

To the Vice-President of the Paris
Court of Justice

Summary Hearing of March 1^{er} 2023 at 10:00 a.m.
RG n°23/51950

CONCLUSIONS

FOR: Mr. Stefan RUITENBEEK, trading as Stefan RUITENBEEK, Keeping it Real Art Critics, KIRAC, registered under number 62934937 with the Dutch Chamber of Commerce (KvK), residing at Huigenbos 25, 1102KA Amsterdam, The Netherlands

Defendant

Having for constituted lawyer :

The SELARL CABINET NOUVELLES
Represented by Virginie TESNIÈRE
Lawyer at the Paris Bar
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AGAINST:

- 1) Mr. Michel THOMAS, known as "Michel HOUELLEBECQ", born on February 26, 1956 in SAINT PIERRE (Reunion Island), residing at 3 avenue de Choisy - 7513 Paris, writer, of French nationality

Applicant

Having for constituted lawyer :

Master Angelique BERES
Lawyer at the Paris Bar
29 rue de Tournon - 75006 Paris
Tel : 01 44 41 73 73 - toque A 0457
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- 2) Mrs. Qianyun LI, known as "Lysis Houellebecq", born on October 16, 1990 in Anhui (China), residing at 3 avenue de Choisy - 7513 Paris, without profession, of Chinese nationality

Applicant

Having for constituted lawyer :

Master Maïa KANTOR
Lawyer at the Paris Bar
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MAY IT PLEASE THE PRESIDENT

By writ notified on February 23, 2023 but received by the defendant on Friday, February 24, 2023, Mr. Michel HOUELLEBECQ and his wife Qianyun LI summoned Mr. Stefan RUITENBEEK of the KIRAC Collective to complain about the allegedly invasive character of their private life and their right to image of the trailer of the film KIRAC 27 broadcasted since January 23, 2023 on the platform <https://www.keepingitrealartcritics.com> as well as on YOUTUBE and on VIMEO

On the basis of articles 8 of the ConvEDH, 835 of the Code of Civil Procedure and 9 of the Civil Code, they request the following measures

1) ABOUT THE TRAILER OF THE FILM

ORDER Mr. Stefan RUITENBEEK to remove from the trailer of the film "KIRAC 27" directed by Mr. RUITENBEEK

- (i) *He wrote to me that his honeymoon trip to Morocco had been cancelled... His wife had spent a month arranging prostitutes in advance and now everything was falling apart.*
- (ii) *any reproduction of the image of Mr Michel THOMAS, known as HOUELLEBECQ and Mrs LI*

and this, directly or indirectly, in any form whatsoever and whatever the medium of dissemination, throughout the world, and in particular on the website <https://www.keepingitrealartcritics.com/wordpress/> edited by Mr. Stefan RUITENBEEK and on all social networks administered by Mr. Stefan RUITENBEEK, such as VIMEO, YOUTUBE, INSTAGRAM or TWITTER, under a penalty of 10,000 € per violation found, after a period of 48 hours from the service of the order to intervene;

FORBID Mr. Stefan RUITENBEEK to use the following statements: "he wrote me that his honeymoon planned in Morocco had been canceled (...) His wife had spent a month to arrange prostitutes in advance and now everything collapsed" or any similar statement in the presentation or promotion of the film and this, directly or indirectly, in any form whatsoever and whatever the medium of dissemination, in the world, and especially on the website <https://www.keepingitrealartcritics.com/wordpress/> edited by Mr. Stefan RUITENBEEK and on all social networks administered by Mr. Stefan RUITENBEEK, such as VIMEO, YOUTUBE, INSTAGRAM or TWITTER, under penalty of 10,000 € per violation found after a period of 48 hours from the service of the order to intervene;

ORDER Mr. Stefan RUITENBEEK to pay to Mrs. Qianyun LI the provisional sum of 100.000 € as compensation for her damage;

ORDER Mr. Stefan RUITENBEEK to pay Mr. Michel THOMAS, known as HOUELLEBECQ, the provisional sum of €100,000 as compensation for his loss;

ORDER Mr. RUITENBEEK to publish, on the homepage of the website www.keepingitrealartcritics.com and on the YOUTUBE page entitled KIRAC, within 48 hours of the notification of the order to intervene, the operative part of the order to intervene, and this, under a penalty of 10,000 € per day of delay.

