

JUDGMENT OF THE COURT (Sixth Chamber)

27 January 2000 \*

In Case C-8/98,

REFERENCE to the Court, pursuant to the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Landgericht Heilbronn (Germany) for a preliminary ruling in the proceedings pending before that court between

**Dansommer A/S**

and

**Andreas Götz**

on the interpretation of Article 16(1)(a) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1),

\* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and G. Hirsch, Judges,

Advocate General: A. La Pergola,  
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Dansommer A/S, by I. Schulze, Rechtsanwalt, Flensburg,
  
- A. Götz, by L. Zürn, Rechtsanwalt, Heilbronn,
  
- the Spanish Government, by R. Silva de Lapuerta, Abogado del Estado, acting as Agent,
  
- the French Government, by K. Rispal-Bellanger, Deputy Head of the Legal Directorate of the Ministry of Foreign Affairs, and R. Loosli-Surrans, Chargée de Mission in that Directorate, acting as Agents,

- the Italian Government, by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and O. Fiumara, Avvocato dello Stato,
  
- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and M. Hoskins, Barrister,
  
- the Commission of the European Communities, by J.L. Iglesias, Legal Adviser, acting as Agent, assisted by B. Wägenbaur, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of the Spanish, French, Italian and United Kingdom Governments and the Commission at the hearing on 10 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 9 September 1999,

gives the following

### Judgment

- 1 By order of 16 June 1997, received at the Court on 14 January 1998, the Landgericht (Regional Court) Heilbronn (Germany) referred to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters a question on the interpretation of Article 16(1)(a) of that Convention (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) (hereinafter ‘the Convention’).
  
- 2 That question has arisen in a dispute between Dansommer A/S, a company incorporated under Danish law and having its registered office in Denmark (‘Dansommer’), and Andreas Götz, a German national who is resident in Germany.

## The Convention

- 3 Article 16(1) of the Brussels Convention, in the version prior to the amendment made by the Convention of 26 May 1989, provided as follows:

‘The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights *in rem* in, or tenancies of, immovable property, the courts of the Contracting State in which the property is situated’.

- 4 As amended by the Convention of 26 May 1989 (‘the San Sebastián Convention’), that provision is now worded as follows:

‘The following courts shall have exclusive jurisdiction, regardless of domicile:

1. (a) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated;

- (b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the

Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State’.

5 Article 29(1) of the San Sebastián Convention provides:

‘The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention, the 1982 Convention and this Convention, shall apply only to legal proceedings instituted... after the entry into force of this Convention in the State of origin...’.

6 The San Sebastián Convention entered into force in Germany on 1 December 1994.

### The dispute in the main proceedings

7 On 27 February 1995, Mr Götz rented from Dansommer a house in Denmark owned by a private individual resident in Denmark, with a view to spending his holidays there from 29 July 1995 to 12 August 1995.

- 8 In its capacity as a professional tour operator, Dansommer merely acted as intermediary.
- 9 Under the general terms and conditions of the contract concluded between Dansommer and Mr Götz, the price payable by the latter as consideration for the provision of the accommodation during the contractual period included a premium for insurance to cover the costs in the event of cancellation of the contract.
- 10 Those general terms and conditions also provided that, in accordance with Article 651k(3) of the Bürgerliches Gesetzbuch (German Civil Code), Dansommer guaranteed reimbursement of the price paid by Mr Götz in the event of the organiser's insolvency.
- 11 It is common ground that Dansommer was not under an obligation to provide any other services.
- 12 After Mr Götz had stayed in the house in question, Dansommer brought proceedings against him as lessee before the Amtsgericht (Local Court) Heilbronn. In those proceedings, Dansommer, which had previously been subrogated to the rights of the owner of the house rented by Mr Götz, claimed damages from him on the ground that he had failed to clean the house properly before his departure and had damaged the carpeting and the oven safety mechanism.

- 13 Following the dismissal of its action, Dansommer appealed to the referring court.
- 14 Since it was unsure whether it had jurisdiction to hear the dispute, the Landgericht Heilbronn decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is Article 16(1)(a) of the Brussels Convention applicable if the tour operator’s performance obligation is limited to making available a holiday home and automatic provision of travel cost and cancellation insurance, but the owner and lessee of the holiday home are not domiciled in the same Contracting State?’

