



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 February 2014 *

(Request for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 27(2) — Lis pendens — Article 24 — Prorogation of jurisdiction — Establishment of jurisdiction of the court first seised by reason of appearance being entered without objection by the parties or the adoption of a final judgment)

In Case C-1/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (France), made by decision of 19 December 2012, received at the Court on 2 January 2013, in the proceedings

Cartier parfums – lunettes SAS,

Axa Corporate Solutions assurances SA

v

Ziegler France SA,

Montgomery Transports SARL,

Inko Trade s. r. o.,

Jaroslav Matěja,

Groupama Transport,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Cartier parfums – lunettes SAS, by A.-F. Roger and A. Sevaux, avocats,

* Language of the case: French.

— the French Government, by D. Colas and B. Beaupère-Manokha, acting as Agents,
— the Austrian Government, by C. Pesendorfer, acting as Agent,
— the Swiss Government, by M. Jametti, acting as Agent,
— the European Commission, by S. Lejeune and A.-M. Rouchaud-Joët, 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 Article 27(2) 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 request has been made in proceedings between Cartier parfums – lunettes SAS ('Cartier') and Axa Corporate Solutions assurances SA ('Axa assurances') and Ziegler France SA ('Ziegler France'), Montgomery Transports SARL ('Montgomery Transports'), Inko Trade s. r. o. ('Inko Trade'), Jaroslav Matěja and Groupama Transport, concerning compensation for damage sustained by Cartier and Axa assurances as a result of the theft of goods during an international transport of goods by road.

Legal context

Regulation No 44/2001

- 3 Recital 2 in the preamble to Regulation No 44/2001 states that 'certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential'.
- 4 Recital 15 in the preamble thereto reads as follows:

'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. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.'

- 5 Article 24 of that regulation, in Section 7, entitled 'Prorogation of jurisdiction', in Chapter II thereof, relating to the rules of jurisdiction, provides:

'Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.'

- 6 Article 25 of that regulation, in Section 8, entitled ‘Examination as to jurisdiction and admissibility’ in Chapter II thereof, reads as follows:

‘Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.’

- 7 Article 27 of Regulation No 44/2001, which is part of Section 9 of Chapter II thereof, entitled ‘Lis pendens – related actions’, provides:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

The Brussels Convention

- 8 Regulation No 44/2001 replaced, in relations between the 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 on the accession of new Member States to that Convention, (‘the Brussels Convention’). Article 18 of that convention, in Section 6 thereof, entitled ‘Prorogation of jurisdiction’, provided:

‘Apart from jurisdiction derived from other provisions of this Convention, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16.’

- 9 Article 21 of the Brussels Convention, in its original version, which appears in Section 8 thereof, entitled ‘Lis pendens and related actions’, provided:

‘Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.’

Dispute in the main proceedings and the question referred for a preliminary ruling

- 10 Cartier entrusted the transport by road of cosmetic products to Ziegler France between Genas (France) and Wickford (United Kingdom). Ziegler France subcontracted the transport of those goods to Montgomery Transports, which itself subcontracted that service to Inko Trade which was, in turn, replaced by Jaroslav Matěja.
- 11 Jaroslav Matěja took charge of the goods at the warehouses of Saflog in Genas on 25 September 2007. During the night of 26 to 27 September 2007, at 00.30, in accordance with the legislation in force concerning the length of driving times, the driver stopped to rest at a service station in the United

Kingdom. The next morning he noticed that part of the consignment of goods had been stolen. The damage was estimated by Cartier's insurance company, Axa assurances, at EUR 145 176.08. Axa assurances paid Cartier EUR 144 176.08 by way of compensation.