2) WITH REGARD TO THE DISTRIBUTION OF THE FILM IN ITS ENTIRETY

In the event that Mr. RUITENBEEK does not comply with the summons to communicate contained in the present summons, ORDER Mr. RUITENBEEK to communicate to Mr. and Mrs. HOUELLEBECQ, within twenty-four hours following the availability of the order to be made enforceable on the minute, the complete copy of the film entitled "KIRAC 27", reproducing the images of Mr. and Mrs. HOUELLEBECQ, and whose broadcasting has been announced for March 11, 2023, under a penalty of 5.000 € per day of delay;

ORDER the viewing of the film entitled "KIRAC 27" directed by Mr. Stefan RUITENBEEK, reproducing the images of Mr. and Mrs. HOUELLEBECQ and whose broadcasting is announced for March 11, 2023 in the presence of the judge of the summary proceedings and at a date decided by the judge of the summary proceedings in order to rule, if necessary, on the requests of Mr. and Mrs. HOUELLEBECQ consecutive to the viewing, and this, before March 11, 2023 ;

PROHIBIT Mr. Stefan RUITENBEEK, as a precautionary measure pending the screening of the film entitled "KIRAC 27", from broadcasting the said film, directly or indirectly, in any form whatsoever and whatever the medium of broadcasting, throughout the world, and in particular in cinemas, on a commercial or non-commercial basis, on the Internet site <https://www.keepingitrealartcritics.com/wordpress/> edited by Mr. Stefan RUITENBEEK and on all social networks administered by Mr. Stefan RUITENBEEK, such as VIMEO, YOUTUBE, INSTAGRAM or TWITTER ;

3) IN ANY CASE

ORDER Mr. Stefan RUITENBEEK to pay to Mrs. Qianyun LI and Mr. Michel THOMAS dit HOUELLEBECQ the sum of 20,000 € in application of the provisions of Article 700 of the Code of Civil Procedure and order him to pay all costs.

As a preliminary matter, the Respondent intends to raise several procedural objections simultaneously, as set out below (I).

In the alternative, he will demonstrate that the present dispute cannot be raised before the summary judgment judge (II) and that, in any event, no manifestly illicit disturbance to be

stopped, nor imminent damage to be prevented, is characterized, the exorbitant provisional requests made by the plaintiffs running up against more than one serious challenge (III).

The summary judgment judge will therefore obviously have to declare himself incompetent, or even declare the nullity of the summons and, in any event, say that there is no need for summary proceedings in this case.

I. IN LIMINE LITIS, ON THE PROCEDURAL EXCEPTIONS

The present action runs head-on into several procedural objections raised simultaneously and *in limine litis*, pursuant to Article 74 of the Code of Civil Procedure, and detailed below.

1) On the territorial incompetence of the French interim relief judge in favour of the Court of First Instance of Amsterdam (Netherlands) :

This action is brought against a defendant domiciled in Amsterdam, the Netherlands.

1. The plaintiffs were wrong to believe that they could rely on the provisions of Article 7.2 of EU Regulation No. 1215/2012 applicable "*in matters relating to tort or delict*" when their action had a contractual basis.

Indeed, the relationship between the parties in connection with the film and the trailer "KIRAC 27" is governed by a contract signed between Mr. Stefan RUITENBEEK and Michel HOUELLEBECQ on the one hand, and Mr. Stefan RUITENBEEK and Qianyun LI on the other hand, on December 21, 2022 (exhibits 1 and 2 and opposing exhibits 8 and 9).

2. Under the terms of these contracts, the plaintiffs thus consented to participate in the filming and production of this "*artistic, fictional, documentary, performative, essayistic, erotic, and pornographic*" film including "*sexual acts or genitalia.*"

Through this contract, they authorized the director and producer to film their image and broadcast it, as well as any content "*obtained by Stefan and his team in the period from 1^{er} November 2022 to 31 December 2023*".

They therefore assigned their personality rights, copyrights and related rights in connection with their participation in this artistic project and "*understood and accepted (that they had) no right to preview the film (...) nor any right to influence or intervene in the results of the production and/or editing processes of the film*".

In order to assess the merits of the plaintiffs' claims, the summary judgment judge will necessarily have to consider these contracts, interpret them, assess the validity and scope of the transfer of rights granted therein, as well as compliance with the obligations arising from them.

However, in contractual matters, the provisions of Article 7.1 of EU Regulation 1215/2012 (known as Brussels I bis) apply, according to which the defendant is sued "*before the court of the place of performance of the obligation which is the basis of the claim*".

In this case, the place of performance of the obligations and services provided for in the contracts - be it the participation of the plaintiffs in the film, the shooting and editing of the film, the editing and post-synchronization of its trailer, or the posting of the trailer online - took place for the most part in Amsterdam, in the Netherlands, so that the courts of that Member State, and more specifically the Court of First Instance of Amsterdam (Civil Section), have exclusive jurisdiction.

3. But above all, the contracts signed between the parties contain a jurisdiction clause:

*"Article 9 - Applicable Law and **Jurisdiction**:*

*The legal relationship between the parties is governed by Dutch law, **all disputes that may arise between the parties shall be submitted to the Dutch Court, before the Court of Amsterdam.***

However, according to Article 25.1 of the above-mentioned EU Regulation 1215/2012:

"If the parties, irrespective of their domicile, have agreed that a court or courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, those courts shall have jurisdiction.

In these circumstances, the Judge of the Paris Court of First Instance will be asked to declare that he does not have jurisdiction in favor of the Amsterdam Court of First Instance.

2) On the nullity of the summons based on the disregard of the provisions of articles 56 and 648 of the Code of Civil Procedure:

Article 56 of the Code of Civil Procedure states that "*the summons shall contain, under penalty of nullity, (...) the particulars prescribed for the acts of a judicial officer*".

