



Reports of Cases

Case C-147/12

ÖFAB, Östergötlands Fastigheter AB
v
Frank Koot
and
Evergreen Investments BV

(Request for a preliminary ruling from the Hovrätten för Nedre Norrland)

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Court with jurisdiction —
Special jurisdiction in ‘matters relating to contract’ and ‘matters relating to tort, delict and
quasi-delict’)

Summary — Judgment of the Court (Fifth Chamber), 18 July 2013

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Scope — Matters excluded — Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings — Concept — Action brought by creditors of a limited company against a member of the board of directors and a shareholder of that company seeking to hold them liable for that company’s debts — Not included — Applicability of the regulation*

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

2. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Provisions of that regulation regarded as equivalent to those of the Brussels Convention — Interpretation of those provisions in accordance with the case-law of the Court on the convention*

(Convention of 27 September 1968; Council Regulation No 44/2001)

3. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — Special jurisdiction in ‘matters relating to contract’ and ‘matters relating to tort, delict and quasi-delict’ — Definitions*

(Council Regulation No 44/2001, Art. 5(1)(a) and (3))

4. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — Jurisdiction in tort, delict or quasi-delict — Concept — Action brought by creditors of a limited company against a member of the board of directors and a shareholder of that company seeking to hold them liable for that company's debts — Included — Transfer of the claim — No effect*

(Council Regulation No 44/2001, Art. 5(3))

5. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Question raised in a context excluding a useful answer — Questions referred without sufficient information on the factual context — Inadmissibility*

(Art. 267 TFEU)

6. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — Jurisdiction in tort, delict or quasi-delict — Place where the harmful event occurred — Concept — Place to which the activities are carried out by the company and the financial situation related to those activities are connected*

(Council Regulation No 44/2001, Art. 5(3))

1. See the text of the decision.

(see paras 24-26)

2. See the text of the decision.

(see paras 28, 29)

3. The term 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5(3) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters covers all actions which seek to establish the liability of a defendant and which are not related to a 'contract' within the meaning of Article 5(1)(a) thereof.

In that connection, first, the concept of 'matters relating to contract', within the meaning of Article 5(1)(a) of that regulation, is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another. Therefore, the application of the rule of special jurisdiction provided for matters relating to a contract in Article 5(1)(a) presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based. Second, liability in tort, delict or quasi-delict can arise only on condition that a causal connection can be established between the damage and the event in which that damage originates.

(see paras 32-34)

4. The concept of 'matters relating to tort, delict or quasi-delict' in Article 5(3) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it covers actions brought by a creditor of a limited company seeking to hold liable a member of the board of directors of that company and one of its shareholders for the debts of that company because they allowed it to continue to carry on business even though it was undercapitalised and was forced to go into liquidation.

In that connection, an interpretation according to which the classification of such actions should follow the classification of the company's debts as to whether they are covered by matters relating to contract or matters relating to tort, delict or quasi-delict cannot be accepted. That would have the consequence of multiplying the courts with jurisdiction to hear actions calling into question the same improper conduct by the member of the board of directors or the shareholder of the company concerned according to the nature of that company's debts which may be the subject of such actions. In such a situation, the aim of proximity in the rules of special jurisdiction laid down in Article 5(1) and (3) of Regulation No 44/2001, based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, precludes the determination of the court having jurisdiction being dependent on the nature of the debts of the company concerned.

In those circumstances, the fact that the claim at issue has been transferred by the initial creditor to another has no impact on the determination of the court having jurisdiction under Article 5(3) of the regulation concerned.

(see paras 38, 41, 42, 59, operative part 1 and 3)

5. See the text of the decision.

(see paras 44-47)

6. The concept of 'the place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, as regards actions seeking to hold liable a member of the board of directors and a shareholder of a limited company for the debts of that company, that place is situated in the place to which the activities carried out by that company and the financial situation related to those activities are connected.

As regards actions brought by creditors of a limited company against a member of the board of directors and the main shareholder of that company, on the ground that they neglected their legal obligations with respect to that company, the place where the harmful event occurred must have a high degree of predictability for both the applicants and the defendants. Likewise, in those circumstances, there must, as regards the sound administration of justice and the efficacious conduct of proceedings, be a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred.

(see paras 52, 55, operative part 2, 3)