Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

16 June 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(3) — Tort, delict or quasi-delict — Harmful event — Lawyer's negligence in drafting the contract — Place where the harmful event occurred)

In Case C-12/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), made by decision of 9 January 2015, received at the Court on 14 January 2015, in the proceedings

Universal Music International Holding BV

v

Michael Tétreault Schilling,

Irwin Schwartz,

Josef Brož,

THE COURT (Second Chamber),

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

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 November 2015,

after considering the observations submitted on behalf of

— Universal Music International Holding BV, by C. Kroes and S. Janssen, advocaten,

— Michael Tétreault Schilling, by A. Knigge, P.A. Fruytier and L. Parret, advocaten,

— Josef Brož, by F. Vermeulen and B. Schim, advocaten,

— the Greek Government, by A. Dimitrakopoulou, S. Lekkou and S. Papaïoannou, acting as Agents,

* Language of the case: Dutch.

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

after hearing the Opinion of the Advocate General at the sitting on 10 March 2016,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 5(3) 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 has been made in proceedings between Universal Music International Holding BV ('Universal Music'), established in the Netherlands, and Michael Schilling, Irwin Schwartz and Josef Brož, all three lawyers, residing in Romania, Canada and the Czech Republic respectively, concerning negligence on the part of Mr Brož in drafting, in the Czech Republic, a contract for the purchase of shares.

Legal context

The Brussels Convention

3 Article 5 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that Convention, ('the Brussels Convention') reads as follows:

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

…

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

…'

Regulation No 44/2001

4 Recitals 11, 12, 15 and 19 in the preamble to Regulation No 44/2001 provide as follows:

'(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. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(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.

…

(19) Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the provisions of the Brussels Convention by the Court of Justice [of the European Union] and the Protocol [of 3 June 1971 on the interpretation by the Court of Justice of the Brussels Convention] should remain applicable also to cases already pending when this Regulation enters into force.'

5 Article 2(1) of that regulation, conferring general jurisdiction upon the courts of the Member State in which the defendant is domiciled, is worded as follows:

'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 of the regulation provides:

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

…

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

…'

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

7 Universal Music is a record company, part of Universal Music Group. Universal Music International Ltd is a sister company of Universal Music, belonging to the same group.

8 In the course of 1998, Universal Music International Ltd agreed with its Czech partners, in particular the record company B&M spol. s r. o. ('B&M') and its shareholders, that one or more companies to be determined within Universal Music Group would acquire 70% of B&M's shares. The parties also agreed that, in the course of 2003, the purchaser would acquire the remaining shares, at a price to be agreed during that final purchase. An advance on the sale price had already been paid. The agreement and the main points of that proposed transaction were set out in a letter of intent fixing the target sale price at five times B&M's average annual profit.

9 The parties then negotiated a contract for the sale and delivery of 70% of B&M's shares as well as a contract for the option to purchase the remaining 30% of the shares ('the share purchase option').

10 At the request of the legal department of Universal Music Group, the share purchase option agreement was drawn up by the Czech law firm Burns Schwartz International. Several versions of that contract were exchanged between that firm, the legal department of Universal Music Group and B&M's shareholders.

11 During those negotiations, Universal Music was designated as the buyer under the contract for the share purchase option. It was signed on 5 November 1998 by Universal Music, B&M and its shareholders.

12 According to the referring court, the contract shows that an amendment suggested by the legal department of Universal Music Group was not fully reproduced by Mr Brož, associate at the law firm Burns Schwartz International, which led to a fivefold increase in the sale price compared with the price originally intended, a sale price which then had to be multiplied by the number of shareholders.

13 In the course of August 2003, Universal Music, in order to meet its contractual obligation to buy the remaining shares, calculated the price of those shares according to the method it had planned, and came up with a sum of CZK 10 180 281 (approximately EUR 313 770). Relying on the calculation method laid down in the contract, B&M's shareholders were claiming a sum of CZK 1 003 605 620 (approximately EUR 30 932 520).

14 The dispute was brought before an arbitration board in the Czech Republic, the parties having agreed a settlement on 31 January 2005. In order to implement the settlement, Universal Music paid the sum of EUR 2654280.03 ('the settlement amount') for the remaining 30% of the shares by transfer from an account it held in the Netherlands. The transfer was made in favour of an account that B&M's shareholders held in the Czech Republic.

15 Universal Music brought proceedings before the Rechtbank Utrecht (Utrecht District Court, Netherlands), pursuant to Article 5(3) of Regulation No 44/2001, seeking to hold jointly and severally liable Mr Schilling and Mr Schwartz, as previous partners of the law firm Burns Schwartz International, as well as Mr Brož, for the payment of EUR 2767861.25, together with interest and costs, damage which it claims to have suffered further to the negligence of Mr Brož in the course of the drafting of the contract for the share purchase option. The damage is alleged to have occurred as a result of the difference stemming from that negligence between the sale price initially intended and the settlement amount and also the costs Universal Music had to incur in the context of the arbitration procedure.