- 12 On 24 September 2008, Cartier and Axa assurances brought an action before the Tribunal de commerce de Roubaix-Tourcoing (France) (Commercial Court, Roubaix-Tourcoing) against Ziegler France, Montgomery Transports, Inko Trade and Jaroslav Matěja seeking an order that they should be jointly and severally liable for payment of the sum of EUR 145 176.08.
- 13 Subsequently, a series of guarantee claims were brought before the same court by the carriers in which their respective insurers intervened.
- 14 The Tribunal de commerce de Roubaix-Tourcoing ordered all the proceedings to be joined.
- 15 At the hearing on 28 October 2010, Ziegler France raised a plea of *lis pendens*, based on Article 27 of Regulation No 44/2001, on the ground that it had previously brought an action before the High Court of Justice (England and Wales), Queen's Bench Division (London Mercantile Court), United Kingdom, by document of 16 September 2008. As is apparent from the file sent to this Court, Ziegler France lodged a claim form before the High Court of Justice against Cartier, Saflog and Wright Kerr Tyson Ltd, a company incorporated under the law of England and Wales, in order to determine liability and calculate the damage sustained by Cartier as a result of the theft at issue.
- 16 Cartier and Axa assurances claimed that that plea was inadmissible on the ground that it had not been raised *in limine litis*. Prior to the hearing, Ziegler France had lodged written submissions before the Tribunal de commerce de Roubaix-Tourcoing, relating to the substance of the case, although under Article 74 of the French Code of Civil Procedure procedural objections must be raised before any defence on the merits, failing which such an objection must be dismissed as inadmissible.
- 17 Cartier and Axa assurances also claimed that, in addition to being inadmissible, the plea of *lis pendens* was unfounded in so far as the jurisdiction of the High Court of Justice, as the court first seised, had not been established within the meaning of Article 27 of Regulation No 44/2001, and the two disputes did not concern the same subject-matter or the same parties.
- 18 By judgment of 6 January 2011, the Tribunal de commerce de Roubaix-Tourcoing held that the plea of *lis pendens* raised by Ziegler France was well founded on the ground, in particular, that Article 871 of the French Code of Civil Procedure allows procedural objections to be raised orally.
- 19 In that connection, the Tribunal de commerce held that the High Court of Justice had been first seised and that its jurisdiction had not been contested. Therefore, as regards the dispute between Cartier and Axa assurances and Ziegler France, the Tribunal de commerce held that it should decline jurisdiction pursuant to Article 27(2) of Regulation No 44/2001 in favour of the High Court of Justice. As regards the other parties, the Tribunal de commerce de Roubaix-Tourcoing decided to stay its proceedings pending the judgment of the High Court of Justice.
- 20 The Cour d'appel de Douai (Court of Appeal, Douai) (France), in its judgment of 14 April 2011, upheld the judgment of the Tribunal de commerce de Roubaix-Tourcoing, holding, in particular, that in the dispute between Cartier and Axa assurances and Ziegler France, the conditions for *lis pendens* had been met and that that court had lawfully declined jurisdiction in favour of the High Court of Justice. The Cour d'appel de Douai held that there was no doubt that the originating application before the United Kingdom court, lodged prior to the action in France, concerned the same transport, carried out from the warehouses of Saflog on behalf of Cartier and that, even though only some of the same parties were in both pending cases, it was undeniable that the issue of Ziegler France's liability discussed before the High Court of Justice would have repercussions for Montgomery transports, Inko Trade, Jaroslav Matěja and Groupama Transport.

- 21 Cartier and Axa assurances appealed against that judgment before the referring court. Those parties claim *inter alia* that the Cour d'appel de Douai has misconstrued the meaning and scope of Article 27 of Regulation No 44/2001 by holding that the jurisdiction of the High Court of Justice was 'established' within the meaning of that article as its jurisdiction has not been contested. Those companies argue that the jurisdiction of the court first seised may be established only by a judgment from that court explicitly rejecting its lack of jurisdiction or by the exhaustion of the remedies that are available against its decision to assume jurisdiction.
- 22 It is apparent from the national file that the referring court considers that it is undeniable that the High Court of Justice was first seised and that the conditions relating to the same parties and subject-matter of the disputes are satisfied in the present case. None the less, confronted with diverging academic opinion in France, the referring court is unsure as to the scope of the expression 'jurisdiction of the court first seised is established' within the meaning of Article 27(2) of Regulation No 44/2001.
- 23 In those circumstances, the Cour de cassation decided to stay the proceedings and to refer the following question to the Court:

'Must Article 27(2) of [Regulation No 44/2001] be interpreted as meaning that the jurisdiction of the court first seised is established, if neither party has claimed that it lacks jurisdiction or if the court has accepted its jurisdiction by a decision which is irrevocable for any reason whatsoever, including the exhaustion of legal remedies?'

