



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 October 2018*

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Special jurisdiction — Article 7(1)(a) — Concept of ‘matters relating to a contract’ — *Actio pauliana*)

In Case C-337/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Szczecinie (Szczecin Regional Court, Poland), made by decision of 29 May 2017, received at the Court on 7 June 2017, in the proceedings

Feniks sp. z o.o.

v

Azteca Products & Services SL,

THE COURT (Second Chamber),

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

Advocate General: M. Bobek,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 11 April 2018,

after considering the observations submitted on behalf of:

- Feniks sp. z o.o., by P. Zimmerman and B. Sierakowski, radcowie prawni,
- Azteca Products & Services SL, by M. Świrgoń, adwokat,
- the Polish Government, by B. Majczyna and M. Nowak and by K. Majcher, acting as Agents,
- the Swiss Government, by M. Schöll, acting as Agent,
- the European Commission, by M. Wilderspin and by M. Heller and A. Stobiecka-Kuik, acting as Agents,

* Language of the case: Polish.

after hearing the Opinion of the Advocate General at the sitting on 21 June 2018,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(1)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).
- 2 The request has been made in proceedings between Feniks sp. z o.o. and Azteca Products & Services SL ('Azteca') concerning a contract for the sale of immovable property, concluded between Azteca and a debtor of Feniks, the contract being allegedly detrimental to the rights of Feniks.

Legal context

European Union law

Regulation No 1215/2012

- 3 Recitals 15, 16 and 34 of Regulation No 1215/2012 are worded as follows:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting 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.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

...

(34) Continuity between the Convention [of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36)], Regulation (EC) No 44/2001 [of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies with regard to the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.'

4 Under Chapter I of this regulation entitled ‘Scope and definitions’, Article 1 provides:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. ...

2. This Regulation shall not apply to:

...

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

...’

5 Chapter II of this regulation entitled ‘Jurisdiction’, contains in particular Section 1 ‘General provisions’ and Section 2 ‘Special jurisdiction’. Article 4(1), which can be found in Section 1, provides:

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

6 Article 7, which can be found in Section 2 of the same regulation, is worded as follows:

‘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;

...’

Regulation (EC) No 1346/2000

7 Article 1 entitled ‘Scope of application’, of Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1), provides in paragraph 1:

‘This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.’

Polish law

- 8 Article 527 et seq. of the ustawa Kodeks cywilny (Law on the Civil Code) of 23 April 1964 (Dz. U. of 1964, No 16, position 93), in the version applicable to the case in the main proceedings (Dz. U. of 2017, position 459) ('the Civil Code') governing the so-called *actio pauliana*, which may render a transaction whereby the debtor has effected a disposition in fraud of the creditor's rights ineffective in relation to the creditor. Article 527 of the Civil Code states:

'(1) If, as a result of a legal act of a debtor done to the detriment of creditors, a third party has obtained an economic advantage, any of the creditors may request that that act be declared ineffective in respect of him, where the debtor knowingly acted to the detriment of the creditor, and the third party knew or, in the exercise of due diligence, could have known, about it.

(2) A legal act of a debtor is done to the detriment of creditors if, as a result of such act, the debtor has become insolvent or insolvent to a greater degree than he was before the act was done.

(3) If, as a result of a legal act of a debtor done to the detriment of creditors, a person who is in a close relationship with the debtor has obtained an economic advantage, it shall be presumed that such person knew that the debtor knowingly acted to the detriment of the creditors.

(4) If, as a result of a legal act of a debtor done to the detriment of creditors, an undertaking in a permanent commercial relationship with the debtor has obtained an economic advantage, it shall be presumed that it was aware that the debtor knowingly acted to the detriment of the creditors.'

- 9 Article 528 of the Civil Code reads as follows:

'If, as a result of a legal act of a debtor done to the detriment of creditors, a third party has obtained an economic advantage free of charge, a creditor may request that the act be declared ineffective even though the person did not know and, even in the exercise of due diligence, could not have known, that the debtor knowingly acted to the detriment to the creditors.'

