

KLEIN

JUDGMENT OF THE COURT (First Chamber)

13 October 2005 \*

In Case C-73/04,

REFERENCE to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, from the Oberlandesgericht Hamm (Germany), by decision of 27 January 2004, received at the Court on 17 February 2004, in the proceedings

**Brigitte and Marcus Klein**

v

**Rhodos Management Ltd,**

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of Chamber, K. Schiemann, N. Colneric, J.N. Cunha Rodrigues and E. Levits, Judges,

\* Language of the case: German.

Advocate General: L.A. Geelhoed,  
Registrar: R. Grass,

after considering the observations submitted on behalf of:

- Mr and Mrs Klein, by M. Brinkmann, Rechtsanwalt,
- the Federal Republic of Germany, by R. Wagner, acting as Agent,
- the United Kingdom of Great Britain and Northern Ireland, by C. Jackson and R. Caudwell, acting as Agents, and T. de la Mare, barrister,
- the Commission of the European Communities, by A.-M. Rouchaud-Joët and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2005,

gives the following

### **Judgment**

- <sup>1</sup> This reference for a preliminary ruling concerns the interpretation of Article 16(1) (a) of 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 Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978

L 304, p. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1; 'the Convention').

- 2 The reference was made in the course of proceedings brought by Mr and Mrs Klein against Rhodos Management Ltd ('Rhodos') for the repayment of sums paid on the conclusion of a contract under the terms of which Mr and Mrs Klein acquired a right to use an apartment in Greece on a time-share basis.

## Law

- 3 The first paragraph of Article 4 of the Convention provides:

'If the defendant is not domiciled in a Contracting State, the jurisdiction of the courts of each Contracting State shall, subject to the provisions of Article 16, be determined by the law of that State.'

- 4 Article 16(1)(a) of the Convention provides:

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

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

**Factual background and the questions referred for a preliminary ruling**

- 5 In 1992, Mr and Mrs Klein, who live in Germany, concluded inter alia with Rhodos, a company established in the Isle of Man, a contract described as a 'membership contract' (Mitgliedschaftsvertrag), under the terms of which the parties, who were described as 'buyers' (Käufer), became members of a club.
- 6 Membership of that club was a requirement for the purchase of a right to use a holiday property on a time-share basis. Under the same contract, Mr and Mrs Klein acquired the right to the use of an apartment of a specified type and in a specified location in a hotel complex in Greece for the 13th calendar week of each year until the year 2031.
- 7 The fee for membership of the club was DEM 10 153 out of the total price of DEM 13 300 which Mr and Mrs Klein paid.
- 8 Membership of the club also gave access to a service for the coordination of exchanges of holiday periods and locations. Membership of that service was subject to a fee of DEM 350 for three years.
- 9 The hotel complex where the apartment at issue in the main proceedings was situated offered holders of time-share rights the same facilities as those provided for hotel guests.

- 10 Mr and Mrs Klein first paid a deposit of DEM 2 640 and shortly afterwards transferred the full amount of the price without deducting the deposit.
- 11 In the main proceedings, Mr and Mrs Klein seek the repayment of the total amount paid of DEM 15 940.
- 12 On appeal, the Oberlandesgericht Hamm had doubts as to its international jurisdiction and decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
1. Does the concept of proceedings "which have as their object ... tenancies of immovable property" under Article 16(1)(a) of the Brussels Convention extend to proceedings concerning the right, for a particular week each year for almost 40 years, to use an apartment in a hotel complex, differentiated according to its type and situation? Is this the case even if the contract provides for the simultaneous and obligatory membership of a club, the main purpose of which is to guarantee that its members may exercise their right to use the apartment?
  2. If the answer to the first question is in the affirmative, the further question arises:

If so, does the exclusive competence resulting from Article 16(1)(a) of the Brussels Convention apply equally to rights which flow from such a lease but which, in fact and in law, do not concern the lease, and in particular to the right

to reimbursement of a sum erroneously paid in excess of the amount demanded in consideration for use of the apartment and for membership of the club?’

### **The questions referred for a preliminary ruling**

#### *The first question*

- 13 By its first question, the referring court essentially seeks to know whether Article 16 (1)(a) of the Convention must be interpreted as meaning that it applies to a contract providing for membership of a club, the principal benefit of which consists in allowing its members to acquire and exercise a right to use on a time-share basis immoveable property of a type and in a location specified in the contract.
- 14 As a preliminary point, it must be observed that Article 16(1) of the Convention provides for the exclusive jurisdiction of the courts of the Contracting State where the property is situated, in proceedings which have as their object rights in rem in, or tenancies of, immovable property, by way of derogation from the general principle laid down by the first paragraph of Article 4 of the Convention, which is that if the defendant is not domiciled in a Contracting State, each Contracting State is to apply its own rules of international jurisdiction.
- 15 As an exception to the general rule of jurisdiction set out in the Convention, Article 16 must not be given an interpretation broader than is required by its objective, since the article deprives the parties of the choice of forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of the domicile of any of them (see Case 73/77 *Sanders* [1977] ECR 2383, paragraphs 17 and 18; Case C-115/88 *Reichert and Kockler* [1990] ECR I-27,

paragraph 9; Case C-292/93 *Lieber* [1994] ECR I-2535, paragraph 12; and Case C-8/98 *Dansommer* [2000] ECR I-393, paragraph 21).

