



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

31 January 2018*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 11(1)(b) and Article 13(2) — Jurisdiction in insurance matters — Scope *ratione personae* — Concept of ‘injured party’ — Professional in the insurance sector — Not included)

In Case C-106/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Szczecinie (Szczecin Regional Court, Poland), made by decision of 30 January 2017, received at the Court on 28 February 2017, in the proceedings

Paweł Hofsoe

v

LVM Landwirtschaftlicher Versicherungsverein Münster AG,

THE COURT (Eighth Chamber),

composed of J. Malenovský, President of the Chamber, D. Šváby (Rapporteur) and M. Vilaras, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- LVM Landwirtschaftlicher Versicherungsverein Münster AG, by M. Siewiera-Misiuda, radca prawny,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and P. Lacerda, acting as Agents,
- the European Commission, by M. Heller and A. Stobiecka-Kuik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Polish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 11(1)(b) and of Article 13(2) of 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).
- 2 The request has been made in proceedings between Mr Paweł Hofsoe and LVM Landwirtschaftlicher Versicherungsverein Münster AG ('LVM'), established in Münster (Germany) concerning an insurance claim brought by Mr Hofsoe against LVM before the Polish courts.

Legal context

EU law

Regulation No 1215/2012

- 3 Regulation No 1215/2012 states in recitals 15 and 18:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

...

(18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.'

- 4 Chapter II of that regulation, laying down the rules of jurisdiction, includes Section 1, entitled 'General provisions', which consists of Articles 4 to 6.

- 5 Article 4(1) of that regulation provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

- 6 Article 5(1) of that regulation states:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

- 7 The rules of jurisdiction in insurance matters which are the subject of Chapter II, Section 3, of Regulation No 1215/2012, are included in Articles 10 to 16 of the latter.

- 8 Article 11(1) of that regulation provides:

'An insurer domiciled in a Member State may be sued:

...

(b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled ...

...'

9 Article 13(2) of that regulation is worded as follows:

'Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.'

10 The rules of jurisdiction concerning consumer contracts are set out in Articles 17 to 19 of that regulation.

11 Article 17(1) of Regulation No 1215/2012 provides:

'In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.'

12 Article 81 of that regulation provides that it is to 'apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014'.

Polish law

13 Article 509 of the ustawa Kodeks cywilny (Law on the Civil Code), of 23 April 1964 in the version applicable to the case in the main proceedings (Dz. U. of 1964, No 16, item 93, in the version published in Dz. U. z 2016 r., item 380, 'the Civil Code') provides:

'1. A creditor may, without the consent of the debtor, assign a claim to a third party (transfer), save where this would be contrary to the law, a contractual stipulation or a characteristic of the obligation.

2. All rights associated with the claim, in particular any claim to arrears of interest, shall be transferred with the claim.'

14 Article 822(4) of that code provides:

'A person entitled to compensation for a contingency covered by a civil-liability insurance policy may bring a claim directly against the insurer.'

15 Article 20(1) of the *ustawa o ubezpieczeniach obowiązkowych, Ubezpieczeniowym Funduszu Gwarancyjnym i Polskim Biurze Ubezpieczycieli Komunikacyjnych* (Law on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Vehicle Insurance Office) of 22 May 2003 (Dz. U. of 2003, No 124, item 1152) provides:

‘Actions for claims arising from compulsory insurance policies or covering claims relating to such insurance may be brought either pursuant to provisions on general jurisdiction or before the court for the place where the injured party or person entitled under the insurance policy is domiciled or has its registered office.’

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

16 On 4 July 2014, a vehicle belonging to a natural person domiciled in Poland was damaged in a traffic accident in Germany caused by a German national insured with LVM.

17 On 12 July 2014, the owner of that vehicle entered into a rental contract for a replacement vehicle for an indefinite period; as the rate was 200 Polish zlotys (PLN) (approximately EUR 47.50) per day and the rental period extended until 22 September 2014, the rental cost amounted to PLN 14 600 (approximately EUR 3 465).

