



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

13 March 2014*

(Area of freedom, security and justice — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1) and (3) — Civil liability claim — Tortious or contractual nature)

In Case C-548/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Krefeld (Germany), made by decision of 27 September 2012, received at the Court on 30 November 2012, in the proceedings

Marc Brogsitter

v

Fabrication de Montres Normandes EURL,

Karsten Fräßdorf,

THE COURT (Seventh Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, J.-C. Bonichot (Rapporteur), and A. Arabadjiev, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 28 November 2013,

after considering the observations submitted on behalf of:

- Mr Brogsitter, Rechtsanwalt, represented by himself,
- Fabrication de Montres Normandes EURL and Mr Fräßdorf, by A. Mansouri, Rechtsanwalt,
- the Portuguese Government, by L. Inez Fernandes and S. Nunes de Almeida, acting as Agents,
- the European Commission, by W. Bogensberger and A.-M. Rouchaud-Joët, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(1) 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 Mr Brogsitter, domiciled in Kempen (Germany), and Fabrication de Montres Normandes EURL ('Fabrication de Montres Normandes'), a company established in Brionne (France), and Mr Fräßdorf, domiciled in Neuchâtel (Switzerland), in relation to claims brought by Mr Brogsitter for various purposes as a result of damage he claims to have suffered from conduct allegedly amounting to unfair competition.

Legal context

EU law

- 3 Article 1(1) of Regulation No 44/2001 states:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.'

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

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

- 5 Article 5 of Regulation No 44/2001 provides:

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

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 point (b) does not apply then point (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;

...'

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

- 6 It is apparent from the order for reference that Mr Brogsitter sells luxury watches. In 2005, he concluded a contract with a master watchmaker, Mr Fräbärdorf, then resident in France, pursuant to which the latter undertook to develop movements for luxury watches, intended for mass marketing, on behalf of Mr Brogsitter. Mr Fräbärdorf carried out his activity with Fabrication de Montres Normandes, company of which he was sole shareholder and manager. Since 2010, Mr Fräbärdorf has been domiciled in Switzerland.
- 7 It appears that Mr Brogsitter paid all costs relating to the development of the two watch movements which were the subject of the contract.
- 8 In addition to the work relating to those two movements, Mr Fräbärdorf and Fabrication de Montres Normandes also developed, in parallel, other watch movements, cases and watch faces, which they exhibited in their own names at the world watch show in Basel (Switzerland) during April and May 2009. They marketed them in their own names and on their own behalf, whilst advertising the products online in French and German.
- 9 Mr Brogsitter submits that, by those activities, the defendants breached the terms of their contract. According to Mr Brogsitter, Mr Fräbärdorf and Fabrication de Montres Normandes had undertaken to work exclusively for him and, therefore, might neither develop nor make use of, in their own names and on their own behalf, watch movements, whether or not identical to those which were the subject of the contract.
- 10 Mr Brogsitter seeks an order that the activities in question be terminated and that damages be awarded in tort against the other parties to the contract, on the basis, in German law, of the Law against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*) and Paragraph 823(2) of the Civil Code (*Bürgerliches Gesetzbuch*); he submits that, by their conduct, the defendants breached business confidentiality, disrupted his business and committed fraud and breach of trust.
- 11 The defendants submit that the court should dismiss the action. They also submit a counterclaim in which they argue that the disputed calibre movements were, at all events, of a construction different from that which was the subject of the contract and that they were not covered by any right of exclusivity. The defendants also raise a plea of lack of jurisdiction on the basis that only French courts have jurisdiction, under Article 5(1) of Regulation No 44/2001, to determine all the applications made by Mr Brogsitter, as both the place of performance of the contract at issue and of the allegedly harmful event were situated in France.
- 12 In the course of proceedings, Fabrication de Montres Normandes went into liquidation. The receiver, appointed in France, authorised the defendants' agents to continue proceedings.
- 13 It is also apparent from the order for reference that the Oberlandesgericht Düsseldorf (Higher Regional Court of Düsseldorf) has already ruled on appeal, in a decision of 5 October 2011, on a first judgment of the Landgericht Krefeld (Regional Court of Krefeld) in which that court found itself lacking jurisdiction. The Oberlandesgericht Düsseldorf held that the first instance court's international jurisdiction derived, with regard to the dispute before it, from Article 5(3) of Regulation No 44/2001 with respect to the hearing and determination of only the civil liability claims made in tort by Mr Brogsitter. The other claims, in contrast, concerned 'matters relating to a contract' within the meaning of Article 5(1) of that regulation, and should be brought before a French court.
- 14 The Landgericht Krefeld is uncertain whether, given the circumstances of the case and, in particular, the existence of a contract between the parties to the dispute, the claims for liability brought before it should not also be considered as concerning 'matters relating to a contract' within the meaning of Article 5(1) of Regulation No 44/2001 and thus falling within the jurisdiction of the French courts.

