Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 May 2017 *

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 27 — *Lis pendens* — Court first seised — Point 1 of Article 30 — Concept of 'document instituting the proceedings' or 'equivalent document' — Application for proceedings to preserve or establish, prior to any legal proceedings, evidence of facts on which a subsequent action could be based)

In Case C-29/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Stralsund (Regional Court, Stralsund, Germany), made by decision of 8 January 2016, received at the Court on 18 January 2016, in the proceedings

HanseYachts AG

v

Port D'Hiver Yachting SARL,

Société Maritime Côte D'Azur,

Compagnie Generali IARD SA,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— HanseYachts AG, by O. Hecht, Rechtsanwalt,

— Port D'Hiver Yachting SARL, by J. Bauerreis, Rechtsanwalt,

— Société Maritime Côte D'Azur, by A. Fischer, Rechtsanwältin,

* Language of the case: German.

— Compagnie Generali IARD SA, by C. Tendil, Chairman, and by J. Laborde, Rechtsanwalt,

— the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 January 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of point 1 of Article 30 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The request has been made in proceedings between HanseYachts AG and Port D'Hiver Yachting SARL, Société Maritime Côte d'Azur ('SMCA') and Compagnie Generali IARD SA ('Generali IARD') concerning an action for a negative declaration relating to the lack of liability of HanseYachts in respect of the loss claimed by SMCA.

Legal context

EU law

3 Recital 15 of Regulation No 44/2001 states:

'In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There should be a clear and effective mechanism for resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this regulation that time should be defined autonomously.'

4 In Chapter II of that regulation, entitled 'Jurisdiction', there is a Section 2, entitled 'Special jurisdiction'. That section includes, inter alia, Article 5 of that regulation, which provides:

'A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
   (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

   — in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

   — …

…

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

…’

5 Section 7 of Chapter II, entitled ‘Prorogation of jurisdiction’, includes, inter alia, Article 23 of Regulation No 44/2001 which provides, in paragraph 1:

‘If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the 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, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. ...’

6 Section 9 of Chapter II thereof, entitled ‘*Lis pendens* — related actions’, contains Articles 27 to 30 of that regulation. Under Article 27 thereof:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

7 Article 30 of that regulation provides:

‘For the purposes of this section, a court shall be deemed to be seised:

(1) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent, or

…’

French law

8 The Code of Civil Procedure includes, in Book 1, Title VII, entitled ‘Production of proof’. Subtitle II thereof, entitled ‘Measures of inquiry’, includes Article 145 which provides:

‘If there is a legitimate reason to preserve or establish, prior to any legal proceedings, evidence of facts upon which the outcome of a dispute could depend, legally permissible measures of inquiry may be ordered at the request of any interested party, by way of application or interlocutory proceedings.’

The dispute in the main proceedings and the question referred for a preliminary ruling

9 It is apparent from the order for reference and the file submitted to the Court that HanseYachts, a company established in Greifswald (Germany), builds and sells motorboats and yachts. Port D’Hiver Yachting is a company which markets boats and whose head office is in France.

10 By a contract of 14 April 2010, HanseYachts sold a Fjord 40 Cruiser motorboat to Port D’Hiver Yachting. The yacht was delivered to Port D’Hiver Yachting on 18 May 2010 in Greifswald, which lies within the judicial district of the Landgericht Stralsund (Regional Court, Stralsund, Germany). It was then transported to France and resold, on 30 April 2010, to SMCA, a company established in that State.

11 On 1 August 2011, HanseYachts and Port D'Hiver Yachting concluded a dealer contract which contained a clause conferring jurisdiction on the courts of Greifswald and designated German law as the applicable substantive law. Under Paragraph 22 of that contract, it replaced all previous written or verbal agreements between those parties.