However, article 648 of the Code of Civil Procedure provides that "*every bailiff's act shall indicate (...):*

2. a) if the applicant is a natural person: his surname, first names, date of birth, occupation, domicile, nationality, date and place of birth ;

b) if the applicant is a legal person: its form, name, registered office and the body that legally represents it".

However, in this case, the summons is worded in an ambiguous way that does not allow to determine if the person summoned is Mr. Stefan RUITENBEEK taken as a physical person, or the KIRAC collective of which Mr. Stefan RUITENBEEK is the legal representative.

The mentions required by article 648 of the Code of Civil Procedure are incomplete and mixed so that the summons could be interpreted as being directed against a natural person or against a legal person, which causes an obvious grievance in terms of the rights of the defense and its organization.

According to article 55, the summons is "*the act of a bailiff by which the plaintiff summons his opponent to appear before the judge*". In this case, it is impossible to determine without uncertainty which adversary is summoned...

Consequently, the summary judgment judge will declare the nullity of the summons on this count.

3) On the nullity of the summons based on the recharacterization of the action as defamation:

⇒ Reminder in law

Pursuant to article 12 of the Code of Civil Procedure, the judge is obliged to give the facts and acts in dispute which are submitted to him their exact characterization, without stopping at the name which the parties would have proposed.

Moreover, according to absolutely constant jurisprudence, a plaintiff cannot circumvent the protective and public order provisions of the law of July 29, 1881 by attempting to base his action on alternative provisions, which would allow him to escape the procedural constraints provided for by the law of July 29, 1881 and intended to guarantee the fundamental freedom of expression, which is notably the case with the provisions of article 53 of the law on the press.

Whether it is the judges of the merits or the Court of Cassation, the courts are keen to cut short any attempt to circumvent the press law (see for example TGI Paris, ord. Ref, November 29, 2019 - Exhibit #3, Paris Judicial Court, September 21, 2021 - Exhibit #30; and Versailles Court of Appeals, October 6, 2017 - Exhibit #4).

According to the Court of Cassation, the action based on article 9 of the Civil Code cannot be used when the facts are of a nature to constitute concurrently an attack on honor and reputation falling under the law of July 29, 1881. This logic of pre-eminence of the law of July 29, 1881 results from a fundamental decision of November 8, 2017, according to which remarks denounced as an invasion of privacy likely to be qualified as defamation must be sued on this ground (Civ. 1^{re} , Nov. 8, 2017, n° 16-23.779).

This is a constant position, including in matters of summary proceedings and hourly summary proceedings (see in particular: Civ. 1^{ère} , September 26, 2019 - pourvoi n°18-18.938 et 18-18.944) :

The same general principle of primacy of the law of July 29, 1881 is applied by the Court of Appeal of Paris, ruling in summary proceedings, in its most recent decisions. Indeed, according to the division 1 - ch. 2 of the Paris Court of Appeal :

"When the damage claimed is caused by one of the offences defined by the law of July 29, 1881 on the freedom of the press, the plaintiff may not, in order to avoid the procedural constraints of this law, rely on distinct legal qualifications for the same facts that restrict the freedom protected by this law under conditions that it does not provide for" (Paris, Pôle 1 - ch. 2, January 28, 2021, no. 20/07199 - exhibit 5).

As a result, in the event of a concurrence of characterizations, the plaintiff does not have the freedom of choice, it being specified that the same facts cannot be characterized as both invasion of privacy and defamation (see in this sense: Civ. 1^{ère} , February 4, 2015 - appeal no. 13-16.263).

⇒ *In this case*

On reading the summons, the plaintiffs clearly argue that the broadcast of the disputed trailer would be prejudicial to their honor and reputation.

Indeed, what the plaintiffs are complaining about in their summons is :

- *"the horribly **shocking** nature of the actions attributed to Mrs. LI by Mr. RUITENBEEK in the voice-over of the trailer"* (page 9);
- *a "trailer that irreparably damages my private life, **my honor**, but above all, what is even more serious, my wife, devastated by the **lies** that you spread about her"* (excerpt from the letter of Michel HOUELLEBECQ reproduced on page 12 of the summons);
- the imputation made to the plaintiff of being *"**the organizer of supposed sexual meetings between Michel Houellebecq and prostitutes**"* (page 19);
- the fact that the plaintiff *"is **implicated by the director in activities contrary to morality**"* (page 19):
- that *"**the image and credibility of Mr. Houellebecq as an author and, above all, as an artist-performer, have been seriously damaged**"* (page 19);

- **"more generally, the entire reputation of Mr. Houellebecq as a creator, which is definitively tainted by this presentation that violates his rights"** (page 19).

Thus, according to the terms of the summons, the damage claimed by the plaintiffs - for which they are seeking the modest provisional sum of €200,000 - is in fact caused by the offence of defamation provided for by article 29 paragraph 1^{er} of the law of July 29, 1881.