16 In support of its application, Universal Music claimed that it suffered the damage in Baarn (Netherlands), where it was established.

17 By decision of 27 May 2009, the Rechtbank Utrecht (Utrecht District Court) declined jurisdiction to deal with the dispute before it on the ground that the place where the damage Universal Music claims it suffered occurred, described by it as 'purely direct financial damage' arising in Baarn, could not be considered the place where the 'harmful event' occurred, within the meaning of Article 5(3) of Regulation No 44/2001, because of the lack of a sufficient connection to attribute jurisdiction to the courts of the Netherlands.

18 Universal Music appealed against that decision before the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal of Arnhem-Leeuwarden, Netherlands) which, by a judgment of 15 January 2013, upheld the judgment given at first instance. That court considered that the very close connection between the request and the court seised of the dispute, which constitutes a criterion for the application of Article 5(3) of Regulation No 44/2001, was lacking in the case in point. Therefore, the mere fact that the settlement amount had to be paid by a company established in the Netherlands is insufficient to justify the attribution of jurisdiction to the courts of the Netherlands.

19 Universal Music brought an appeal in cassation against the judgment of the Gerechtshof Arnhem-Leeuwarden (Regional Court of Appeal of Arnhem-Leeuwarden, Netherlands) before the referring court. Mr Schilling and Mr Brož each separately brought a cross-appeal.

20 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 5(3) of Regulation No 44/2001 be interpreted as meaning that the "place where the harmful event occurred" can be construed as being the place in a Member State where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of unlawful conduct which occurred in another Member State?

(2) If the answer to the first question is in the affirmative:
(a) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine whether in the present case there has been financial damage which is the direct result of unlawful conduct ("initial financial damage" or "direct financial damage") or whether there has been financial damage which is the result of initial damage which occurred elsewhere or damage which has resulted from damage which occurred elsewhere ("consequential damage" or "derived financial damage")?
(b) What criterion or what perspectives should the national court apply, when assessing its jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, in order to determine where, in the present case, the financial damage — whether it be direct or derived financial damage — occurred or is deemed to have occurred?

(3) If the answer to the first question is in the affirmative, must Regulation No 44/2001 be interpreted as meaning that the national court which is required to determine whether it has jurisdiction pursuant to that regulation in the present case is obliged, when making its determination, to proceed on the basis of the relevant submissions of the claimant or applicant in that regard, or is it obliged also to take into account the arguments put forward by the defendant to refute those submissions?'

Consideration of the questions referred for a preliminary ruling

The first question

21 By its first question, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning, in circumstances such as those in the main proceedings, that the 'place where the harmful event occurred' can be construed as being the place, in a Member State, where the damage occurred, if that damage consists exclusively of financial damage which is the direct result of an unlawful act committed in another Member State.

22 In order to answer that question, it should be noted that, inasmuch as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of that convention is valid also for those of that regulation, whenever the provisions of those Union instruments may be regarded as equivalent (judgments of 16 July 2009 in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 18, and of 10 September 2015 in *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 38).

23 It should be observed that the provisions of Regulation No 44/2001 relevant to the present case are drafted in nearly identical terms to those of the Brussels Convention. In the light of such similarity, it is necessary to ensure, in accordance with recital 19 in the preamble to Regulation No 44/2001, continuity in the interpretation of those two instruments (see, inter alia, judgment in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 19).

24 According to the Court's case-law, the concept of 'matters relating to tort, delict or quasi-delict' within the meaning of Article 5(3) of Regulation No 44/2001 covers all actions which seek to establish the liability of a defendant and do not concern 'matters relating to a contract' within the meaning of Article 5(1)(a) of that regulation (see judgment in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 44). In that regard, failing any evidence in the order for reference tending to show that a contractual relationship existed between the parties in the main proceedings, which it is nevertheless a matter for the referring court to verify, the Court must restrict its analysis to Article 5(3) of Regulation No 44/2001, to which the questions referred by the national court relate.

25 As the Advocate General noted at point 27 of his Opinion, it is only by way of derogation from the general principle laid down in Article 2(1) of Regulation No 44/2001, attributing jurisdiction to the courts of the Member State in which the defendant is domiciled, that Section 2 of Chapter II of that regulation makes provision for certain special jurisdictional rules, such as the rule laid down in Article 5(3) of that regulation. Insofar as the jurisdiction of the courts for the place where the harmful event occurred constitutes a rule of special jurisdiction, it must be interpreted independently and strictly, which does not permit an interpretation going beyond the cases expressly envisaged by that regulation (see, to that effect, judgments of 5 June 2014 in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraphs 43 to 45, and of 10 September 2015 in *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraphs 72 and case-law cited).

26 According to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of that regulation is based on the existence of a particularly close connecting factor between the dispute and the courts for the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (judgments of 5 June 2014 in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraphs 47, and of 10 September 2015 in *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 73 and case-law cited).

27 In matters relating to tort, delict or quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on the grounds of proximity of the dispute and ease of taking evidence (judgments of 21 May 2015 in *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 40, and of 10 September 2015 in *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 74).

