Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

18 July 2013 *

(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')

In Case C-147/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hovrätten för Nedre Norrland (Sweden), made by decision of 23 March 2012, received at the Court on 26 March 2012, in the proceedings

ÖFAB, Östergötlands Fastigheter AB

v

Frank Koot,

Evergreen Investments BV,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, A. Rosas, E. Juhász, D. Šváby and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 17 April 2013,

after considering the observations submitted on behalf of:

— ÖFAB, Östergötlands Fastigheter AB, by M. André,

— Mr Koot and Evergreen Investments BV, by K. Crafoord, B. Rundblom Andersson and J. Conradsson, advokater,

— the Swedish Government, by A. Falk and K. Ahlstrand-Oxhamre, acting as Agents,

— the Greek Government, by S. Chala, acting as Agent,

— the United Kingdom Government, by J. Beeko, acting as Agent,

* Language of the case: Swedish.

— the European Commission, by A.-M. Rouchaud-Joët and C. Tufvesson, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The request was made in proceedings between ÖFAB, Östergötlands Fastigheter AB ('ÖFAB'), established in Sweden, and Mr Koot and Evergreen Investments BV ('Evergreen'), established in the Netherlands, concerning the refusal by the latter to meet the debts of Copperhill Mountain Lodge AB ('Copperhill'), a limited company established in Sweden.

Legal context

European Union law

3 Regulation No 44/2001 contains the rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

4 Recitals 8, 11 and 12 in the preamble to that regulation state:

'(8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Accordingly common rules on jurisdiction should, in principle, apply when the defendant is domiciled in one of those Member States.

…

(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.'

5 According to Article 1(2)(b) of that regulation it does not to apply to 'bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings'.

6 Article 2(1) of Regulation No 44/2001 provides:

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

7 Article 5(1) and (3) of Regulation No 44/2001 provide that a person domiciled in a Member State may be sued in another Member State:

‘(1)

(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if subparagraph (b) does not apply then subparagraph (a) applies;

…

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

Swedish law

8 In Chapter 25 of the Law on limited liability companies (Aktiebolagslag, SFS 2005, No 551), Article 18 thereof provides that the members of the board of directors may be liable for the debts of the company where they fail to complete certain formalities to monitor the company’s financial situation which no longer has sufficient funds. According to that article:

‘If the board has failed,

1. in accordance with paragraph 13, to draw up and submit to the company’s auditor for scrutiny a pre-liquidation balance sheet in accordance with paragraph 14,

2. in accordance with paragraph 15, to convene a first general meeting, or

3. in accordance with paragraph 17, to apply to the District Court for an order that the company be put in liquidation,

the members of the board are jointly and severally liable for the debts of the company arising during the period of any such failure.

Any person who, with knowledge of the board’s failure, acts on behalf of the company shall be jointly and severally liable with the members of the board for the obligations which thereby arise for the company.

The liability under points 1 and 2 does not apply to any person who shows that he or she has not been negligent.

…’

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

9 Mr Koot, who resides in the Netherlands, was a member of the board of directors of Copperhill from 9 September 2007 until 5 September 2009 inclusive, the date on which he became a deputy director, which he remained until 22 January 2010.

10 Evergreen held 40% of Copperhill's shares prior to acquiring a further 50% of the shares in that company on 11 September 2007.

11 Between 10 October 2007 and 2 December 2009 Copperhill's seat was situated in the municipality of Åre (Sweden), which falls within the jurisdiction of Östersunds tingsrätt (District Court, Östersund), where it carried on business during that period and built a hotel.

12 For the construction of that hotel, Copperhill ordered excavation works and, inter alia, tiling in the bathrooms from two local companies, Toréns Entreprenad i Östersund AB ('Toréns') and Kakelmässan Norr Handelsbolag ('Kakelmässan').

13 On 23 March 2009, since Copperhill had suspended payments on account of financial difficulties, the Östersunds tingsrätt made a company reconstruction order ('företagsrekonstruktion'). Under those measures, Toréns and Kakelmässan were paid only part of their claims against Copperhill. The outstanding balance of the claims was acquired by Invest i Årefjällcn i Stockholm AB ('Invest').