It should be added that the terms of the press releases, formal notices and e-mails sent to Mr. RUITENBEEK confirm that the plaintiffs are clearly complaining of an attack on their honor and consideration, the term "defamation" even being expressly used on several occasions (opposing exhibits n°21; 22, 23-1, 25).

Thus, in the press release:

"Mr. Michel HOUELLEBECQ and Mrs. Qianyum Li, his wife, discovered with dismay and disgust that the video trailer (...) contained statements implicating them, serious and false, violently undermining their dignity. Stefan RUITENBEEK has subsequently repeated his defamatory statements in various interviews" (Exhibit 21).

This is how the press perceived it, evoking a "defamatory" trailer.

In view of these elements, there is no doubt that the plaintiffs are ultimately seeking compensation for damage caused exclusively by an alleged attack on their reputation, it being remembered that the law on the press is likely to cover alleged defamation committed by image, as is clear from the terms of articles 23 and 29 combined of the law of July 29, 1881.

Thus:

- Qianyun LI cannot at the same time complain about a content which according to her presents her "falsely" as **"the organizer of supposed sexual encounters"** which she herself considers as imputing to her an **"activity contrary to good morals"** and, at the same time, try to escape the constraints of the press law;
- in the same way, Michel HOUELLEBECQ cannot complain that his **"image"**, his **"credibility"** and his **"whole reputation"** have been tainted and deteriorated, and sue on the basis of the article 9 of the Civil code.

It was therefore up to the plaintiffs to initiate their action by invoking, on the one hand, the special provisions of the law on the press that are solely applicable to defamation, i.e. article 29 paragraph 1 of the law of July 29, 1881, and by following, on the other hand, the procedural rules imposed by this law, which are of public order (see in this sense: Civ. 1^{ère}, September 26, 2019, mentioned above)

Under these conditions, the summary judgment judge will be pleased to requalify the action taken, in accordance with article 12 of the Code of Civil Procedure, and to note that the plaintiffs should have requested measures to repair the alleged damage on the basis of articles 23, 29 paragraph 1^{er} and 32, paragraph 1 of the law of July 29, 1881.

They should thus have respected the imperative provisions of article 53 of the law on the press, applicable before the judge of summary proceedings, which they did not do, so that it will be up to the Judge of this court **to purely and simply annul the summons delivered**, for failure to respect the formalism imposed, on pain of nullity, by this provision (indication of the texts applicable to the lawsuit, articulation and qualification of the remarks, denunciation to the public prosecutor's office).

In any event, the summary proceedings judge, bound by the concept of "manifestly unlawful" disturbance, which is the basis of his jurisdiction, would not be able to decide on the question of qualification in the presence of such a difficulty, and would have to refer this assessment to the judge on the merits.

The following observations are therefore provided only in the most subsidiary manner.

II. ON THE LACK OF POWERS OF THE JUDGE OF REFERRALS

It should be recalled that in matters of invasion of privacy, as it results from article 9 of the Civil Code, the legislator has enacted a particular procedure of summary proceedings, the conditions and modalities of which are provided for by article 9 paragraph 2 of the Civil Code according to which :

"Without prejudice to the compensation of the damage suffered, the Judges can prescribe all measures, such as sequestration, seizure and others, suitable to prevent or stop an invasion of privacy; these measures can be ordered in summary proceedings if there is urgency.

Thus, the legislator intended to confine the intervention of the summary judgment judge in matters of invasion of privacy **to cases of urgency**, and by conferring on him powers strictly limited by the text and intended to prescribe only *"measures to prevent or stop an invasion of privacy"*, the terms of this text showing that, for the rest, and in particular with regard to the reparation of the damage allegedly suffered, this may not be ordered in summary proceedings.

In this case, the plaintiffs are not seeking any measures to prevent or halt an invasion of privacy, as the disputed trailer has been online since January 23, 2023 and has been widely reported in the press.

They are simply seeking to obtain rapid compensation (200,000 Euros in total!) and to request a viewing, even though this is expressly excluded by the contract they signed, for an alleged

prejudice they would have suffered following the posting of the litigious trailer, even though they expressly consented to participate in this film as well as to its broadcasting, notably in the form of a trailer, and without any right of inspection over the editing.

They cannot circumvent the restrictive provisions for the use of the summary procedure provided for by the legislator, by using the general power of summary procedure provided for by articles 834 and 835 of the Code of Civil Procedure, which radically violates the requirements of article 10 of the European Convention on Human Rights and Fundamental Freedoms.

The judge of summary proceedings must therefore be careful not to encroach on the prerogatives of the natural judge, namely the court ruling on the merits, as soon as there is a serious discussion on a particular question submitted to him. This is clearly the case here, so that the present dispute cannot fall within the jurisdiction of the judge of obviousness, who cannot calmly balance the interests involved and apply the principle of proportionality.

III. ON THE ABSENCE OF A MANIFESTLY ILLICIT DISTURBANCE

1) On the applicable law

Contrary to what the plaintiffs claim, the provisions of EU Regulation No. 864/2007 (Rome II) on the law applicable to "*non-contractual obligations*" is not applicable in this case.