12 After damage had appeared in one of the yacht's engines in August 2011, by a summons to appear in interlocutory proceedings issued to Port D'Hiver Yachting on 22 September 2011, SMCA applied to the Tribunal de commerce de Marseille (Commercial Court, Marseilles, France) for proceedings for the preservation of evidence (expertise judiciaire) prior to any legal proceedings under Article 145 of the Code of Civil Procedure. A summons was also served on Volvo Trucks France SAS, as manufacturer of the engine. In 2012, Generali IARD intervened in the proceedings, as the insurer of Port D'Hiver Yachting. In 2013, HanseYachts also became a party to the proceedings, as the manufacturer of the yacht in question.

13 The expert appointed by the Tribunal de commerce de Marseille (Commercial Court, Marseilles) submitted his final report on 18 September 2014.

14 On 15 January 2015, SMCA brought an action against Port D'Hiver Yachting, Volvo Trucks France and HanseYachts at the Tribunal de commerce de Toulon (Commercial Court, Toulon, France) seeking an order that they pay compensation for the loss it claimed to have suffered and reimburse it the costs incurred in the proceedings for the preservation of evidence. The action brought against HanseYachts was based on the manufacturer's warranty in respect of liability for hidden defects.

15 On 21 November 2014, before the action before the Tribunal de commerce de Toulon (Commercial Court, Toulon) was brought but after the summons to appear in interlocutory proceedings before the Tribunal de commerce de Marseille (Commercial Court, Marseilles), HanseYachts brought an action before the Landgericht Stralsund (Regional Court, Stralsund) seeking a negative declaration that Port D'Hiver Yachting, SMCA and Generali IARD were not in any way its creditors as regards the yacht in question.

16 Since the defendants in the main proceedings have raised a plea of *lis pendens* based on Article 27 of Regulation No 44/2001, the referring court is uncertain whether, having regard to the provisions of Article 30 of that regulation, as not being the court first seised, it is required to stay its proceedings until such time as the international jurisdiction of the Tribunal de commerce de Toulon (Commercial Court, Toulon), which is the court first seised, has been established or whether it may proceed to examine the substance of the action in the main proceedings as the court first seised. In that regard, it considers that its decision depends on whether the act which commenced the proceedings for the taking of evidence before the Tribunal de commerce de Marseille (Commercial Court, Marseilles) constitutes a 'document instituting the proceedings or an equivalent document' within the meaning of point 1 of Article 30 of Regulation No 44/2001, or whether that classification belongs to the document by which the action before the Tribunal de commerce de Toulon (Commercial Court, Toulon) was brought.

17 The referring court considers that the conditions for application of Article 27(1) of Regulation No 44/2001 are met in so far as the main action before the Tribunal de commerce de Toulon (Commercial Court, Toulon) and the action in the main proceedings are between the same parties and involve the same object and the same cause of action. It points out that it is apparent from the case-law of the Court, in particular the judgments of 25 October 2012, *Folien Fischer and Fofitec* (C-133/11, EU:C:2012:664, paragraphs 42 et seq.), and of 19 December 2013, *Nipponkoa Insurance* (C-452/12, EU:C:2013:858, paragraph 41 et seq.), that the fact that the main proceedings consist of an action for a negative declaration does not preclude a finding of *lis pendens*.

18 In the view of the Landgericht Stralsund (Regional Court, Stralsund), since the application for proceedings for the preservation of evidence prior to any legal proceedings, provided for under French law, and the main action which followed it form a single entity, the lodging of the main action constitutes the continuation of the settlement of an existing dispute between the parties. Therefore it takes the view that the French courts were the courts first seised of a dispute between the same parties and involve the same object and the same cause of action as that before it.

19 The wording of Article 30 of Regulation No 44/2001, by virtue of which a court is deemed to be seised at the time of lodging of not only a 'document instituting the proceedings' but also an 'equivalent document', justifies, according to the referring court, a broad interpretation of that article, to the effect that an application for independent proceedings for the taking of evidence such as that instituted on the basis of Article 145 of the Code of Civil Procedure could be regarded as being a document equivalent to a document instituting the proceedings.