#### The question referred for preliminary ruling

- 15 By way of derogation from the general principle set out in the first paragraph of Article 2 of the Convention, according to which persons domiciled in a Contracting State must be sued in the courts of that State, Article 16(1) of the Convention provides that, in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, exclusive jurisdiction lies with the courts of the Contracting State in which the property is situated.

- 16 The dispute in the main proceedings is, however, manifestly unconnected with any right *in rem* in immovable property, within the meaning of Article 16(1).
- 17 Although the case of which the national court is seised results from the short-term letting of a holiday home, it must be stressed, as the Landgericht Heilbronn points out in its order for reference, that Article 16(1)(b), which contains a specific provision relating to short-term tenancies which was added to Article 16(1) of the Brussels Convention by the San Sebastián Convention, is not relevant to this case since not all the conditions laid down in that provision are satisfied. Thus, in the case before the national court, the owner and tenant of the property are not domiciled in the same Contracting State.
- 18 The national court is thus asking the Court whether Article 16(1)(a), resulting from the San Sebastián Convention, which is applicable to the dispute in the main proceedings, but the wording of which has remained unchanged in relation to Article 16(1) of the Brussels Convention in its earlier versions, covers judicial proceedings such as those of which it is seised.
- 19 Finally, it must be pointed out that the fact, mentioned in the question submitted, that the owner of the property and the lessee are not domiciled in the same Contracting State is immaterial, since, as is clear from the actual wording of Article 16 and subject to the proviso in subparagraph 1(b) thereof, which, as has just been held in paragraph 17 above, is not applicable to this case, the domicile of the parties is irrelevant for the purposes of Article 16 of the Convention (see, to this effect, Case 73/77 *Sanders v Van der Putte* [1977] ECR 2383, paragraph 10).

- 20 In those circumstances, the question submitted must be construed as essentially seeking to ascertain whether the rule laid down in Article 16(1)(a) of the Convention conferring exclusive jurisdiction in proceedings having as their object tenancies of immovable property is applicable to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.
- 21 It should be noted in this regard that Article 16, being an exception to the general rule of jurisdiction set out in the first paragraph of Article 2 of the Convention, must not be given an interpretation broader than is required by its objective, since the article deprives the parties of the choice of forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of the domicile of any of them (see *Sanders*, cited above, paragraphs 17 and 18; Case C-115/88 *Reichert and Kockler* [1990] ECR I-27, paragraph 9; and Case C-292/93 *Lieber* [1994] ECR I-2535, paragraph 12).
- 22 So, it is established in case-law that, in order for Article 16(1) of the Brussels Convention to apply, it is not sufficient for the action to be connected with immovable property (Case C-294/92 *Webb* [1994] ECR I-1717, paragraph 14, and *Lieber*, cited above, paragraph 13).
- 23 Nevertheless, it follows from that same case-law that, in a case such as that before the national court, which concerns not a right *in rem* in immovable property but a tenancy of immovable property, Article 16(1) applies to any proceedings

concerning rights and obligations arising under an agreement for the letting of immovable property, irrespective of whether the action is based on a right *in rem* or on a right *in personam* (Lieber, paragraphs 10, 13 and 20).

- 24 That is precisely the position in the instant case, since the proceedings brought by Dansommer, after partial failure to perform a tenancy agreement, is based on the tenant's obligation to maintain the property let in a proper condition and to repair any damage which he has caused to it.
- 25 The subject-matter of the proceedings before the referring court is thus directly linked to a leasing contract concerning immovable property and consequently to a tenancy of immovable property within the meaning of Article 16(1)(a) of the Convention, with the result that those proceedings fall within the exclusive jurisdiction rule laid down in that provision.
- 26 This interpretation, which is, moreover, the only interpretation which does not render ineffective the rule of exclusive jurisdiction in regard to tenancies of immovable property, is borne out by the underlying purpose of the provision in question.
- 27 It is clear from both the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1, at p. 35) and case-law that the essential reason for conferring exclusive jurisdiction on the courts of the Contracting State in which the property is situated is that the courts of the *locus rei sitae* are the best placed, for reasons of proximity, to ascertain the facts satisfactorily, by carrying out checks, inquiries

and expert assessments on the spot, and to apply the rules and practices which are generally those of the State in which the property is situated (see, in particular, *Sanders*, paragraph 13, and *Reichert and Kockler*, paragraph 10).