Is it necessary to recall once again that the relationship between the parties in connection with the shooting and broadcasting of the film at issue is governed by a **contract**?

The provisions of the EU Regulation 593/2008 of June 17, 2008 (Rome I) are therefore applicable.

According to Article 3.1 of the EU Regulation: "***the contract is governed by the law chosen by the parties. The choice is express or is clearly apparent from the terms of the contract or the circumstances of the case***".

In this case, however, the contract signed on December 21, 2022 by each of the plaintiffs expressly provides for an applicable law clause:

"Article 9 - **Applicable Law and Jurisdiction**:

The legal relationship between the parties is governed by Dutch law.

Furthermore, Article 12 of the above-mentioned EU Regulation provides that:

" 1. The law applicable to a contract under this Regulation shall govern in particular: (a) its interpretation; (b) the performance of the obligations arising out of it; (c) within the

limits of the powers conferred on the court seised by its procedural law, the consequences of total or partial non-performance of those obligations, including the assessment of damages in so far as this is governed by rules of law; (d) the various methods of extinguishing obligations, as well as prescription and forfeiture based on the expiry of a period of time; and (e) the consequences of nullity of a contract.

2. As regards the modalities of execution and the measures to be taken by the creditor in case of default in execution, the law of the country where the execution takes place shall be taken into account;

The same applies to the validity and existence of the contract (Article 10.1 of the Regulations).

In this case, it is inconceivable that the interim relief judge - who is the judge of evidence - could rule on the measures requested by the plaintiffs by applying Dutch law!

This would exceed his powers.

In the present case, the Judge will necessarily have to take into consideration the contract concluded between the parties, and to assess, in the light of the only applicable Dutch law, the validity and the extent of the transfer of rights which has been agreed upon, and even the conditions of its execution, in order to assess whether or not there is a manifestly illicit disturbance, and in particular :

- whether the contract authorized the director to film the plaintiffs at all times, including as soon as they arrived at the station, as they accuse the defendant of doing;
- whether the plaintiffs gave their consent to the trailer being presented with such a synopsis, as they are now challenging the defendant;
- if the contract authorizes Mr. Stefan RUITENBEEK to make a commercial and non-commercial exploitation, by extracts or entirely, of the image of the plaintiffs, as the latter want to prohibit it (in particular in their letter of formal notice);
- whether the plaintiffs' consent was truncated (page 17 of the summons);
- whether the contract provides for or, on the contrary, excludes (which is the case) the pre-screening of the film by the plaintiffs and their intervention in the editing, as the plaintiffs have requested (page 21 of the summons);
- whether the content of the film complies "with *the contractual provisions, in particular article 1.3*", as requested by the plaintiffs from the summary judgment judge (page 22);

... that is to say, so many questions that the judge will have to ask in the context of the present action, and so many questions that are exclusively governed by Dutch law, by virtue of both the above-mentioned EU Regulation and the applicable law clause provided for in article 9 of the contract.

Consequently, and taking into account the applicable foreign law, the judge of Céans can only declare himself incompetent to appreciate the existence of a manifestly illicit disturbance, no more than he can appreciate the existence of an imminent damage.

2) On the consent of the applicants

1. The HOUELLEBECQ couple cannot complain about an infringement of their private life and their right to their image allegedly caused by the editing (voice-over) and the broadcasting of the trailer of the film even though they have contractually agreed to be filmed and to have their image, their words and all the information exchanged with the director during the shooting broadcast, without prior viewing or intervention on their part in the editing.

2. Nor can they claim that their consent was truncated by the "*indigent*" nature of the contract or an alleged lack of translation into French (subpoena page 6).

First of all, such a question (validity of consent) does not fall within the material and territorial jurisdiction of the judge of summary proceedings of the Tribunal de céans, nor does it fall within the jurisdiction of French law.

Then, Mrs. Qianyun LI speaks and understands English perfectly, Michel HOUELLEBECQ being himself at ease in this language.

Last but not least, and contrary to what the plaintiffs falsely claim, they were given a French translation of the contract before signing it, and they had all the time they needed to read and understand every word of it, and even to formulate specific demands.

This contract was therefore signed with full knowledge of the facts.

A filmed sequence proves it (exhibit n°6).

3. Nor can the plaintiffs claim that the image of the plaintiffs in the trailer would have been used "*in a context totally different from the initial context in which the authorizations were given*" (page 17 of the summons) and that "*if they could have been informed, from the very beginning of the project, that Stefan RUITENBEEK would use the images shot in the context of such a story, they would never have given him the slightest consent*".

Once again, the question of the validity of the consent exceeds the material and territorial competence of the French judge of summary proceedings for the reasons explained *above*.

But especially, Mr. Michel HOUELLEBECQ and his wife were always perfectly informed of the nature of the artistic audio-visual project to which they agreed, contractually, to take part in the purpose of its diffusion.

