

JUDGMENT OF THE COURT (Second Chamber)

13 July 2006 *

In Case C-103/05,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC by the Oberster Gerichtshof (Austria), made by decision of 2 February 2005, received at the Court on 28 February 2005, in the proceedings

Reisch Montage AG

v

Kiesel Baumaschinen Handels GmbH,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, P. Kúris, G. Arestis and J. Klučka (Rapporteur), Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the German Government, by M. Lumma, acting as Agent,
- the French Government, by G. de Bergues and A. Bodard-Hermant, acting as Agents,
- the Commission of the European Communities, by A.-M. Rouchaud-Joët and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2006,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Article 6(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).

- 2 The reference was made in the context of a dispute between Reisch Montage AG ('Reisch Montage') and Kiesel Baumaschinen Handels GmbH ('Kiesel') concerning repayment of a debt of EUR 8 689.22.

Legal context

Community law

- 3 Recitals 11, 12 and 15 in the preamble to Regulation No 44/2001 state:

(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. ...

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

...

(15) 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. ...'

4 Article 2(1) of the Regulation, which is part of Chapter II, Section 1, thereof, entitled 'General provisions', provides:

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

5 Under Article 3 of the Regulation, which is also part of Chapter II, Section 1:

'1. 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.

2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.'

6 Under Article 5 of Regulation No 44/2001, which is part of Chapter II, Section 2, entitled 'Special jurisdiction', a person domiciled in a Member State may be sued in another Member State under certain conditions.

7 In addition, Article 6 of the Regulation, which is also part of Section 2, provides:

‘A person domiciled in a Member State may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

...’

National law

8 Paragraph 6(1) of the Konkursordnung (Insolvency Regulations; ‘the KO’) provides:

‘Litigation intended to enforce or secure claims to assets forming part of a bankrupt’s estate shall be neither commenced nor pursued after the commencement of bankruptcy proceedings.’

The main proceedings and the question referred

- 9 On 30 January 2004, Reisch Montage, a company established in Liechtenstein, brought an action for payment before the Bezirksgericht Bezau (Austria) (District Court, Bezau) against Mr Gisinger, who is domiciled in Austria, and against Kiesel, whose registered office is in Germany. Kiesel stood security for Mr Gisinger to the amount of EUR 8 689.22 and Reisch Montage is seeking repayment of that sum.
- 10 By decision of 24 February 2004 the Bezirksgericht Bezau dismissed, under Paragraph 6(1) of the KO, Reisch Montage's action in so far as it was brought against Mr Gisinger on the ground that bankruptcy proceedings concerning his assets had been instituted on 23 July 2003 and were not completed at the time that action was brought. That decision became final.
- 11 Kiesel disputed the jurisdiction of the court which was seised of the action, arguing that Reisch Montage could not rely on Article 6(1) of Regulation No 44/2001 to justify the Bezirksgericht Bezau's jurisdiction since the action brought against Mr Gisinger was dismissed as inadmissible under Paragraph 6(1) of the KO.
- 12 By judgment of 15 April 2004 the Bezirksgericht Bezau upheld the objection of lack of jurisdiction raised by Kiesel and dismissed Reisch Montage's action on the ground that that court lacked international and territorial jurisdiction.
- 13 Hearing the case on appeal, the Landesgericht Feldkirch (Austria) (Regional Court, Feldkirch) set aside that judgment and dismissed the objection of lack of jurisdiction raised by Kiesel.

- 14 Kiesel brought an appeal on a point of law ('Revision') before the Oberster Gerichtshof (Supreme Court), which decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Can a claimant rely on Article 6(1) of Regulation ... No 44/2001 when bringing a claim against a person domiciled in the forum state and against a person resident in another Member State, but where the claim against the person domiciled in the forum state is already inadmissible by the time the claim is brought because bankruptcy proceedings have been commenced against him, which under national law results in a procedural bar?'

The question referred

- 15 By its question, the national court is asking in essence whether Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that it may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State where that action is considered, by the time it is brought, to be inadmissible in relation to the first defendant.

Observations submitted to the Court

- 16 According to the German Government, Article 6(1) of Regulation No 44/2001 must be interpreted strictly in order to preserve the principle, laid down in Article 2(1) of the Regulation, that the courts of the place where the defendant is domiciled should have jurisdiction.

- 17 In its view, if the proceedings brought against one of the defendants is inadmissible by the time the application is made, because that person is the subject of bankruptcy proceedings, claims brought against both defendants must be regarded as not being 'so closely connected that it is expedient to hear and determine them together', within the meaning of Article 6(1) of the Regulation. That provision is, therefore, not applicable in a situation such as that in the case in the main proceedings.
- 18 By contrast, the French Government and the Commission of the European Communities submit that that provision may be relied on in such a case.
- 19 In the view of the French Government, Article 6(1) of Regulation No 44/2001 provides only that where he is one of a number of defendants he may be sued in the courts of the place where any one of them is domiciled, provided that the claims relating to them are connected. Contrary to Article 6(2), Article 6(1) does not impose any special condition preventing it from being used for the sole purpose of removing a defendant from the jurisdiction of the court where he is domiciled.
- 20 That Government refers to the case-law of the Court (Case C-365/88 *Hagen* [1990] ECR I-1845, paragraphs 20 and 21; Case C-159/02 *Turner* [2004] ECR I-3565, paragraph 29; and Case C-77/04 *GIE Réunion européenne and Others* [2005] ECR I-4509, paragraph 34), claiming that a national court cannot base the dismissal of an action on a warranty or guarantee on the fact that the guarantor is domiciled in a Member State other than that of the national court, which is also the State in which the debtor, against whom the action is inadmissible, is domiciled.