28 As for the notion of 'place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001, as the Court has already held, those words are intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (see in relation to pollution, judgment of 30 November 1976 in *Bier*, 21/76, EU:C:1976:166, paragraphs 24 and 25; in relation to counterfeiting, judgment of 5 June 2014 in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraphs 46; in relation to company directors' contracts, judgment of 10 September 2015 in *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 72).

29 Although it is common ground between the parties to the main proceedings that the Czech Republic is the place of the event giving rise to the damage, they disagree as regards the determination of the place where the damage occurred.

30 It is clear from the request for a preliminary ruling that the contract entered into on 5 November 1998 between B&M and its shareholders, on the one hand, and Universal Music, on the other hand, was negotiated and signed in the Czech Republic. The rights and obligations of the parties were established in that Member State, including the obligation for Universal Music to pay a greater amount than originally provided for for the remaining 30% of shares. That contractual obligation, which the parties to the contract did not intend to create, arose in the Czech Republic.

31 The damage for Universal Music resulting from the difference between the intended sale price and the price mentioned in that contract became certain in the course of the settlement agreed between the parties before the arbitration board, in the Czech Republic, on 31 January 2005, the date on which the actual sale price was fixed. Therefore, the obligation to pay placed an irreversible burden on Universal Music's assets.

32 Accordingly, the loss of some assets happened in the Czech Republic, the damage having occurred there. The mere fact that, to implement the settlement agreed before the arbitration board, in the Czech Republic, Universal Music paid the financial settlement by a transfer from a bank account it held in the Netherlands, is not such as to invalidate that finding.

33 The solution thereby stemming from the findings made in paragraphs 30 to 32 of the present judgment satisfies the requirements of predictability and certainty laid down by Regulation No 44/2001, since the conferral of jurisdiction on the Czech courts is justified for reasons of the sound administration of justice and the efficacious conduct of the proceedings.

34 In that context, it should be noted that the term 'place where the harmful event occurred' may not be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt (judgment of 19 September 1995 in *Marinari*, C-364/93, EU:C:1995:289, paragraph 14).

35 In the wake of that case-law, the Court has also held that that expression does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment of 10 June 2004 in *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21).

36 It is true that in the case which gave rise to the judgment of 28 January 2015 in *Kolassa* (C-375/13, EU:C:2015:37), the Court found, in paragraph 55 of its reasoning, jurisdiction in favour of the courts for the place of domicile of the applicant by virtue of where the damage occurred, if that damage materialises directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.

37 However, as the Advocate General stated in essence in points 44 and 45 of his Opinion in the present case, that finding is made within the specific context of the case which gave rise to that judgment, a distinctive feature of which was the existence of circumstances contributing to attributing jurisdiction to those courts.

38 Consequently, purely financial damage which occurs directly in the applicant's bank account cannot, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001. In that respect, it should also be noted that a company such as Universal Music may have had the choice of several bank accounts from which to pay the settlement amount, so that the place where that account is situated does not necessarily constitute a reliable connecting factor.

39 It is only where the other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place.

40 In the light of the foregoing considerations, the answer to the first question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in a situation such as that in the main proceedings, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materialises directly in the bank account of the applicant and is the direct result of an unlawful act committed in another Member State.

41 In view of the reply given to the first question, there is no need to answer the second question.

The third question

42 By its third question, the referring court asks, in essence, whether, in the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

43 As the Advocate General stated in paragraph 52 of his Opinion, notwithstanding the fact that the referring court asked that question only if the answer to the first question were in the affirmative, there is an interest in answering it, given that that question relates to the general assessment of jurisdiction and not only to the question of whether financial damage is sufficient to determine jurisdiction.

44 In the particular context of Article 5(3) of Regulation No 44/2001, the Court has held that, at the stage at which jurisdiction is determined, the court seised does not examine either the admissibility or the substance of the application in the light of national law, but identifies only those points of connection with the State in which that court is sitting that support its claim to jurisdiction under that provision. Thus, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant's claims as regards the conditions for liability in tort, delict or quasi-delict (see, to that effect, judgments of 25 October 2012 in *Folien Fischer and Fofitec*, C-133/11, EU:C:2012:664, paragraph 50, and of 28 January 2015 in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 62 and case-law cited).

45 Although the national court seised is not obliged, if the defendant contests the applicant's claims, to conduct a comprehensive taking of evidence at the stage of determining jurisdiction, the Court has held that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court seised to be able to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendant's arguments (judgement of 28 January 2015 in *Kolassa*, C-375/13, EU:C:2015:37, paragraph 64).

46 On the basis of the foregoing, the answer to the third question asked is that, in the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.

Costs

47 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:

1. **Article 5(3) of 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, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materialises directly in the applicant's bank account and is the direct result of an unlawful act committed in another Member State.**

2. **In the context of the determination of jurisdiction under Regulation No 44/2001, the court seised must assess all the evidence available to it, including, where appropriate, the arguments put forward by the defendant.**

[Signatures]