18 However, the owner has only been compensated for PLN 2 800 (approximately EUR 665) by a company representing LVM in Poland.

19 On 22 September 2014, in order to receive the remaining PLN 11 800 (approximately EUR 2 800), the owner of the vehicle concluded a contract for the assignment of a claim, whereby he transferred his right to damages to Mr Hofsoe, who exercises his commercial activity in Szczecin (Poland).

20 In relation to that activity, on the basis of a contractual assignment of a claim, Mr Hofsoe assumes responsibility for securing compensation from insurers to which an injured party may be entitled.

21 On 2 February 2015, on the basis of the contract for the assignment of a claim as referred to in paragraph 19 of the present judgment, Mr Hofsoe brought an action before the *Sąd Rejonowy Szczecin-Centrum w Szczecinie* (District Court for Central Szczecin in Szczecin, Poland) seeking, principally, the amount of PLN 11 800 (approximately EUR 2 800) from LVM by way of compensation corresponding to the rental cost of a replacement vehicle.

22 For the purposes of establishing the jurisdiction of that court as that of the injured party’s place of domicile, Mr Hofsoe relied on Article 20 of the Law on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Vehicle Insurance Office of 22 May 2003 and the judgment of the Court of 13 December 2007, *FBTO Schadeverzekeringen* (C-463/06, EU:C:2007:792).

23 However, relying on Article 9(1) 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), read in conjunction with Article 11(2) of that regulation, LVM disputed the jurisdiction of that Polish court. It maintained that the concept of ‘injured party’ within the meaning of Article 11(2) of that regulation should be interpreted literally so that Mr Hofsoe could not sue it before a Polish court in his capacity as assignee of the injured party’s claim.

24 However, the *Sąd Rejonowy Szczecin-Centrum w Szczecinie* (District Court for Central Szczecin in Szczecin) declared itself to have jurisdiction by a decision of 13 May 2015.

- 25 In support of the appeal which it brought against that decision before the referring court, the Sąd Okręgowy w Szczecinie (Szczecin Regional Court), LVM primarily contends that the court of first instance misinterpreted Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, by holding, contrary to the guidance to be derived from recitals 15 and 18 of that regulation and from the case-law of the Court, that Mr Hofsoe should have been regarded as the weaker party in the dispute. According to LVM, Mr Hofsoe is not the injured party as such, but a professional engaged in obtaining damages from insurance companies. Furthermore, as a derogation from the general rule of jurisdiction laid down in Article 4(1) of Regulation No 1215/2012, Article 13(2) of that regulation should be interpreted strictly.
- 26 Mr Hofsoe maintains that the attribution of jurisdiction to the courts for the place where the policyholder, the insured or a beneficiary is domiciled, as provided in Article 9(1)(b) of Regulation No 44/2001, which has been replaced by Article 11(1)(b) of Regulation No 1215/2012, ('the *forum actoris*') is not reserved exclusively for the party directly injured, so that the assignee of the injured party's claim should also be entitled to rely on it.
- 27 The referring court considers it necessary to make a reference to the Court in so far as the field of application *ratione personae* of the attribution of jurisdiction provided for in Article 11(1)(b) of Regulation No 1215/2012 depends, in this instance, on the interpretation of the concept of 'injured party', within the meaning of Article 13(2) of that regulation. The jurisdiction of the referring court is established only if it were considered that the concept of 'injured party' includes a professional in the insurance sector, assignee of the claim for damages held by the person directly injured against the insurer of the vehicle which caused a traffic accident.
- 28 In that regard, the referring court points out, under Article 509(2) of the Civil Code, 'all rights associated with the claim ... shall be transferred with the claim'. In those circumstances, the assignment of the claim should include that of the benefit of jurisdiction. Such an interpretation would contribute towards achieving the purpose of protecting the weaker party, which underlies the special rules of jurisdiction applicable in insurance matters.
- 29 The referring court takes the view that the concept of 'injured party', within the meaning of Article 11(2) of Regulation No 44/2001 and consequently, of Article 13(2) of Regulation No 1215/2012, refers both to the person who suffered the damage directly as well as to a person who only suffered that damage indirectly. Therefore, that concept should cover the person who carries out, as a natural person, a professional activity of claims recovery in order to obtain compensation for damages against insurance companies, on the basis of a contract for the assignment of a claim concluded with the directly injured party. According to the referring court, that solution is all the more applicable as, in this case, there is a clear imbalance, from an economic and organisational point of view, between Mr Hofsoe's position and that of an insurer as legal person, whose capacities, in that regard, are significantly larger.
- 30 That specific comparison of the respective situations of the parties to the main proceedings also highlights the difference between the underlying facts of the dispute in the main proceedings and those giving rise to the judgments of 17 September 2009, *Vorarlberger Gebietskrankenkasse* (C-347/08, EU:C:2009:561), and of 26 May 2005, *GIE Réunion européenne and Others* (C-77/04, EU:C:2005:327).
- 31 The referring court observes, however, that the interpretation which it suggests of Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, conflicts with the principle of strict interpretation of exceptions and, more particularly, Article 5(1) of that regulation, read in the light of recital 15 thereof.

