

Case C-183/90

Berend Jan van Dalfsen and Others

v

Bernard van Loon and Theodora Berendsen

(Reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Brussels Convention — Interpretation of Articles 37 and 38)

Report for the Hearing	I - 4744
Opinion of Mr Advocate General Van Gerven delivered on 11 July 1991	I - 4755
Judgment of the Court (Sixth Chamber), 4 October 1991	I - 4765

Summary of the Judgment

- Convention on jurisdiction and the enforcement of judgments — Enforcement — Legal remedies — Appeal in cassation — Judgments which may be contested by an appeal in cassation — Decision by the court with which the appeal against the enforcement order is lodged as to a stay of proceedings or the provision of security — Excluded*
(Convention of 27 September 1968, second paragraph of Art. 37 and Art. 38)
 - Convention on jurisdiction and the enforcement of judgments — Enforcement — Appeal against the enforcement order — Power of the court with which the appeal is lodged to stay the proceedings — Exercise — Taking into consideration only submissions not already put forward by or known to the applicant at the time of the proceedings before the court of the State in which the judgment was given*
(Convention of 27 September 1968, Art. 31, third paragraph of Art. 34 and first paragraph of Art. 38)
1. The second paragraph of Article 37 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be interpreted as meaning that a decision taken under Article 38 of the Convention by which the court with which an appeal has been lodged against an order for the enforcement of a judgment given in another Contracting State has refused to stay the proceedings and has ordered the party to whom the

enforcement order was granted to provide security does not constitute a 'judgment given on the appeal' within the meaning of the second paragraph of Article 37 of the Convention and may not, therefore, be contested by an appeal in cassation or similar form of appeal. The position is the same where the decision taken under Article 38 of the Convention and the 'judgment given on the appeal' within the meaning of the second paragraph of Article 37 of the Convention are given in a single judgment.

2. The first paragraph of Article 38 of the Convention is to be strictly interpreted so as not to prejudice the effectiveness either of Article 31, which lays down the principle that a judgment given in a Contracting State and enforceable in that

State may be enforced in another Contracting State even if it has not yet become *res judicata*, or of the third paragraph of Article 34, which prohibits the courts of the State in which enforcement is sought from reviewing the substance of the judgment given in the first State.

Hence the first paragraph of Article 38 of the Convention is to be interpreted as meaning that a court with which an appeal is lodged against an order for the enforcement of a judgment given in another Contracting State may take into consideration, in a decision concerning an application for the proceedings to be stayed under that paragraph, only such submissions as the appellant was unable to put before the court of the State in which the judgment was given.

REPORT FOR THE HEARING in Case C-183/90 *

I — Facts and written procedure

1. On 26 December 1985 the applicants in the main proceedings (hereinafter referred to as 'Van Dalfsen'), residing in the Netherlands, brought an action before the *Vrederechter van het Kanton Herentals* (Belgium) against the defendants in the main proceedings (hereinafter referred to as 'Van Loon').

Van Dalfsen's principal claim was for the annulment of a tenancy agreement between

the parties and an order that Van Loon should pay BFR 5 560 086 and HFL 200 000. In the alternative, they claimed confirmation of the termination of that agreement and discharge of the security they had provided and reimbursement of their capital expenditure.

Van Loon counterclaimed for arrears of rent.

* Language of the case: Dutch.