The question referred for a preliminary ruling

- 24 As a preliminary point, it must be stated that, although the question whether *lis pendens* had arisen within the meaning of Article 27(1) of Regulation No 44/2001 was discussed in the dispute in the main proceedings before the court of first instance and on appeal, the referring court has asked the Court of Justice only about the scope of Article 27(2) of that regulation.
- 25 In that connection, it must be recalled that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (Case C-184/12 *Unamar* [2013] ECR, paragraph 28 and the case-law cited).
- 26 Furthermore, it must be observed that nothing in the documents before the Court suggests that the main proceedings fall within an exclusive head of jurisdiction laid down in Article 22 of Regulation No 44/2001. The Court's ruling does not, therefore, have to cover cases in which the court second seised has such exclusive jurisdiction (see, to that effect, Case C-351/89 *Overseas Union Insurance and Others* [1991] ECR I-3317, paragraph 20).
- 27 Therefore, it must be held that, by its question, the referring court asks essentially whether Article 27(2) of Regulation No 44/2001 must be interpreted as meaning that it is sufficient, for the jurisdiction of the court first seised to be established within the meaning of that provision, that no party has contested its jurisdiction or whether it is necessary that that court has impliedly or expressly assumed jurisdiction by a judgment which has become final.
- 28 In that connection, it is clear from the material put before the Court that, in the case in the main proceedings, the court first seised has not declined jurisdiction of its own motion and that Cartier appeared before it to contest the claims by Zielgler France on the merits, without challenging the jurisdiction of that court.

- 29 In order to answer that question it must be recalled, first of all, that under Article 27(1) of Regulation No 44/2001, where there are parallel proceedings before the courts of different Member States, the court second seised must stay its proceedings of its own motion until the jurisdiction of the court first seised is established.
- 30 Furthermore, Article 27(2) provides that, where the jurisdiction of the court first seised is established, any court other than the court first seised must decline jurisdiction in favour of that court.
- 31 Next, as the French Government and the European Commission rightly observed, Regulation No 44/2001 does not set out in what circumstances the jurisdiction of the court first seised must be regarded as ‘established’ within the meaning of Article 27 thereof.
- 32 According to settled case-law, the provisions of that regulation must be interpreted independently, by reference to its scheme and purpose (see, Case C-456/11 *Gothaer Allgemeine Versicherung and Others* [2012] ECR, paragraph 25 and the case-law cited).
- 33 Therefore, in order to answer the question referred the overall scheme and purpose of Regulation No 44/2001 must be taken into account.
- 34 In the first place, as regards the overall scheme of Regulation No 44/2001, it must be recalled that the first sentence of Article 24 of Regulation No 44/2001 provides for a rule of jurisdiction based on the entering of an appearance by the defendant in respect of all disputes where the jurisdiction of the court seised is not derived from other provisions of that regulation. That provision applies also in cases where the court has been seised in breach of the provisions of that regulation and implies that the entering of an appearance by the defendant may be considered to be a tacit acceptance of the jurisdiction of the court seised and thus a prorogation of that court’s jurisdiction (Case C-111/09 *ČPP Vienna Insurance Group* [2010] ECR I-4545, paragraph 21).
- 35 The second sentence of Article 24 of Regulation No 44/2001 provides for exceptions to that general rule. It determines that there is no tacit prorogation of jurisdiction of the court seised where the defendant contests the jurisdiction, thereby expressing his intention not to accept that court’s jurisdiction, or where the dispute is one in respect of which Article 22 of that regulation provides for rules on exclusive jurisdiction (*ČPP Vienna Insurance Group*, paragraph 22).
- 36 The Court has already held that it is clear from Article 18 of the Brussels Convention, a provision which in essence is identical to Article 24 of Regulation No 44/2001, that the challenge to jurisdiction may not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised (Case 150/80 *Elefanten Schuh* [1981] ECR 1671, paragraph 16, and Case C-144/12 *Goldbet Sportwetten* [2013] ECR, paragraph 37).
- 37 Moreover, the Court has held that Article 18 of the Brussels Convention also applies in a case where the defendant makes submissions on both the jurisdiction of the court and the substance of the dispute. However, the challenge to jurisdiction may have the result attributed to it by Article 18 only if the applicant and the court seised of the matter are able to ascertain from the time of the defendant’s first defence that it is intended to contest the jurisdiction of the court (see, to that effect, *Elefanten Schuh*, paragraphs 14 and 15).
- 38 It follows that the system established by Regulation No 44/2001, as is clear from Articles 24 and 27 thereof, was devised in order to avoid prolonging the length of time for which proceedings were stayed by the court second seised, when, in reality, the jurisdiction of the court first seised may no longer be challenged, as set out in paragraph 36 above.