They were familiar with the working methods of the artist Stefan RUITENBEEK, who uses filmed sequences in quasi-continuity as material to build the scenario of his films. Also a large part is left to reality, to improvisation, to spontaneity (which makes it a hybrid work: half-documentary, half-fiction), of which Mr. Michel HOUELLEBECQ and Mrs. Qianyun LI were perfectly informed, in particular by notes of presentation (room n°17) and by the sending of the film KIRAC episode 23 "Honeypot" which is in the same vein and which puts in scene the same actress, Jini, that the one with whom Mr. Michel HOUELLEBECQ has a filmed sexual relation within the framework of the litigious film - room n°18).

Here again, this is the result of e-mail exchanges between the parties (Exhibit 7 and Exhibit 10), but also of filmed sequences submitted to the debates (Exhibit 6).

If Mr. Stefan RUITENBEEK contacted Mr. Michel HOUELLEBECQ for another project at the beginning, it is necessary to note that their collaboration quickly drifted, with the agreement of all, towards the project of film with litigious pornographic character.

This is particularly due to the initiative of his wife, Mrs. Qianyun LI.

It is indeed the plaintiff who insisted, on several occasions, with the defendant that Mr. Michel HOUELLEBECQ and her participate in a "porn movie".

Thus, at the very beginning of the shooting, on November 1^{er} 2022, she declares, in front of the camera (exhibit n°6):

- Qianyun LI: *"I want to put him in a porno. That's my motivation. I want to get him into porn. I want him to stop being depressed. And I want him to find hope. Even if it's just for once.*
- *"It is certainly a better project to propose him to shoot a pornographic scene than to cut the..."* (in reference to the ribbon that Stefan RUITENBEEK proposed to Michel HOUELLEBECQ to cut during the initial event, Miscatonic, in Amsterdam) ;
- Stefan RUITENBEEK : *" it was a stupid idea the ribbon ? "*
- Qianyun LI: *"Porn is always a good idea. It can become another project. I'm looking to shoot a porn scene in Paris with Houellebecq and nobody knows if it will happen or not".*
- Qianyun LI: *"Just offer porn instead. Don't be afraid to go hard".*
- Stefan RUITENBEEK: *"ok let's do it".*

Another filmed sequence attests to the fact that the plaintiffs were perfectly aware that there was no script, nor any pre-existing plan and that a large part was therefore left to improvisation and reality, during sequences filmed on the spot (exhibit n°6 - RESTO_MH_LYSIS_no script).

This also results from Whatsapp exchanges between Qianyun LI and the director in the context of the film project (Exhibit #8).

The only requirement put forward by the plaintiffs was that their face and sex not appear in the same shot, which was and will be scrupulously respected by the director, in the trailer as in the film, in accordance with his contractual commitment (article 1.3 of the contract).

Thus, nothing justifies the backtracking of Mr Michel HOUELLEBECQ and his wife, nor the present action.

It will be recalled that it has already been held that :

"Mr. X had given his consent to the realization of the report and had not made any protest during the shooting and that the withdrawal of his consent without real justification of a breach of the purpose aimed at in the authorization he had given, was not legitimate" (Civ. 2^{ème} , March 10, 2004 - appeal n°02-16.354).

4. There was never any use of a hidden or discreet camera. All the sequences were filmed in front of a camera (or even in the presence of several cameras), during the period of filming provided for in the contract (from 1^{er} November 2022 to 31 December 2022), whether these sequences took place in a bed, a restaurant, or a car, and whether Mr. Michel HOUELLEBECQ was naked or dressed.

In this respect, it should be noted that the applicant has never hesitated to show himself naked in film trailers in which he played his own role (exhibit 9).

The same is true for the plaintiff (exhibit 10).

The plaintiffs have therefore agreed to be filmed, without any script or predefined dialogue, with a view to the broadcasting by Mr. Stefan RUITENBEEK and the KIRAC collective of sequences of the film, according to an editing and a scenario to be determined by the director from the collected material and on which - contractually - the plaintiffs have no right of review, this aspect coming in any case under the freedom of creation of the defendant.

Indeed, it has already been ruled that participants in an audiovisual work who had *"freely accepted that their image and voice be reproduced in excerpts and without control over the final work cannot reproach the director for expressing his or her personal opinion, even if they were not aware from the outset of this intention, which may have arisen in the course of the production. This is the fundamental principle of respect for the freedom of expression of*

authors in particular, cinematographic, as well as investigative journalists" (Douai Court of Appeal, January 16, 2014 - Exhibit #11).

It is moreover constant that those who, like Mr Stefan RUITENBEEK, create and disseminate an artistic work, benefit from a greater freedom of expression in that they contribute to the exchange of ideas and opinions essential to a democratic society (see in particular ECHR, 22 October 2007 - Lindon v. France; ECHR, 29 March 2005 - Alinak v. Turkey, ECHR 25 January 2007 - application no. 68354/1 - Vereinigung Bildender Künstler v. Austria, § 38).