- 10 Article 530 of this code states:

'The provisions of the preceding articles shall apply *mutatis mutandis* where a debtor acted with the intention of causing detriment to future creditors. If, however, a third party has obtained economic advantage in return for payment, a creditor may request that the act be declared ineffective only if the third party knew of the debtor's intention.'

- 11 Article 531 of the same code provides:

'(1) An act of a debtor done to the detriment of creditors shall be declared ineffective through an action or plea raised against the third party who has obtained an economic advantage as a result of that act.

(2) Where a third party has disposed of the advantage obtained, the creditor may directly sue the person to whom the disposition was made if that person knew of circumstances justifying the debtor's act being declared ineffective or if the disposition was free of charge.'

- 12 Under Article 532 of the Civil Code:

'A creditor in respect of whom the legal act of a debtor has been declared ineffective may, with priority over third-party creditors, obtain satisfaction from items of property which, as a result of the act being declared ineffective, were removed from, or not included in, the debtor's assets.'

13 Article 533 is worded as follows:

‘A third party who has obtained an economic advantage as a result of a legal act of the debtor done to the detriment of creditors may be exempted from meeting a claim raised by a creditor requesting that the act be declared ineffective if he satisfies that creditor, or indicates to him, property of the debtor sufficient to satisfy him.’

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

- 14 Coliseum 2101 sp. z o.o. (‘Coliseum’), established in Poland, acting as a general contractor, concluded with Feniks, also established in Poland, acting as an investor, a contract concerning the performance of construction works as part of an immovable property investment project located in Gdańsk (Poland). For the purpose of fulfilling the contract, Coliseum concluded a number of subcontracts.
- 15 As Coliseum had not been able to meet its obligations in respect of some of its subcontractors, Feniks was required to pay a sum of money to them on account of the provisions in the Civil Code on the joint and several liability of the investor and thus became a creditor of Coliseum for a total sum of 1 396 495,48 Polish zloty (PLN) (approximately EUR 336 174).
- 16 Pursuant to agreements concluded on 30 and 31 January 2012 in Szczecin (Poland), Coliseum sold to Azteca, established in Alcora (Spain), immovable property located in Szczecin for a sum of PLN 6 079 275 (approximately EUR 1 463 445), in partial fulfilment of prior claims by Azteca. The latter was nevertheless still required to pay to Coliseum the sum of PLN 1 091 413,70 (approximately EUR 262 732). According to the information provided by Feniks, on the date on which the sale was concluded, 30 January 2012, the President of the management body of Coliseum was also the representative of Horkios Gestion SA, established in Alcora, the latter being the only member of the management body of Azteca.
- 17 Coliseum being insolvent, on 11 July 2016 Feniks brought an action, based on Article 527 et seq. of the Civil Code, against Azteca before the Sąd Okręgowy w Szczecinie (Szczecin Regional Court, Poland), the referring court, seeking a declaration that the contract of sale referred to above is ineffective in relation to it, because of the fact that it was concluded by his debtor in fraud of the creditor’s rights.
- 18 In establishing the jurisdiction of that court, Feniks relied on Article 7(1)(a) of Regulation No 1215/2012.
- 19 Azteca raised an objection alleging that the Polish courts lack jurisdiction. It stated that the international jurisdiction of a court to hear and determine an action seeking to have a legal act declared ineffective should be established according to the general rule laid down in Article 4(1) of Regulation No 1215/2012, in favour of the Spanish courts. Furthermore it claimed that such an action would not be qualified as ‘matters relating to a contract’ within the meaning of Article 7(1)(a) of the same regulation.
- 20 In analysing this plea of lack of international jurisdiction, the referring court describes the main features of the *actio pauliana* in Polish law, as can be seen in the provisions of the Civil Code, cited in paragraphs 8 to 13 of the present judgment, and it explained that this action is an exception to the principle according to which the creditor only has access to the debtor’s assets. The referring court adds that Article 527(3) of the Civil Code infers from the existence of a close relationship between the debtor and the third party a presumption that by the act, which is requested to be declared ineffective, the third party knew that the debtor knowingly acted to the detriment of the creditor. This presumption means that the creditor must merely show, in such a scenario, that a close relationship exists between the debtor and the third party.