- 39 Such a risk does not arise where, as in the case in the main proceedings, the court first seised has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time when a position is adopted which is regarded under national procedural law as the first defence.
- 40 In the second place, as regards the purpose itself of Regulation No 44/2001, it must be recalled that one of the aims of that regulation, as is clear from recital 15 in the preamble thereto, is to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given where a number of courts have jurisdiction to hear the same dispute. It is for that purpose that the European Union legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens*. It follows that, in order to achieve those aims, Article 27 of Regulation No 44/2001 must be interpreted broadly (*Overseas Union Insurance and Others*, paragraph 16).
- 41 It must be stated that an interpretation of Article 27(2) of that regulation, according to which, in order to establish the jurisdiction of the court first seised within the meaning of that provision, it is necessary that that court has impliedly or expressly accepted jurisdiction by a judgment which has become final would, by increasing the risk of parallel proceedings, deprive the rules intended to resolve situations of *lis pendens*, laid down by that regulation, of all their effectiveness.
- 42 Furthermore, as is clear from the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1) and the case-law of the Court on Article 21 thereof, which corresponds to Article 27 of Regulation No 44/2001, the aim of the rule on *lis pendens* is also to avoid negative conflicts of jurisdiction. That rule was introduced so that the parties would not have to institute new proceedings if, for example, the court first seised of the matter were to decline jurisdiction (see *Overseas Union Insurance and Others*, paragraph 22).
- 43 Where the court first seised has not declined jurisdiction of its own motion and no objection of lack of jurisdiction has been raised before it, the fact that the court second seised declines jurisdiction cannot result in a negative conflict of jurisdiction since the jurisdiction of the court first seised can no longer be contested.
- 44 Accordingly, it must be held that it is clear both from the overall scheme and the purpose of Regulation No 44/2001 that, in order for the jurisdiction of the court first seised to be established within the meaning of Article 27(2) thereof, it is sufficient, where the court second seised does not have exclusive jurisdiction under that regulation, that the court first seised has not declined jurisdiction of its own motion and that none of the parties has contested that jurisdiction before or up to the time at which a position is adopted which is regarded by national procedural law as being the first defence.
- 45 Having regard to all of the foregoing considerations, the answer to the question is that Article 27(2) of Regulation No 44/2001 must be interpreted as meaning that, except in the situation where the court second seised has exclusive jurisdiction by virtue of that regulation, the jurisdiction of the court first seised must be regarded as being established, within the meaning of that provision, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court.

Costs

- 46 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 (Third Chamber) hereby rules:

Article 27(2) 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, except in the situation where the court second seised has exclusive jurisdiction by virtue of that regulation, the jurisdiction of the court first seised must be regarded as being established, within the meaning of that provision, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court.

[Signatures]