20 In those circumstances, the Landgericht Stralsund (Regional Court, Stralsund) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where the procedural law of a Member State provides for independent proceedings for the taking of evidence in which, by order of the court, an expert report is obtained (in this case the "expertise judiciaire" in French law), and where such independent proceedings for the taking of evidence are conducted in that Member State and an action based on the findings of those independent proceedings is subsequently brought in the same Member State between the same parties:

In that case, is the document by which the independent proceedings for the taking of evidence were instituted a "document instituting the proceedings or an equivalent document" within the meaning of point 1 of Article 30 of Regulation (EC) No 44/2001? Or is it only the document by which the action is brought that is to be regarded as being the "document instituting the proceedings or an equivalent document"?'

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether Article 27(1) and point 1 of Article 30 of Regulation No 44/2001 must be interpreted as meaning, in cases of *lis pendens*, that the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced may constitute the date on which, within the meaning of point 1 of Article 30 of that regulation, a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure was 'deemed to be seised'.

22 As a preliminary point, it must, first of all, be noted that Regulation No 44/2001 was repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1). However, the latter regulation is applicable, by virtue of Article 81 thereof, only from 10 January 2015. In consequence, the request for a preliminary ruling, which concerns legal proceedings brought by HanseYachts on 21 November 2014, must be examined in the light of Regulation No 44/2001.

23 Next, it must be noted that the Court is not asked to rule on the question of the international jurisdiction of the referring court and the Tribunal de commerce de Toulon (Commercial Court, Toulon), notwithstanding the information provided on that subject by the referring court. In the present case, although HanseYachts seems to have claimed that the German court has an exclusive international jurisdiction under Article 23 of Regulation No 44/2001, the referring court states that it draws its international jurisdiction from Article 5(1) of Regulation No 44/2001 and is of the view that

the German courts have no exclusive jurisdiction precluding the action brought before the Tribunal de commerce de Toulon (Commercial Court, Toulon), since the French court in turn draws its international jurisdiction from Article 5(3) of that regulation.

24 In that regard, it must be recalled that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment of 27 February 2014, *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 25 and the case-law cited). Accordingly, it is without prejudging the issue of the international jurisdiction of the referring court that the Court will answer the question referred.

25 Section 9 of Chapter II of Regulation No 44/2001, entitled '*Lis pendens* — related actions', contains Articles 27 to 30 of that regulation. That section seeks, in the interest of sound administration of justice within the European Union, to reduce to the greatest extent possible concurrent proceedings before the courts of the various Member States and to avoid the delivery of irreconcilable decisions.

26 It follows from the terms of Article 27(1) of Regulation No 44/2001 that a situation of *lis pendens* arises where proceedings involving the same object and cause of action and between the same parties are brought in the courts of different Member States.

27 The referring court is of the view that there is a situation of *lis pendens* between the case pending before it and that of which the Tribunal de commerce de Toulon (Commercial Court, Toulon) is seised. It states that its obligation to stay the proceedings, as the court not first seised, would exist only if the substantive action brought before the Tribunal de commerce de Toulon (Commercial Court, Toulon) were to be considered to have commenced at the stage of the proceedings for the taking of evidence brought before the Tribunal de commerce de Marseille (Commercial Court, Marseilles).

28 As a preliminary point, it must be recalled that the mechanism to resolve situations of *lis pendens* is objective and automatic and is based on the chronological order in which the courts concerned were seised (see, to that effect, judgment of 22 October 2015, *Aannemingsbedrijf Aertssen and Aertssen Terrassements*, C-523/14, EU:C:2015:722, paragraph 48 and the case-law cited).

29 In that context, Article 30 of that regulation defines uniformly and independently the time when a court is to be deemed to be seised for the purposes of the application of Section 9 of Chapter II of that regulation, and in particular Article 27 thereof relating to *lis pendens* (judgment of 22 October 2015, *Aannemingsbedrijf Aertssen and Aertssen Terrassements*, C-523/14, EU:C:2015:722, paragraph 57). By virtue of point 1 of Article 30 thereof, interpretation of which has been requested by the referring court, a court is to be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with it, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent.