In this respect, requests for deletion must be assessed more carefully and more severely by the judge when they concern creative works (see: ECHR, 24 May 1988, application no. 10737/84 - Müller v. Switzerland, § 40).

5. Finally, it is quite dismaying to read, both in the summons and in the open letter addressed by Mr. Michel HOUELLEBECQ to Mr. Stefan RUITENBEEK and in the press release distributed by the plaintiffs' lawyers, that the sentence pronounced by the director on the trailer relating to the *"honeymoon trip planned to Morocco (which) had been cancelled"* and to the *"prostitutes arranged by his wife"* on this occasion, would be, on the one hand, invasive of the plaintiffs' privacy and, on the other hand, untrue.

Firstly, it will be specified that it is not a question of *"honeymoon"*, but of *"pleasure trip"*, the confusion coming from an obvious error in the translation of the term *"honey trip"* (exhibits n°12 and 13).

Secondly and more importantly, it was the plaintiff who brought this information to the attention of the director in the context of their professional exchanges around the film project, and more specifically in Whatsapp exchanges of November 7 and 11, 2022 that they had (and therefore included in the contractual authorization period), exchanges in which she writes (Exhibit #14):

"I am looking for prostitutes (so cheap) in Casablanca and he knows it.

"We don't go to Morocco anymore (...) I pray that we can come to Amsterdam!

Thus, this information is not misleading in any way.

By revealing them to the film's director as part of the filming project, Ms. Qianyun LI consented - at least tacitly - to their use in the film, and therefore to their public disclosure.

Thus, the defendant was not aware of, nor did it intend to violate the plaintiffs' privacy by using this phrase in the trailer. This is especially true since it is not offensive or particularly intimate in relation to the footage that the plaintiffs have otherwise agreed to film, which depicts them together with young women in scenes of physical intimacy, even pornography, in which they play themselves (without dialogue or a predefined script).

Still it is necessary to specify that the plaintiff claims, in front of the camera, and in front of her husband, that Mr. Michel HOUELLEBECQ "**only wants to fuck**" within the framework of this project of film (exhibit n°6), what seems to correspond to the reality since once the sequences of sex turned, Mr. Michel HOUELLEBECQ retropedalé without legitimate justification (exhibit n°16)

This backtracking is moreover not without causing a serious prejudice to the young women who agreed to have sexual relations with him, in an exclusively artistic goal, supposing - for this goal to be reached - that the film is effectively edited and diffused by Mr. Stefan RUITENBEEK and the collective KIRAC, in the continuity of the preceding episodes.

The actress who appears in the trailer in bed with Mr. Michel HOUELLEBECQ (Isa) attests to this (Exhibit 6).

In these circumstances, it will please the summary judgment judge to rule that no manifestly unlawful disturbance is characterized on the basis of an infringement of the plaintiffs' privacy or right to image justifying the measures of modification of the trailer and prohibition requested, radically contrary to freedom of expression as well as freedom of creation (see in particular: ECHR, May 15, 2018, Application No. 37326/13 - Unifaun v. Malta, § 80).

These measures would be all the more disproportionate as the litigious comments and images were widely relayed by the press and on the Internet and are still online, in particular because of the press release of the plaintiff's lawyers which largely contributed to increase the publicity...

IV. **ON THE EXISTENCE OF SERIOUS DISPUTES JUSTIFYING THE REJECTION OF THE PROVISIONAL DAMAGES REQUESTED**

In addition to the fact that the damage claimed in support of the exorbitant total amount of 200,000 euros that the plaintiffs are claiming provisionally results exclusively from defamation (page 19 of the summons), it will be observed that this claim for compensation comes up against particularly serious challenges, which are described in detail in the preceding paragraph (§ III).

It will therefore please the summary judgment judge to reject this request on the basis of article 835 paragraph 2 of the Code of Civil Procedure.

V. **ON THE ABSENCE OF IMMINENT DAMAGE TO PREVENT**

The plaintiffs rely on the non-execution of a summons to communicate the final version of the film KIRAC 27 before its broadcasting to request that the judge :

- *"orders the viewing of the film in the presence of the judge so that it can be verified by the judge and by the plaintiffs that the manner in which Stefan RUITENBEEK intends to present and broadcast the film is consistent with the rights of the HOUELLEBECQ couple as well as with the contractual provisions, in particular article 1.3 of the signed authorization"* (page 22 of the summons);
- Prohibits the broadcasting of the film while waiting for the pre-screening.

However, the summons to communicate as well as the measure of viewing before a judge are in conflict with the provisions of the contracts signed on December 21, 2022, which expressly exclude such pre-screening (Article 8).

They also and above all come up against the applicable law and jurisdiction clause of the contract, which subjects the assessment of the merits of such a measure, and its enforcement measures, to Dutch law and jurisdiction (Article 9).

Finally, they come up against the creative freedom of the director of an artistic work who - taking into account the arguments developed *above* - should not be subjected to such unjustified and disproportionate interference in his creative process as well as in the dissemination of his art.