32 In those circumstances, the Sąd Okręgowy w Szczecinie (Szczecin Regional Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must the reference, in Article 13(2) of Regulation No 1215/2012 to Article 11(1)(b) thereof be interpreted as meaning that a natural person, a businessman, who is engaged in, inter alia, obtaining damages from insurers, and who relies on the acquisition by contract of a claim from the party directly injured may bring an action for that claim against the civil-liability insurer of the person responsible for a road accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled?’

Consideration of the question referred

33 The referring court asks, in essence, whether Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it may be relied on by a natural person, whose professional activity consists, inter alia, in recovering claims for damages from insurers and who relies on a contract for the assignment of the claim concluded with the victim of a road accident to bring a civil liability action against the insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.

34 At the outset, it is necessary to point out that it is apparent from the order for reference, first, that as Mr Hofsoe’s action in the main proceedings was brought on 4 February 2015, that is to say, after 10 January 2015, Regulation No 1215/2012 is applicable, in accordance with Article 81 thereof.

35 Second, Article 822(4) of the Civil Code makes it possible, for the person entitled to compensation, to bring a direct action against the insurer, which, under Article 13(2) of Regulation No 1215/2012, results in Articles 10 to 12 of that regulation being applicable.

36 Third, since Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012 repeat, essentially, the respective wording of Article 9(1)(b) and Article 11(2) of Regulation No 44/2001, the interpretation given by the Court with regard to the provisions of that latter regulation remain valid for the equivalent provisions of Regulation No 1215/2012 (see, by analogy, judgments of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 60, and of 21 January 2016, *SOVAG*, C-521/14, EU:C:2016:41, paragraph 43).

37 Fourth, it should also be recalled that the Court has held that the purpose of the reference in Article 13(2) of Regulation No 1215/2012 is to add injured parties to the list of claimants contained in Article 11(1)(b) of that regulation, without restricting the category of persons having suffered damage to those suffering it directly (judgment of 20 July 2017, *MMA IARD*, C-340/16, EU:C:2017:576, paragraph 33 and the case-law cited).

38 Thus, the *forum actoris* must be extended respectively to the heirs of an insured party and to the employer who continued to pay the salary of an employee injured in a road accident while he is on sick leave after that accident (judgments of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 44, and of 20 July 2017, *MMA IARD*, C-340/16, EU:C:2017:576, paragraph 35).

39 Those decisions are based on the reasoning that, first, the purpose of the provisions listed in Section 3 of Chapter II of Regulation No 1215/2012 is to protect the weaker party by rules of jurisdiction more favourable to his interests than the general rules and, second, an assignee of the rights of the directly injured party, who may himself be considered to be a weaker party, should be able to benefit from the

special rules on the jurisdiction of courts laid down in the combined provisions of Article 11(1)(b) and of Article 13(2) of Regulation No 1215/2012 (see, to that effect, judgment of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraphs 40 and 44).