14 On 10 August 2010, Invest brought two actions against Mr Koot and Evergreen before the Östersunds tingsrätt. In support of its action against Mr Koot, Invest argued that he was required to compensate it pursuant to Article 18 of Chapter 25 of the Law on limited liability companies. The action against Evergreen was based on a 'derogation from the principle of limited liability' and the fact that Evergreen had 'undertaken' to pay Toréns and Kakelmässan or to provide Copperhill with the funds necessary to do so.

15 As regards the jurisdiction of the Östersunds tingsrätt to hear the dispute at issue, Invest claimed that the harmful event had occurred in Åre and that the damage was also sustained there. Mr Koot and Evergreen contended that, since they were both domiciled in the Netherlands, that court did not have jurisdiction to hear those disputes.

16 On 26 April 2011, the Östersunds tingsrätt decided to dismiss Invest's actions on the ground that it did not have jurisdiction to hear the disputes concerned. According to that court, those disputes are not covered either by matters relating to contract nor to matters relating to tort, delict or quasi-delict within the meaning of Article 5(1) and (3) of Regulation No 44/2001. Therefore, in accordance with the general rule laid down in Article 2(1) thereof, those disputes should be brought before the courts of the Member State in which Mr Koot and Evergreen are domiciled.

17 Invest appealed against those decisions before the Hovrätten för Nedre Norrland requesting that that court make a request for a preliminary ruling to the Court of Justice. It then transferred its claims to ÖFAB.

18 The Hovrätten för Nedre Norrland takes the view that, in order to determine the jurisdiction of the Swedish courts to hear the dispute in the main proceedings, it is necessary to interpret Article 5(1) and (3) of Regulation No 44/2001.

19 In that connection, the referring court asks whether those provisions constitute a comprehensive derogation to Article 2 of Regulation No 44/2001 as regards actions for damages, in that Article 5(3) thereof applies if Article 5(1) does not. Furthermore, that court considers that the Court of Justice has

not yet determined the issue whether actions seeking to hold a member of the board of directors of a limited company and one of its shareholders liable for the company's debts, pursuant to Article 18 of Chapter 25 of the Law on limited companies, fall within Article 5(3) of that regulation.

20 As regards the derogation from the principle of limited liability, the referring court states that, according to the case-law of the Högsta domstolen (Supreme Court), the shareholders of a limited company may, in exceptional circumstances, be liable for its debts. Among the factors likely to be relevant in that regard may be unfair or improper conduct by the shareholders, undercapitalisation and the fact that that company did not serve any commercial purpose.

21 In the light of those considerations the Hovrätten för Nedre Norrland decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Are Articles 5(1) and 5(3) of [Regulation No 44/2001] to be interpreted in such a way that they constitute a comprehensive derogation from the main rule of Article 2 in compensation disputes?

(2) Is the term "matters relating to tort, delict or quasi-delict" in Article 5(3) of [Regulation No 44/2001] to be interpreted in such a way that the provision covers the action of a creditor against a director of a company if the action seeks to hold the director liable for the company's debts where the director has failed to make formal arrangements to monitor the company's financial situation and instead has continued to carry on the business of the company and has burdened it with further debts?

(3) Is the term "matters relating to tort, delict or quasi-delict" in Article 5(3) of [Regulation No 44/2001] to be interpreted in such a way that the provision covers an action of a creditor against a shareholder of a company if the action seeks to make the shareholder liable for the company's debts by reason of the fact that he allowed the company to continue to carry on business despite the fact that it was undercapitalised and the company is forced to go into liquidation?

(4) Is the term "matters relating to tort, delict or quasi-delict" in Article 5(3) of [Regulation No 44/2001] to be interpreted in such a way that it covers the action of a creditor against a shareholder of a company who has undertaken to discharge a company's debts?

(5) If the answer to [question 2] is in the affirmative, is any harm arising deemed to have occurred in the Netherlands or in Sweden, if the director is domiciled in the Netherlands and the breaches of the board's obligations relate to a Swedish company?

(6) If the answer to [questions 3 or 4] is in the affirmative, is any harm arising deemed to have occurred in the Netherlands or in Sweden if the shareholder in question is domiciled in the Netherlands and the company is Swedish?

(7) If either Article 5(1) or 5(3) of [Regulation No 44/2001] are applicable in any of the situations described above, is it of any relevance to the application of those provisions if a claim has been transferred from the original creditor to another person?'