- 16 According to both the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1, at p. 35) and the case-law, the essential reason for conferring exclusive jurisdiction on the courts of the Contracting State in which the property is situated is that the courts of the *locus rei sitae* are the best placed, for reasons of proximity, to ascertain the facts satisfactorily, by carrying out checks, inquiries and expert assessments on the spot, and to apply the rules and practices which are generally those of the State in which the property is situated (see, in particular, *Sanders*, paragraph 13, *Reichert and Kockler*, paragraph 10, and *Dansommer*, paragraph 27). That report also states, with specific regard to the rule of exclusive jurisdiction in the matter of tenancies of immovable property in Article 16(1), that the Convention draftsmen intended it to cover, inter alia, disputes over compensation for damage caused by tenants (*Dansommer*, cited above, paragraph 28).
- 17 However, that objective is not at issue in the case in the main proceedings, as the action brought by Mr and Mrs Klein, seeking repayment of the total amount they paid, can only be brought on the basis of a claim that the contract concluded with Rhodos is void.
- 18 The contract was described by the parties as a contract for membership of a club. As the referring court observed, the membership fee of DEM 10 153 constituted the major part of the total price of DEM 13 300.
- 19 That membership enabled Mr and Mrs Klein to acquire, for an amount which, in the light of the information in the order for reference, can be put at about DEM 2 000, the right to use an apartment of a specified type in a specified location for one week of the year for a period of nearly 40 years.

- 20 Thus, the value of the right to use the property is of only secondary economic importance, in the construction of the contract at issue, compared with the right to membership.
- 21 The Court has held that a contract which does not only concern the right to use a time-share apartment, but also concerns the provision of separate services of a value higher than that of the right to use the property, is not a contract for the rental of immoveable property within the meaning of Article 3(2)(a) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 372, p. 31) (Case C-423/97 *Travel Vac* [1999] ECR I-2195, paragraph 25).
- 22 Given the link between the Convention and the Community legal order (Case C-398/92 *Mund & Fester* [1994] ECR I-467, paragraph 12, and Case C-7/98 *Krombach* [2000] ECR I-1935, paragraph 24), that interpretation must be taken into account for the purposes of the interpretation of the Convention.
- 23 The German and United Kingdom Governments observed that the principal benefit conferred by the club membership contract at issue in the main proceedings is the possibility of acquiring the right to use property on a time-share basis.
- 24 In that connection it must be observed that the property itself, which is defined only as being of a particular type within a hotel complex, is not specified or designated individually in the club membership contract. As the Commission pointed out, the right of use could relate to a different apartment each year.



- 25 That circumstance is compounded by the fact that, as Mr and Mrs Klein pointed out, that contract itself makes provision for the affiliation of its members to a service allowing them, on payment of an annual fee, initially payable for three years, to exchange their holiday accommodation.
- 26 In the light of all those circumstances, it appears that the link between the club membership contract at issue in the main proceedings and the property to be actually used by the member is not sufficiently close to warrant classifying it as a tenancy within the meaning of Article 16(1)(a) of the Convention which, as observed in paragraph 15 of this judgment, must be interpreted strictly.
- 27 That finding is borne out by the fact that the membership contract in question provides for the provision of services which are made available to club members on the same terms as those offered to clients of the hotel complex. As the Commission observed, those additional services go beyond the transfer of a right of use which constitutes the subject-matter of a tenancy agreement. Although the content and nature of the services at issue in the main proceedings are not specified in the order for reference, it must none the less be observed that a complex contract concerning a range of services provided in return for a lump sum paid by the customer is outside the scope within which the exclusive jurisdiction laid down by Article 16(1) of the Convention finds its *raison d'être* and cannot constitute a tenancy as such within the meaning of that article (Case C-280/90 *Hacker* [1992] ECR I-1111, paragraph 15).
- 28 Accordingly, the answer to the first question must be that on a proper construction, Article 16(1)(a) of the Convention does not apply to a club membership contract which, in return for a membership fee which represents the major part of the total price, allows members to acquire a right to use on a time-share basis immoveable property of a specified type in a specified location and provides for the affiliation of members to a service which enables them to exchange their right of use.

*The second question*

- 29 In view of the reply to the first question, the second question no longer serves any purpose.

**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 (First Chamber) hereby rules:

**On a proper construction of Article 16(1)(a) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, that Article does not apply to a club membership contract which, in return for a membership fee which represents the major part of the total price, allows members to acquire a right to use on a time-share basis immoveable property of a specified type in a specified location and provides for the affiliation of members to a service which enables them to exchange their right of use.**

[Signatures]