- 21 The referring court considers that the international jurisdiction of Polish courts to hear and determine an action such as the one which was brought before it, can be supported only by Article 7(1)(a) of Regulation No 1215/2012. In this regard, it argues that while admittedly this dispute is not between the parties to the contract relating to the performance of construction works, namely Feniks and Coliseum, and does not concern the validity of this contract, it is still up to the referring court to examine whether the contract concluded between Azteca and Coliseum is or is not effective with regard to Feniks.
- 22 The national court submits that Article 7(1)(a) of Regulation No 1215/2012 relates to all disputes having a link with a contract. Indeed, regarding the dispute before it, there is a link between the resolution of that dispute and the contract concluded between Azteca and Coliseum which is alleged to be ineffective so far as Feniks is concerned.
- 23 Moreover, while acknowledging that Article 7(1)(a) of Regulation No 1215/2012 must be interpreted strictly, the national court nevertheless emphasises the disadvantages, which, according to it, would be created by the application of the general rule regarding jurisdiction in Article 4(1) of this regulation, if the applicant — in the context of proceedings concerning the ineffectiveness of several legal acts concluded by his debtor with other contracting parties established in other Member States — were obliged to bring separate actions before the courts of the various Member States and thus incur costs disproportionate to the objective of the proceedings.
- 24 According to this court, although in the judgment of 17 June 1992, *Handte* (C-26/91, EU:C:1992:268) the Court of Justice held that ‘matters relating to a contract’ is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another, the factual context of that case was special, because it concerned a chain of international contracts in which the parties’ contractual obligations might vary from contract to contract.
- 25 Nonetheless, in this case, one of the specificities of the *actio pauliana* in Polish law is the perception which the third party must or may have as to the fact that the debtor knowingly acted to the detriment to the creditors, and as a result, that creditors who have suffered detriment may make a claim against it.
- 26 It is against this background that the Sąd Okręgowy w Szczecinie (Szczecin Regional Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does a case brought against a buyer established in one Member State, seeking a declaration that a contract for the sale of immovable property situated in the territory of another Member State, which was concluded and performed in its entirety in the territory of another Member State, is ineffective on the ground of detriment to the seller’s creditors, constitute a ‘matter relating to a contract’ within the meaning of Article 7(1)(a) of [Regulation No 1215/2012]?
- (2) Must the above question be answered applying the principle of *acte éclairé* with reference to the judgment of 17 June 1992, *Handte* (C-26/91, EU:C:1992:268), despite the fact that it concerned the liability for defects in goods of a manufacturer who could not foresee to whom the goods would subsequently be sold, and thus who would be able to bring claims against him, whereas the present action against a buyer “seeking a declaration that a contract for the sale of immovable property is ineffective” on the ground of detriment to the seller’s creditors, requires, in order to be effective, knowledge on the part of the buyer that the legal act (contract of sale) was done with detriment to creditors, and thus the buyer must anticipate that such an action may be brought by a personal creditor of the seller?’

Consideration of the questions referred

- 27 By these two questions, which must be examined together, the national court asks in essence whether an *actio pauliana*, whereby the person entitled to a debt requests that an act by which his debtor has transferred an asset to a third party and which is allegedly detrimental to his rights be declared ineffective in relation to the creditor, is covered by the rule of international jurisdiction provided for in Article 7(1)(a) of Regulation No 1215/2012.