Consideration of the questions referred

Questions 1 to 3

22 By its first three questions, which it is appropriate to examine together, the referring court asks essentially whether 'matters relating to tort, delict or quasi-delict' in Article 5(3) in Regulation No 44/2001, must be understood as meaning that it covers actions brought by the creditor of a limited company seeking to hold liable for its debts a member of the board of directors and one of that company's shareholders, as they have allowed it to continue to carry on business although it was undercapitalised and was forced to go into liquidation.

23 As a preliminary point, it is necessary to examine the argument raised by Mr Koot that the actions brought against him are excluded from the scope of Regulation No 44/2001 pursuant to Article 1(2)(b) thereof, since they are based on provisions of Swedish law according to which limited companies with insufficient capital must be put into liquidation.

24 In that connection, it must be recalled that, according to settled case-law, Article 1(2)(b) of Regulation No 44/2001 excludes from the scope of that regulation only actions which derive directly from insolvency proceedings and are closely connected with them (see, to that effect, Case C-111/08 *SCT Industri* [2009] ECR I-5655, paragraph 21 and the case-law cited, and Case C-213/10 *F-Tex* [2012] ECR, paragraph 29).

25 As is clear from the docments submitted to the Court and the submissions made by the Swedish Government at the hearing, the actions in the main proceedings do not constitute insolvency proceedings but were brought after Copperhill had been subject to a company reconstruction order. In any event, it must be held, as the European Commission observes, that those actions do not concern the exclusive prerogative of the liquidator to be exercised in the interests of the general body of creditors, but of rights which ÖFAB is free to exercise in its own interests.

26 Therefore, it must be held that the actions at issue in the main proceedings fall within the scope of Regulation No 44/2001.

27 In order to answer the first three questions, it must be observed that, according to settled case-law, the concepts of 'matters relating to contract' and 'matters relating to tort, delict or quasi-delict' in Article 5(1) and (3) of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (see, to that effect, Joined Cases C-509/09 and C-161/10 *eDate Advertising and Martinez* [2011] ECR I-10269, paragraph 38 and the case-law cited).

28 Second, in so far as Regulation No 44/2001 now replaces, in the relations between Member States, the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention ('the Brussels Convention'), the interpretation provided by the Court in respect of the provisions of the Brussels Convention is also valid for those of the regulation whenever the provisions of those Community instruments may be regarded as equivalent (see, inter alia, *eDate Advertising and Martinez*, paragraph 39 and the case-law cited).

29 Articles 2 and 5(1)(a) and (3) of Regulation No 44/2001, which are relevant to the case in the main proceedings, reflect the same system as Articles 2 and 5(1) and (3) of the Brussels Convention and are drafted in almost identical terms. 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, Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 19).

30 Thus, according to settled case-law, the system of common rules of conferment of jurisdiction laid down in Title II of Regulation No 44/2001 is based on the general rule, set out in the first paragraph of Article 2(1), that persons domiciled in a Member State are to be sued in the courts of that State, irrespective of the nationality of the parties. It is only by way of derogation from that fundamental principle attributing jurisdiction to the courts of the defendant's domicile that Section 2 of Title II of Regulation No 44/2001 makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of the Convention (see, to that effect, *Zuid-Chemie*, paragraphs 20 and 21, and Case C-144/10 *BVG* [2011] ECR I-3961, paragraph 30 and the case-law cited).

31 The Court has also held that those rules of special jurisdiction must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by the regulation (see, to that effect, *Zuid-Chemie*, paragraph 22 and the case-law cited).

32 Nevertheless, it is settled case-law that the term '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 which are not related to a 'contract' within the meaning of Article 5(1)(a) thereof (see, as regards the interpretation of the Brussels Convention, Case 189/87 *Kalfelis* [1988] ECR 5565, paragraph 18; Case C-261/90 *Reichert and Kockler* [1992] ECR I-2149, paragraph 16; Case C-51/97 *Réunion européenne and Others* [1998] ECR I-6511, paragraph 22; and Case C-334/00 *Tacconi* [2002] ECR I-7357, paragraph 21).