- 28 This interpretation is also borne out by the fact that the Jenard Report (cited above, pp. 34 and 35) states that the jurisdiction rules set out in Article 16 of the Brussels Convention take as their criterion the subject-matter of the action and, with specific regard to the rule of exclusive jurisdiction in the matter of tenancies of immovable property in Article 16(1), the Convention draftsmen intended it to cover, *inter alia*, disputes over compensation for damage caused by tenants.
- 29 The reasoning set out above cannot be called in question by the judgment in Case C-280/90 *Hacker* [1992] ECR I-1111.
- 30 In that judgment, the Court held, in paragraph 15, that a complex contract concerning a range of services provided in return for a lump sum paid by the customer did not constitute a tenancy of immovable property within the meaning of Article 16(1) of the Brussels Convention.
- 31 The contract at issue in *Hacker* had been concluded between a professional travel organiser and its customer at the place where both were domiciled, and even though that contract provided for a service concerning the use of short-term holiday accommodation, it also included other services, such as information and advice, where the travel organiser proposed a range of holiday offers, the

reservation of accommodation during the period chosen by the customer, the reservation of seats in connection with travel arrangements, reception at the destination and the possibility of travel cancellation insurance (*Hacker*, cited above, paragraph 14).

32 However, the unavoidable conclusion is that the circumstances of the case now under consideration are different from those of *Hacker*.

33 The contract now at issue concerns exclusively the letting of immovable property.

34 The clause in the general terms and conditions of the contract relating to insurance to cover the costs in the event of cancellation is only an ancillary provision which cannot alter the status of the tenancy agreement to which it relates, especially since this clause is not in issue before the referring court.

35 The same applies in regard to the guarantee — which is, moreover, required by German legislation — of repayment of the price paid in advance by the customer in the event of the organiser's insolvency.

36 Finally, Article 16(1)(a) of the Convention is not rendered inapplicable merely because the dispute in this case is not directly between the owner and the tenant of the immovable property, given that Dansommer brought legal proceedings

against the tenant after being subrogated to the rights of the owner of the property which was the subject of the lease concluded between Dansommer and Mr Götz.

- 37 Suffice it to note in this regard that, through subrogation, one person steps into the shoes of another in order to enable the former to exercise rights belonging to the latter, so that, in the main proceedings in this case, Dansommer is not acting in its capacity as a professional tour operator but as if it were the owner of the property in question.
- 38 In view of the foregoing, the answer to be given to the question referred must be that the rule laid down in Article 16(1)(a) of the Convention conferring exclusive jurisdiction in proceedings having as their object tenancies of immovable property is applicable to an action for damages for taking poor care of premises and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.

The ancillary clauses relating to insurance in the event of cancellation and to guarantee of repayment of the price paid by the client, which are contained in the general terms and conditions of the contract concluded between that organiser and the tenant, and which do not form the subject of the dispute in the main proceedings, do not affect the nature of the tenancy as a tenancy of immovable property within the meaning of that provision of the Convention.

## Costs

- 39 The costs incurred by the Spanish, French, Italian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Landgericht Heilbronn by order of 16 June 1997, hereby rules:

The rule laid down in Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, conferring exclusive jurisdiction in proceedings having as their object tenancies of immovable property is applicable to an action for damages for taking poor care of premises

and causing damage to accommodation which a private individual had rented for a few weeks' holiday, even where the action is not brought directly by the owner of the property but by a professional tour operator from whom the person in question had rented the accommodation and who has brought legal proceedings after being subrogated to the rights of the owner of the property.

The ancillary clauses relating to insurance in the event of cancellation and to guarantee of repayment of the price paid by the client, which are contained in the general terms and conditions of the contract concluded between that organiser and the tenant, and which do not form the subject of the dispute in the main proceedings, do not affect the nature of the tenancy as a tenancy of immovable property within the meaning of that provision of the Convention.

Schintgen

Kapteyn

Hirsch

Delivered in open court in Luxembourg on 27 January 2000.

R. Grass

J.C. Moitinho de Almeida

Registrar

President of the Sixth Chamber