Applicability of Regulation No 1215/2012

- 28 As can be seen from the request for a preliminary ruling, the enforcement proceedings begun against Coliseum were terminated because of a lack of assets, as this company is currently insolvent.
- 29 Therefore, the question arises as to whether the main proceedings fall within the scope of Regulation No 1215/2012 or rather, whether they fall within the scope of an insolvency procedure governed by Regulation No 1346/2000, applicable *ratione temporis* to the main proceedings.
- 30 In this regard, it should be recalled that the Court has held that Regulations No 1215/2012 and No 1346/2000 should be interpreted in such a way as to avoid any overlap between the rules of law that those instruments lay down and any legal vacuum. Accordingly, actions excluded under Article 1(2)(b) of Regulation No 1215/2012 from the application of that regulation because they come under 'bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings', fall within the scope of Regulation No 1346/2000. Correspondingly, actions which fall outside the scope of Regulation No 1346/2000 fall within the scope of Regulation No 1215/2012 (judgment of 20 December 2017, *Valach and Others*, C-649/16, EU:C:2017:986, paragraph 24 and the case-law cited).
- 31 The Court has also held that an action is related to bankruptcy or winding-up if it derives directly from the bankruptcy or winding-up and is closely connected with the proceedings for the liquidation of assets or composition proceedings (judgment of 12 February 2009, *Seagon*, C-339/07, EU:C:2009:83, paragraph 19 and the case-law cited).
- 32 However, in this case, the action brought by Feniks does not seem to be at all connected with proceedings for the liquidation of assets or composition proceedings. Furthermore, during the hearing before the Court, Feniks, in response to a question put by the Court, stated that no insolvency proceedings were begun against Coliseum; that is, however, for the national court to verify.
- 33 In so far as the action in the main proceedings, based on Article 527 et seq. of the Civil Code, aims to preserve the creditor's own interests and not to increase the assets of Coliseum, it falls within the notion of 'civil and commercial matters' within the meaning of Article 1(1) of Regulation No 1215/2012.

Substance

- 34 It should be recalled that Regulation No 1215/2012 aims to harmonise the rules regarding conflicting jurisdictions in civil and commercial matters by means of creating rules governing jurisdiction that are highly predictable. Therefore, the purpose of this regulation is to strengthen the legal protection of persons established in the European Union by enabling the applicant to identify easily the court in which he may sue and a normally well-informed defendant to reasonably foresee in which court he may be sued (see, to that effect, judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 16 and the case-law cited).

- 35 According to the Court's settled case-law, the system of common rules on conferment of jurisdiction laid down in Chapter II of Regulation No 1215/2012 is based on the general rule, set out in Article 4(1) of that regulation, 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 Chapter II of Regulation No 1215/2012 makes provision for certain special jurisdictional rules, such as those laid down in Article 7(1)(a) of that regulation (see, to that effect, judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 17 and the case-law cited).
- 36 In addition to the aforementioned jurisdiction of the courts of the defendant's domicile there should be, as stated in recital 16 of this regulation, alternative grounds of jurisdiction based on a close connection between the court and the action or facilitation of the sound administration of justice.
- 37 The special jurisdictional rules must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 18 and the case-law cited).
- 38 Concerning the special jurisdiction laid down in Article 7(1)(a) of Regulation No 1215/2012 in actions concerning the concept of 'matters relating to a contract', this concept must be interpreted independently in order to ensure that it is applied uniformly in all the Member States (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 58 and the case-law cited).
- 39 As the Court has consistently held, the application of this rule of special jurisdiction 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, to that effect, judgments of 20 January 2005, *Engler*, C-27/02, EU:C:2005:33, paragraph 51; of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 33; and of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 44).
- 40 The *actio pauliana* is based on the creditor's personal claim against the debtor and seeks to protect whatever security he may have over the debtor's estate (judgments of 10 January 1990, *Reichert and Kockler*, C-115/88, EU:C:1990:3, paragraph 12, and of 26 March 1992, *Reichert and Kockler*, C-261/90, EU:C:1992:149, paragraph 17).
- 41 It thus preserves the interests of the creditor with a view in particular to a subsequent enforcement of the debtor's obligations (judgment of 26 March 1992, *Reichert and Kockler*, C-261/90, EU:C:1992:149, paragraph 28).
- 42 Although it can be seen from the request for a preliminary ruling that Feniks paid the subcontractors used by Coliseum for the performance of construction works because of a provision in national law which establishes the joint and several liability of the investor towards the performers of the works, the fact remains that both the security that Feniks has over the debtor's estate and the present action regarding the ineffectiveness of the sale concluded by the debtor with a third party originate in the obligations freely consented to by Coliseum with regard to Feniks upon the conclusion of their contract relating to those construction works.
- 43 By this action the creditor seeks a declaration that the transfer of assets by the debtor to a third party has caused detriment to the creditor's rights deriving from the binding nature of the contract and which correspond with the obligations freely consented to by the debtor. The cause of this action therefore lies essentially in the breach of these obligations towards the creditor to which the debtor agreed.