33 In that connection, it must be observed, first, that the concept of 'matters relating to contract' within the meaning of Article 5(1)(a) of Regulation No 44/2001 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) of Regulation No 44/2001 presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based (see, as regards the interpretation of the Brussels Convention, Case C-27/02 *Engler* [2005] ECR I-481, paragraphs 50 and 51, and Case C-419/11 *Česká spořitelna* [2013] ECR, paragraphs 46 and 47 and the case-law cited).

34 Second, it is settled case-law that 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, as regards the interpretation of the Brussels Convention, Case 21/76 *Bier* [1976] ECR 1735, '*Mines de potasse d'Alsace*', paragraph 16, and *Zuid-Chemie*, paragraph 28 and the case-law cited).

35 As regards the actions in the main proceedings, it is apparent from the documents submitted to the Court that they aim to call into question Mr Koot's liability, as a member of the board of directors of Copperhill, pursuant to Article 18 of Chapter 25 of the Law on limited companies and that of Evergreen as a shareholder of that company by virtue of the derogation from the principle of limited liability as developed in the case-law of the Högsta domstolen.

36 As is also apparent from the order for reference, those actions are based not on an undertaking freely consented to by one of the parties to the other, but on the allegation that a member of the board of directors of Copperhill, who did not complete certain formalities intended to monitor the financial situation of that company, and its main shareholder neglected their legal obligations by allowing that company to continue to carry on business even though it was undercapitalised and was forced to go into liquidation. Under the applicable law, that member of the board of directors and that shareholder may, if necessary, be held liable for Copperhill's debts.

37 While the actions in the main proceedings aim to hold the member of the board of directors and the shareholder liable for Copperhill's debts, they help first and foremost, the creditors to obtain the payment of claims which, since the member of the board of directors and the shareholder of that

company did not fulfill their legal obligations, could not be made in full by that company. In the present case, therefore, those actions seek to compensate the harm resulting from the fact that Toréns and Kakelmässan carried out work for Copperhill without subsequently being able to obtain full payment from that company of the sums owed by it for those works.

38 It follows that the actions in the main proceedings, without prejudging the classification of other actions which may be brought against a member of the board of directors or a shareholder of a company, fall within Article 5(3) of Regulation No 44/2001.

39 In that connection, the Swedish and Greek Governments submit that the classification of the actions in the main proceedings with respect to Article 5(1) and (3) of Regulation No 44/2001, given that those actions seek to establish the liability of a member of the board of directors or a shareholder of a limited company for that company's debts, 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, as the case may be.

40 That interpretation cannot be accepted.

41 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 (see, to that effect, inter alia, Case C-381/08 *Car Trim* [2010] ECR I-1255, paragraph 48 and the case-law cited, and Case C-228/11 *Melzer* [2013] ECR, paragraph 26 and the case-law cited), preclude the determination of the court having jurisdiction being dependent on the nature of the debts of the company concerned. Furthermore, it must be observed that, as regards a defendant who is held liable for the debts of another, such an interpretation of the rules of jurisdiction laid down in Article 5 of the regulation would not have the degree of predictability required by recital 11 in the preamble thereto.

42 Having regard to the foregoing, the answer to the first three questions is that the concept of 'matters relating to tort, delict or quasi delict' in Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that it covers actions such as those at issue in the main proceedings 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 that company to continue to carry on business even though it was undercapitalised and was forced to go into liquidation.

Fourth question

43 By its fourth question, the referring court asks whether the concept of 'matters relating to tort, delict or quasi-delict', in Article 5(3) of Regulation No 44/2001, must be understood as meaning that it covers an action brought by a creditor against a shareholder of a company which has undertaken to pay the latter's debts.

44 In that connection, it must be recalled that it is for the national courts to furnish the Court with the factual and legal information necessary to enable it to give useful answers to the questions referred (Case C-249/97 *Gruber* [1999] ECR I-5295, paragraph 19, and Case C-177/10 *Rosado Santana* [2011] ECR I-7907, paragraph 33).

45 As is clear from settled case-law, the need to provide an interpretation of European Union law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, Case C-134/03 *Viacom Outdoor* [2005] ECR I-1167, paragraph 22; Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 29; and Case C-145/10 *Painer* [2011] ECR I-12533, paragraph 46).