- 15 In that context, the Landgericht Krefeld decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must Article 5(1) of Regulation [No 44/2001] be interpreted as meaning that a claimant who purports to have suffered damage as a result of the conduct amounting to unfair competition of his contractual partner established in another Member State, which is to be regarded in German law as a tortious act, also relies on rights stemming from matters relating to a contract against that person, even if he makes his civil liability claim in tort?’

The question referred for a preliminary ruling

- 16 By its question, the referring court asks, in essence, whether claims for civil liability, such as those at issue in the main proceedings, made in tort under national law, must nonetheless be regarded as concerning ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001, taking account of the contract which binds the parties in the main proceedings.
- 17 At the outset, the plea of inadmissibility raised by Mr Brogsitter — according to which the question is irrelevant as the referring court should at all events be regarded as having jurisdiction under Article 5(1)(b) of Regulation No 44/2001 (which relates to contracts for the sale of goods) or Article 5(3) of the regulation — must be rejected. Indeed, such a line of argument relates only to the interpretation to be given to the provisions of EU law at issue in the case in the main proceedings and, therefore, does not constitute a ground of inadmissibility of the question referred for a preliminary ruling.
- 18 It should also be pointed out that it is settled case-law that the concepts ‘matters relating to a contract’ and ‘matters relating to tort, delict or quasi-delict’ within the meaning, respectively, of Article 5(1)(a) and (3) of Regulation No 44/2001, must be interpreted independently, by reference to the regulation’s scheme and purpose, in order to ensure that it is applied uniformly in all the Member States (see, inter alia, Case C-147/12 *ÖFAB* [2013] ECR, paragraph 27). Those concepts cannot therefore be taken to refer to how the legal relationship in question before the national court is classified by the relevant national law.
- 19 Furthermore, in so far as Regulation No 44/2001 now replaces, in relationships 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 instruments may be regarded as equivalent (*ÖFAB*, paragraph 28). This applies to Article 5(1)(a) and (3) of the regulation in relation to Article 5(1) and (3) respectively of the Brussels Convention (see, to that effect, *ÖFAB*, paragraph 29).
- 20 In that regard, it is apparent from settled case-law that 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 which do not concern ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of the regulation (see to that effect, inter alia, Case 189/87 *Kalfelis* [1988] ECR 5565, paragraph 17).
- 21 In order to determine the nature of the civil liability claims brought before the referring court, it is important first to check whether they are, regardless of their classification under national law, contractual in nature (see, to that effect, Case C-167/00 *Henkel* [2002] ECR I-8111, paragraph 37).
- 22 It is apparent from the order for reference that the parties to the main proceedings are bound by a contract.

- 23 However, the mere fact that one contracting party brings a civil liability claim against the other is not sufficient to consider that the claim concerns ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001.
- 24 That is the case only where the conduct complained of may be considered a breach of contract, which may be established by taking into account the purpose of the contract.
- 25 That will a priori be the case where the interpretation of the contract which links the defendant to the applicant is indispensable to establish the lawful or, on the contrary, unlawful nature of the conduct complained of against the former by the latter.
- 26 It is therefore for the referring court to determine whether the purpose of the claims brought by the applicant in the case in the main proceedings is to seek damages, the legal basis for which can reasonably be regarded as a breach of the rights and obligations set out in the contract which binds the parties in the main proceedings, which would make its taking into account indispensable in deciding the action.
- 27 If that is the case, those claims concern ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001. Otherwise, they must be considered as falling under ‘matters relating to tort, delict or quasi-delict’ within the meaning of Article 5(3) of Regulation No 44/2001.
- 28 It should also be noted that, in the first case, jurisdiction in matters relating to a contract is to be determined in accordance with the connecting factors defined in Article 5(1)(b) of Regulation No 44/2001 if the contract at issue in the main proceedings is a contract for the sale of goods or for the supply of services within the meaning of that provision. As provided in Article 5(1)(c) of Regulation No 44/2001, it is in fact only when a contract does not fall within either of those two categories that it is appropriate to determine the competent jurisdiction in accordance with the connecting factor provided for in Article 5(1)(a) of Regulation No 44/2001 (see, to that effect, Case C-533/07 *Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraph 40, and Case C-9/12 *Corman-Collins* [2013] ECR, paragraph 42).
- 29 Therefore, the answer to the question referred is that civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning ‘matters relating to a contract’ within the meaning of Article 5(1)(a) of Regulation No 44/2001, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.

Costs

- 30 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 (Seventh Chamber) hereby rules:

Civil liability claims such as those at issue in the main proceedings, which are made in tort under national law, must nonetheless be considered as concerning ‘matters relating to a contract’ within the meaning of Article 5(1)(a) 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, where the conduct complained of may be considered a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.

[Signatures]