- 44 It follows that the *actio pauliana*, once it is brought on the basis of the creditor's rights created upon the conclusion of a contract, falls within 'matters relating to a contract' within the meaning of the case-law cited in paragraph 39 of this judgment. It is thus necessary that in addition to the forum of the defendant's domicile, there should be a supplementary ground of jurisdiction, namely that prescribed by Article 7(1)(a) of Regulation No 1215/2012, such jurisdiction meeting, with regard to the contractual origin of the relationship between the creditor and debtor, both the requirement for legal certainty and foreseeability and the aim to facilitate the sound administration of justice.
- 45 Were it otherwise, the creditor would be forced to bring proceedings before the court of the place where the defendant is domiciled, that forum, as prescribed by Article 4(1) of Regulation No 1215/2012, possibly having no link to the place of performance of the obligations of the debtor with regard to his creditor.
- 46 Therefore, it is for the creditor who holds the claim derived from a contract and who intends to bring an *actio pauliana*, to bring this action before the courts in 'the place of performance of the obligation in question' as prescribed by Article 7(1)(a) of Regulation No 1215/2012. In the present case, as the action brought by the creditor aims to preserve its interests in the performance of the obligations derived from the contract concerning construction works, it follows that 'the place of performance of the obligation in question' is, according to Article 7(1)(b) of this regulation, the place where, under the contract, the construction services were provided, namely Poland.
- 47 Such a conclusion meets the objective concerning the predictability of the rules relating to jurisdiction, all the more since a professional who has concluded a contract for the sale of immovable property may, where the creditor of the other contracting party objects that the contract obstructs the performance of obligations which the other contracting party has towards that creditor, reasonably expect to be sued in the courts of the place of performance of these obligations.
- 48 That conclusion reached in the previous paragraph is not in any way invalidated by the fact, arising in the present case from Article 531(1) of the Civil Code, that the action was brought against the third party and not the debtor. It must be borne in mind in that regard that the rule of special jurisdiction in matters relating to a contract provided for in Article 7(1)(a) of Regulation No 1215/2012 is based on the cause of action, not the identity of the parties (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 61 and the case-law cited).
- 49 Therefore, the answer to the questions referred for a preliminary ruling, is that, in a situation such as that at issue in the main proceedings, an *actio pauliana*, whereby the person entitled to a debt arising under a contract requests that an act by which his debtor has transferred an asset to a third party and which is allegedly detrimental to his rights be declared ineffective in relation to the creditor, is covered by the rule of international jurisdiction provided for in Article 7(1)(a) of Regulation No 1215/2012.

Costs

- 50 Since this request is, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

In a situation such as that at issue in the main proceedings, an *actio pauliana*, whereby the person entitled to a debt arising under a contract requests that an act by which his debtor has transferred an asset to a third party and which is allegedly detrimental to his rights be declared ineffective in relation to the creditor, is covered by the rule of international jurisdiction provided

for in Article 7(1)(a) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[Signatures]