46 In the present case, it must be stated that, as regards its fourth question, the referring court merely states that Evergreen had 'undertaken' to pay Toréns and Kakelmässan or to provide Copperhill with the funds necessary in that regard, without setting out the factual circumstances of that 'undertaking', the legal basis or the subject-matter of the action brought against the person who gave the 'undertaking'. In those circumstances, the request for a preliminary ruling does not enable the Court to give a useful interpretation of Article 5(3) of Regulation No 44/2001.

47 Accordingly, the fourth question is not admissible.

The fifth and sixth questions

48 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks essentially whether the concept of 'the place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, as regards actions seeking to hold a member of the board of directors and a shareholder of a limited company liable for the debts of that company, that place is situated in the Member State where that company has its seat.

49 In order to answer those questions, it must be recalled, first, that, according to settled case-law, the rule establishing special jurisdiction laid down, by way of derogation from the principle that jurisdiction lies with the courts of the defendant's place of domicile, in Article 5(3) of Regulation No 44/2001 is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, to that effect, *eDate Advertising and Martinez*, paragraph 40, and Case C-133/11 *Folien Fischer and Fofitec* [2012] ECR, paragraph 37 and the case-law cited).

50 In matters of tort, delict or quasi-delict, the courts of the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on grounds of proximity and ease of taking evidence (see, inter alia, *Folien Fischer and Fofitec*, paragraph 38 and the case-law cited).

51 Second, the expression 'place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001 is 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, *Folien Fischer and Fofitec*, paragraph 39 and the case-law cited). Those two places could constitute a significant connecting factor from the point of view of jurisdiction, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of the proceedings (*eDate Advertising and Martinez*, paragraph 41 and the case-law cited).

52 Thus, as regards the actions in the main proceedings, 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.

53 In that connection, it must be observed that, in a situation such as that at issue in the main proceedings, involving actions based on the allegation that a member of the board of directors and Copperhill's main shareholder have not fulfilled their legal requirements as regards monitoring the financial situation of that company and allowing it to continue to carry on business even though it was undercaptialised and required to go into liquidation, it is not the financial situation or the carrying-on of the business of that company which are at issue per se, but the conclusion to be drawn as regards a possible failure of monitoring by the member of the board of directors and the shareholder.

54 It is clear from the documents submitted to the Court that, in the period in which the disputed facts took place, Copperhill's seat was in the municipality of Åre within the jurisdiction of the Östersunds tingsrätt, where, in the same period, it carried on its business and built a hotel. In those circumstances, it appears that the activities carried out and the financial situation related to those activities is connected to that place. In any event, the information on the financial situation and activities of that company necessary to fulfill the management obligations by the member of the board of directors and the shareholder should have been available there. The same is true for the information concerning the alleged failure to comply with those obligations. It is for the referring court to ascertain the accuracy of that information.

55 Therefore, the answer to the fifth and sixth questions is that the concept of 'the place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001 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.

The seventh question

56 By its seventh question, the referring court asks essentially whether the fact that the claim at issue has been transferred from the original creditor to another has, in circumstances such as those in the main proceedings, any impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001.

57 In that connection, it should be borne in mind, first, as stated in paragraph 41 of this judgment, that the rules of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 reflect the aim of proximity and are based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred. A dispute concerning claims relating to 'tort, delict or quasi-delict' continues, in principle, to be closely connected to the place where the harmful event occurred, even though the claims at issue have been transferred.

58 Second, it must be observed that to allow the transfer of claims by the initial creditor to have an impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001 would also be contrary to one of the aims of that regulation, set out in recital 11 in the preamble thereto, according to which the rules of jurisdiction must be highly predictable.

59 Having regard to the foregoing considerations, the answer to the seventh question is that the fact that the claim at issue has been transferred by the initial creditor to another, in circumstances such as those at issue in the main proceedings, has no impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001.

Costs

60 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 (Fifth Chamber) hereby rules:

1. **The concept of 'matters relating to tort, delict or quasi delict' in Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that it covers actions such as those at issue in the main proceedings 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 that company to continue to carry on business even though it was undercapitalised and was forced to go into liquidation.**

2. **The concept of 'the place where the harmful event occurred or may occur' in Article 5(3) of Regulation No 44/2001 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.**

3. **The fact that the claim at issue has been transferred by the initial creditor to another, in circumstances such as those at issue in the main proceedings, has no impact on the determination of the court having jurisdiction under Article 5(3) of Regulation No 44/2001.**

[Signatures]