed in the interlocutory judgment of 16 August 2023. At that time, the court saw no reason, based on the debate at the time, to order SCC to produce its financing agreement. It was decided then that SCC met the guarantee requirement and was admissible. The ex nunc review of the guarantee requirement may mean that, under certain circumstances, compliance with that requirement can be re-examined. However, this would require new facts or circumstances of sufficient significance. This is not the case here. The fact that a different decision was taken in another set of proceedings in which SCC is the plaintiff and that it was decided that the financing agreement should be brought into the proceedings there is of insufficient significance. Indeed, in both cases each had its own, partly different debate. The court thus sees no reason to reopen the debate on SCC's admissibility in this case or to subject that admissibility to a renewed assessment.

In the court's view, there is also no violation of Section 21 Rv in that SCC did not bring the financing agreement into the proceedings of its own accord, as Stellantis c.s. argues.

in Case C/13/712812 / HA ZA 22-72

Reverse previous decision on admissibility of claim increase SDEJ?

2.4. Stellantis c.s. objects to the claim multiplication as made by SDEJ at the hearing on 14 March 2023 and which was held by the court in the judgment of 16 August 2023 to be permissible. The claim increase involves a broadening of the definition of the term Relevant Period used by SDEJ, or the period to which the claims brought by SDEJ relate. Originally, it covered the period between 1 September 2009 and 1 September 2019. After the claim increase (whereby the end date of the period was widened until the date of the final judgment to be rendered in these proceedings, to the extent that the Euro 5 or 6 emissions standard was applicable during that period), the Relevant Period has an open end and also includes

Car owners who are not yet, but in the future will buy or lease an Affected Vehicle that might even still have to be developed and/or produced among SDEJ's supporters. Stellantis c.s. put forward several arguments and asked the court to reverse its earlier decision and refuse the claim increase (as yet) because of a violation of the requirements set out to this effect in Section 130 Rv and/or the requirements of Section 3:305a of the Civil Code (old) and/or due process. The Auto Dealers endorsed the position of Stellantis et al.

2.5. SDEJ opposes the request by Stellantis et al and the Auto Dealers.

2.6. The court's earlier decision to allow the claim modification is a procedural one. The court may, in principle, reverse that decision. In this case, the court sees reason to reverse its decision to allow the claim amendment. This is because the demand amendment makes the present proceedings too complicated. The SDEJ's constituency becomes an undefined group by the demand amendment, as it is expanded to include as yet unknown possible future interested parties. The same applies to the Affected Vehicles. Such ambiguity hinders a proper debate on the claims and thus violates the requirements of due process. SDEJ's claim amendment is therefore denied as yet.

in all matters

Request Foundations to order Stellantis et al to provide certain information under section 22 Rv

2.7. The Foundations request the court to order Stellantis et al to answer a number of questions and produce documents under Section 22 Rv. This request concerns information on the technical functioning of the emissions software. This is important to establish the inadmissibility of this software and thus the liability of Stellantis et al, the Foundations said.

2.8. Stellantis et al oppose this.

2.9. The court sees no reason at present to use the power of Section 22 Rv.

The further procedure

2.10. The parties then filed further motions for directions on how to proceed. Since the defendants have already filed a reply brief, the court will refer the case for setting an oral hearing. Recently, it failed to reserve a date for an oral hearing in the final months of 2024. The court will now request prevention dates for the months of February and March 2025. If parties provide more than five prevention dates per month, the court cannot guarantee that it will take them into account.

2.11. This oral hearing will be limited to the question of the defendants' liability towards the persons for whom the Foundations act, including the burden of proof and the section 22 Rv application. The court asks the parties to come up with a joint proposal for an agenda of this oral hearing including a proposal for the speaking time for each litigant. The court assumes that the parties will align their positions where possible to avoid repetition.

2.12. With regard to the submission of further documents, the court stipulates that the parties may submit further documents until no later than eight weeks before the oral hearing.

3 The decision

The court

in all matters

3.1. Requests the parties to forward their prevention dates for the months of February and March 2025 and an agenda proposal for the oral hearing on the roll of 31 July 2024,

3.2. reserves any further decision.

This judgment was rendered by J.T. Kruis, N.C.H. Blankevoort and M. Wouters, Judges, assisted by P. Palanciyan, Registrar, and pronounced in public on 3 July 2024.

¹ For details of defendants 11 to 137, see the judgment dated 16 August 2023.

² ECLI:NL:RBAMS:2024:407.
