

Case C-111/08

SCT Industri AB i likvidation

v

Alpenblume AB

(Reference for a preliminary ruling
from the Högsta domstolen (Sweden))

(Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments —
Scope — Insolvency)

Judgment of the Court (First Chamber), 2 July 2009 I - 5657

Summary of the Judgment

Judicial cooperation in civil matters — Jurisdiction and enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Scope — Excluded matters — Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings

(Council Regulation No 44/2001, Art.1 (2)(b))

The exception provided for in Article 1(2)(b) of Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to a judgment of a court of Member State A regarding registration of ownership of shares in a company having its registered office in Member State A, according to which the transfer of those shares was to be regarded as invalid on the ground that the court of Member State A did not recognise the powers of a liquidator from a Member State B in the context of insolvency proceedings conducted and closed in Member State B.

The action which gave rise to such a decision derives directly from insolvency proceedings and is closely linked to them. First, the link between the court action and the insolvency proceedings is particularly close since the dispute concerns solely the ownership of the shares which were transferred in insolvency proceedings by a liquidator on the basis of

provisions, such as those enacted under the legislation of Member State B on insolvency proceedings, which derogate from the general rules of private law and, in particular, from property law. Thus, the transfer of the shares and the action for restitution of title to which it gave rise are the direct and indissociable consequence of the exercise by the liquidator — an individual who intervenes only after the insolvency proceedings have been opened — of a power which he derives specifically from the provisions of national law governing insolvency proceedings. Second, the content and the scope of the decision declaring the transfer to be invalid are intimately linked to the conduct of the insolvency proceedings since the ground on which the transfer was held invalid relates, specifically and exclusively, to the extent of the powers of that liquidator in insolvency proceedings.

(see paras 25-28, 30-31, 33, operative part)