

## Case C-327/10

**Hypoteční banka a.s.**

**v**

**Udo Mike Lindner**

(Reference for a preliminary  
ruling from the Okresní soud v Chebu)

(Jurisdiction and the enforcement of judgments in civil and commercial matters — Mortgage loan contract concluded by a consumer who is a national of one Member State with a bank established in another Member State — Legislation of a Member State making it possible, in the case where the exact domicile of the consumer is unknown, to bring an action against the latter before a court of that State)

Opinion of Advocate General Trstenjak delivered on 8 September 2011 . . . I - 11546

Judgment of the Court (First Chamber), 17 November 2011 . . . . . I - 11582

### Summary of the Judgment

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Field of application — Determination of international jurisdiction of a court of a Member State (Council Regulation No 44/2001)*

2. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Jurisdiction over consumer contracts — Court of the Member State where the consumer was domiciled — Place of domicile unknown — Jurisdiction of the court of the place of last known domicile — Conditions (Council Regulation No 44/2001, Arts 16(2) and 59)*
  
3. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Provision of national law enabling proceedings to be brought against a person whose domicile is unknown — Whether lawful — Conditions (Council Regulation No 44/2001)*

1. Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application of the rules of jurisdiction it lays down presupposes that the situation at issue in the proceedings of which the court of a Member State is seised is such as to raise questions relating to determination of the international jurisdiction of that court. Such a situation arises where an action is brought before a court of a Member State against a national of another Member State whose domicile is unknown to that court.

be made between, on the one hand, the conditions under which the rules of jurisdiction pursuant to that regulation must apply and, on the other, the criteria by which international jurisdiction is determined under those rules. It is clear that the foreign nationality of the defendant may raise questions relating to the determination of the international jurisdiction of the court seised.

(see paras 31-32, 35, operative part 1)

While it is true that the foreign nationality of one of the parties to the proceedings is not taken into account by the rules of jurisdiction laid down by Regulation No 44/2001, a distinction must however

2. Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that

in a situation in which a consumer who is a party to a long-term mortgage loan contract, which includes the obligation to inform the other party to the contract of any change of address, renounces his domicile before proceedings against him for breach of his contractual obligations are brought, the courts of the Member State in which the consumer had his last known domicile have jurisdiction, pursuant to Article 16(2) of that regulation, to deal with that action when they are unable to determine, pursuant to Article 59 of that regulation, the defendant's current domicile and have no firm evidence either allowing them to conclude that the defendant is in fact domiciled outside the European Union.

3. Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not precluding the application of a provision of national procedural law of a Member State which, with a view to avoiding a situation in which justice is denied, enables proceedings to be brought against, and in the absence of, a person whose domicile is unknown, if the court seised of the matter is satisfied, before giving a ruling in those proceedings, that all investigations required by the principles of diligence and good faith have been undertaken with a view to tracing the defendant.

(see para. 55, operative part 2)

(see para. 55, operative part 2)