In any case, Mr. Stefan RUITENBEEK intends to scrupulously respect the provisions of article 1.3 of the contract, under the terms of which no sequence of the film must represent, in the same shot, the face and the sex of the applicants.

Incidentally, the film is still being edited and will probably not be released until May 2023.

For all these reasons, the singularly serious and disproportionate demands for pre-screening and for a ban on the broadcasting of the film until such pre-screening has taken place appear particularly unfounded, as no imminent damage to be prevented - which must not be hypothetical but certain - has been sufficiently characterized in this case.

NOW THEREFORE

In view of article 10 of the ECHR,
In view of articles 12, 56, 648, 835 of the Code of Civil Procedure,
Considering articles 29 paragraph 1^{er} , 32 paragraph 1^{er} and 53 of the law of July 29, 1881,
In view of Article 9 of the Civil Code,

It is requested to the Judge of the summary proceedings to :

In limine litis.

DECLARE that the Court of First Instance of Amsterdam (Civil Section) has no territorial jurisdiction;

CANCEL the writ of February 23, 2023 for failure to comply with the provisions of articles 56 and 648 of the Code of Civil Procedure;

TO REQUIRE the action for defamation on the basis of article 29 paragraph 1^{er} of the law of July 29, 1881 and consequently ;

ANNUL the summons for failure to comply with the requirements of section 53 of the Act of July 29, 1881;

Alternatively.

To declare that there are no grounds for summary judgment;

As a result,

TO DISMISS Mr. Michel HOUELLEBECQ and Mrs. Qianyun LI from their claims, ends and conclusions;

In all cases.

ORDER Mr. Michel HOUELLEBECQ and Mrs. Qianyun LI to pay to Mr. Stefan RUITENBEEK the sum of 5,000 Euros each under Article 700 of the Code of Civil Procedure;

ORDER Mr. Michel HOUELLEBECQ and Ms. Qianyun LI to pay all costs and expenses.

UNDER ALL CONDITIONS

LIST OF EXHIBITS SUBMITTED TO THE HEARING

1. Contract signed between Stefan RUITENBEEK and Michel HOUELLEBECQ on December 21, 2022
2. Contract signed between Stefan RUITENBEEK and Qianyun LI on 21 December 2022
3. TGI Paris, order. Ref, November 29, 2019
4. Versailles Court of Appeals, October 6, 2017
5. Paris, Pôle 1 - ch. 2, January 28, 2021, n°20/07199
6. Rush videos filmed by Stefan RUITENBEEK and his team (and transcript) (on usb key)
7. Exchanges of emails between the parties during the project
8. Bailiff's report of February 27, 2023
9. Screenshots from the trailer of the movie "Thalasso" by Guillaume Nicloux, 2019
10. Excerpts from Qianyun LI's blog: "lysis.blog
11. Court of Appeal of Douai, January 16, 2009
12. Screenshot of the trailer of KIRAC 27 (with English subtitles)
13. Translation of the terms "honey-trip" and "honey-moon" on the deepl.com application
14. Whatsapp exchanges between Qianyun LI and Stefan RUITENBEEK between November 7 and 11, 2022 (also witnessed by a bailiff in exhibit 8)
15. extracts from www.keepingitrealtcritics.com
16. email sent by Michel HOUELLEBECQ to Stefan RUITENBEEK on 15 February 2023
17. preliminary note " *project : takeover of Miscatonique with Michel HOUELLEBECQ* ".
18. movie " *honeypot - KIRAC episode 23* " (sent to Michel HOUELLEBECQ and Qianyun LI) on USB key
19. article "Houellebecq, un mariage et un plan com' published on www.lemonde.fr on Jan 13, 2019
20. article " work of art or short porn film ? the funny film in which Michel HOUELLEBECQ plays " published on the site marianne.com on January 25, 2023
21. article "Houellebecq : la possibilité d'un porno, avec prostituées à Amsterdam" published on the site Univers du Livre Actualité on January 30, 2023
22. article "Houellebecq attacks his "porn": Extension of the field of the jiggery-pokery?" published on the site Univers du Livre Actualité on 7 February 2023
23. article " Houellebecq wants to ban " Kirac 27 " the " porn " film featuring him published on the huffingtonpost site
24. article " Michel HOUELLEBECQ wants to ban the porn movie Kirac 27 where he appears " published on the site rtl.fr
25. article " Michel HOUELLEBECQ wants to ban a Dutch film qualified as porn, featuring him " published on ouest-France.fr
26. articles " Michel HOUELLEBECQ investigation on a drift " and " actor of a porn " arty " the writer has no more the taste of X " published in Libération of February 14, 2023
27. excerpt from the mytf1 website on the February 17, 2023 issue of the daily newspaper
28. interview with Michel HOUELLEBECQ published in L'Express on 1^{er} September 2001
29. YOUTUBE screenshot showing the date of the KIRAC 27 video online
30. Judicial Court Paris, summary judgment, September 21, 2021

31. Interview of Stefan RUITENBEEK in the Express of February 14, 2023 " The director of the pornographic film with Michel HOUELLEBECQ : 'we have signed a contract' "