- 40 That said, the derogations from the principle of jurisdiction of the defendant's domicile must be exceptional in nature and be interpreted strictly (see, to that effect, judgments of 17 June 1992, *Handte*, C-26/91, EU:C:1992:268, paragraph 14; of 19 January 1993, *Shearson Lehman Hutton*, C-89/91, EU:C:1993:15, paragraphs 14 to 17; of 13 July 2000, *Group Josi*, C-412/98, EU:C:2000:399, paragraphs 49 and 50; and of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraphs 36 to 39).
- 41 In those circumstances, the protective function which Article 13(2) of Regulation No 1215/2012 fulfils, read in the light of Article 11(1)(b) of that regulation necessitates that the application of the special rules of jurisdiction laid down in those provisions are not to be extended to persons for whom that protection is not justified (see, to that effect, judgments of 13 July 2000, *Group Josi*, C-412/98, EU:C:2000:399, paragraphs 65 and 66; of 26 May 2005, *GIE Réunion européenne and Others*, C-77/04, EU:C:2005:327, paragraph 20; and of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 41).
- 42 It follows that no special protection is justified where the parties concerned are professionals in the insurance sector, neither of whom may be presumed to be in a weaker position than the other (see judgments of 26 May 2005, *GIE Réunion européenne and Others*, C-77/04, EU:C:2005:327, paragraph 20; of 17 September 2009, *Vorarlberger Gebietskrankenkasse*, C-347/08, EU:C:2009:561, paragraph 42; and of 21 January 2016, *SOVAG*, C-521/14, EU:C:2016:41, paragraphs 30 and 31).
- 43 Therefore, a person such as Mr Hofsoe, who carries out a professional activity recovering insurance indemnity claims against insurance companies, in his capacity as contractual assignee of such claims, should not benefit from the special protection constituted by the *forum actoris*.
- 44 Although it is true that recital 18 of Regulation No 1215/2012 states that the purpose of Section 3 of Chapter II of that regulation is to protect the weaker party by rules of jurisdiction more favourable to his interests than the general rules, it is apparent that the action at issue in the main proceedings concerns relations between professionals and that it is not such as to affect the procedural situation of a party deemed to be weaker (see, to that effect, judgment of 21 January 2016, *SOVAG*, C-521/14, EU:C:2016:41, paragraphs 29 and 30).
- 45 In that regard, the fact that a professional, such as Mr Hofsoe, carries out his business on a small scale, cannot lead to the conclusion that he is deemed to be a weaker party than the insurer. A case-by-case assessment of the question whether such a professional may be considered as a 'weaker party' in order to be covered by the definition of 'injured party', within the meaning of Article 13(2) of Regulation No 1215/2012, would give rise to the risk of legal uncertainty and would be contrary to the objective of that regulation, laid down in recital 15 thereof, according to which the rules of jurisdiction must be highly predictable (see, to that effect, judgment of 20 July 2017, *MMA IARD*, C-340/16, EU:C:2017:576, paragraph 34).
- 46 Such an interpretation is, moreover, supported by the objective stated in recital 15 of Regulation No 1215/2012, according to which the rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile.
- 47 In those circumstances, the answer to the question referred is that Article 13(2) of Regulation No 1215/2012, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it may not be relied on by a natural person, whose professional activity consists, inter alia, in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road accident, to bring a civil liability action against the

insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.

Costs

- ⁴⁸ 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 (Eighth Chamber) hereby rules:

Article 13(2) of 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, read in conjunction with Article 11(1)(b) of that regulation, must be interpreted as meaning that it may not be relied on by a natural person, whose professional activity consists, inter alia, in recovering claims for damages from insurers and who relies on a contract for the assignment of a claim concluded with the victim of a road accident, to bring a civil liability action against the insurer of the person responsible for that accident, which has its registered office in a Member State other than the Member State of the place of domicile of the injured party, before a court of the Member State in which the injured party is domiciled.

[Signatures]