- 21 The Commission submits that Reisch Montage cannot, however, bring an inadmissible action against a defendant domiciled in a Member State for the sole purpose of removing another defendant from the jurisdiction in principle enjoyed by the courts of the Member State in which he is domiciled. It is thus for the competent court to examine whether Article 6(1) of Regulation No 44/2001 is being misused.

The Court's reply

- 22 It must be observed, at the outset, that the jurisdiction provided for in Article 2 of Regulation No 44/2001, namely that the courts of the Member State in which the defendant is domiciled are to have jurisdiction, constitutes the general principle and it is only by way of derogation from that principle that that regulation provides for special rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (see, in relation to the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36; 'the Brussels Convention'), the provisions of which are essentially identical to those of Regulation No 44/2001, Case C-51/97 *Réunion européenne and Others* [1998] ECR I-6511, paragraph 16, and Case C-265/02 *Frahuil* [2004] ECR I-1543, paragraph 23).
- 23 In that regard, it is settled case-law that those special rules on jurisdiction must be strictly interpreted and cannot be given an interpretation going beyond the cases expressly envisaged by Regulation No 44/2001 (see, in relation to the Brussels Convention, Case C-168/02 *Kronhofer* [2004] ECR I-6009, paragraph 14 and the case-law cited).

- 24 It is for the national courts to interpret those rules having regard for the principle of legal certainty, which is one of the objectives of Regulation No 44/2001 (see, in relation to the Brussels Convention, Case C-440/97 *GIE Groupe Concorde and Others* [1999] ECR I-6307, paragraph 23; Case C-256/00 *Besix* [2002] ECR I-1699, paragraph 24; and Case C-281/02 *Owusu* [2005] ECR I-1383, paragraph 38).
- 25 That principle requires, in particular, that the special rules on jurisdiction be interpreted in such a way as to enable a normally well-informed defendant reasonably to foresee before which courts, other than those of the State in which he is domiciled, he may be sued (see *GIE Groupe Concorde and Others*, paragraph 24; *Besix*, paragraph 26; and *Owusu*, paragraph 40).
- 26 As regards the special jurisdiction provided for in Article 6(1) of Regulation No 44/2001, a defender may be sued, where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided 'the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings'.
- 27 In that regard, it must be found, first, that that provision does not include any express reference to the application of domestic rules or any requirement that an action brought against a number of defendants should be admissible, by the time it is brought, in relation to each of those defendants under national law.

28 Second, independently of that first finding, the question referred seeks to determine whether a national rule introducing an objection of lack of jurisdiction may stand in the way of the application of Article 6(1) of Regulation No 44/2001.

29 It is settled case-law that the provisions of the regulation must be interpreted independently, by reference to its scheme and purpose (see, in relation to the Brussels Convention, Case C-433/01 *Blijdenstein* [2004] ECR I-981, paragraph 24 and the case-law cited).

30 Consequently, since it is not one of the provisions, such as Article 59 of Regulation No 44/2001, for example, which provide expressly for the application of domestic rules and thus serve as a legal basis therefor, Article 6(1) of the Regulation cannot be interpreted in such a way as to make its application dependent on the effects of domestic rules.

31 In those circumstances, Article 6(1) of Regulation No 44/2001 may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State even when that action is regarded under a national provision as inadmissible from the time it is brought in relation to the first defendant.

32 However, the special rule on jurisdiction provided for in Article 6(1) of Regulation No 44/2001 cannot be interpreted in such a way as to allow a plaintiff to make a claim against a number of defendants for the sole purpose of removing one of them from the jurisdiction of the courts of the Member State in which that defendant is

domiciled (see, in relation to the Brussels Convention, Case 189/87 *Kalfelis* [1988] ECR 5565, paragraphs 8 and 9, and *Réunion européenne and Others*, paragraph 47). However, this does not seem to be the case in the main proceedings.

- 33 In the light of all of the above considerations, the answer to the question referred must be that Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that, in a situation such as that in the main proceedings, that provision may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State even when that action is regarded under a national provision as inadmissible from the time it is brought in relation to the first defendant.

Costs

- 34 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 6(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 must be interpreted as meaning that, in a situation such as

that in the main proceedings, that provision may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State even when that action is regarded under a national provision as inadmissible from the time it is brought in relation to the first defendant.

[Signatures]