30 It is clear from recital 15 of Regulation No 44/2001 that that article is intended, inter alia, to obviate problems flowing from national differences as to the determination of the time when a case is regarded as pending, that time being defined autonomously. Furthermore, as the Advocate General notes in point 67 of his Opinion, it is clear from the legislative work preceding the adoption of that regulation, in particular the Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final), that the aim of Article 30 thereof was to reduce the problems and legal uncertainties caused by the wide variety of arrangements which existed in the Member States for determining the time when a court is seised, by means of a substantive rule permitting the easy and standardised identification of that time.

31 In the present case, it follows from Article 145 of the Code of Civil Procedure that, in French law, if there is a legitimate reason to preserve or establish, prior to any legal proceedings, evidence of facts upon which the outcome of a dispute could depend, legally permissible measures of inquiry may be ordered at the request of any interested party, by way of application or interlocutory proceedings. Those measures include, inter alia, proceedings for the taking of evidence.

32 That article expressly states that the application for measures of inquiry concerned is made 'prior to any legal proceedings'. In its replies to the questions posed by the Court under measures of organisation of the procedure taken by application of Article 61(1) of the Rules of Procedure of the Court, the French Government observed, first of all, that the wording of Article 145 of the Code of Civil Procedure expresses the independence of measures of inquiry ordered on the basis of that article in relation to the substantive proceedings involving the same parties, since those measures must be requested 'prior to any legal proceedings'. Next, according to that Government, an application based on Article 145 of the Code of Civil Procedure is the object of proceedings separate from any substantive action. Finally, that Government pointed out that the proceedings before the court seised on the basis of Article 145 of the Code of Civil Procedure have run their full course once the measure of inquiry sought is ordered.

33 It follows from the interpretation of Article 145 of the Code of Civil Procedure thus set out by the French Government that although there may indeed be a connection between the court seised on the basis of that article and the court having jurisdiction to hear the substance of the case with a view to which the measure of inquiry was ordered, the fact remains that such proceedings for the taking of evidence are independent in relation to the substantive procedure which may, if necessary, be brought subsequently.

34 It must nevertheless be stated that it is for the national court to assess whether such an interpretation of that article is to be adopted, since, in accordance with settled case-law, the Court does not have jurisdiction to interpret the internal law of a Member State (see, inter alia, judgment of 13 December 2012, *Caves Krier Frères*, C-379/11, EU:C:2012:798, paragraph 35 and the case-law cited).

35 Having regard to that independence and the very clear distinction between the proceedings for the taking of evidence, on the one hand, and any substantive procedure, on the other, the concept of an 'equivalent document' to a document instituting legal proceedings, set out in Article 30 of Regulation No 44/2001, must be interpreted as meaning that a document instituting proceedings for the taking of evidence cannot be regarded, for the purposes of assessing a situation of *lis pendens* and of determining which court is the court first seised within the meaning of Article 27(1) of that regulation, as also being the document instituting the substantive proceedings. Moreover, such an interpretation would be incompatible with the objective pursued by point 1 of Article 30 thereof, which, as set out in Paragraph 30 of this judgment, seeks to permit the simple and uniform identification of the time at which a court is seised.

36 In the light of all the foregoing considerations, the answer to the question referred is that Article 27(1) and point 1 of Article 30 of Regulation No 44/2001 must be interpreted as meaning, in cases of *lis pendens*, that the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced cannot constitute the date on which, within the meaning of point 1 of Article 30 of that regulation, a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure was 'deemed to be seised'.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 27(1) and point 1 of Article 30 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning, in cases of *lis pendens*, that the date on which a procedure for a measure of inquiry prior to any legal proceedings was commenced cannot constitute the date on which, within the meaning of point 1 of Article 30 of that regulation, a court called upon to rule on a substantive application which was brought in the same Member State following the result of that measure was 'deemed to be seised'.

[Signatures]