Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

15 June 2017*

(Reference for a preliminary ruling — Jurisdiction in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 7(1) — Concepts of 'matters relating to a contract' and of a 'contract for the provision of services' — Recourse claim between jointly and severally liable debtors under a credit agreement — Determination of the place of performance of the credit agreement)

In Case C-249/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 31 March 2016, received at the Court on 2 May 2016, in the proceedings

Saale Kareda

v

Stefan Benkö,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Kareda, by C. Függer, Rechtsanwalt,

— Mr Benkö, by S. Alessandro, Rechtsanwalt,

— the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2017,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(1) 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 Mr Stefan Benkö and Ms Saale Kareda concerning the reimbursement of monthly payments, due under a joint credit agreement, which were paid by Mr Benkö in the absence of payment by Ms Kareda.

Legal context

EU law

Regulation No 1215/2012

3 According to recital 4 of Regulation No 1215/2012, the regulation aims, in the interests of the sound operation of the internal market, to introduce 'provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State'.

4 Recitals 15 and 16 of that regulation state:

'(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.'

5 The rules of jurisdiction are set out in Chapter II of Regulation No 1215/2012. That chapter includes Sections 1, 2 and 4, headed 'General provisions', 'Special jurisdiction' and 'Jurisdiction over consumer contracts', respectively.

6 Paragraph 1 of Article 4 of Regulation No 1215/2012, which is in Section 1 of Chapter II, reads as follows:

'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 7 of Regulation No 1215/2012, which is in Section 2 of Chapter II, provides:

‘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 point (b) does not apply then point (a) applies;

…’

8 The wording of Article 7(1) of Regulation No 1215/2012 is identical to that 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), which was repealed by Regulation No 1215/2012. In addition, Article 7(1) of Regulation No 1215/2012 corresponds to Article 5(1) 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 successive conventions on the accession of new Member States to that convention (‘the Brussels Convention’).

9 Paragraph 1 of Article 17 of Regulation No 1215/2012, which is in Section 4 of Chapter II, provides:

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

10 Paragraphs 1 and 2 of Article 18 of the regulation, which is also in Section 4, provide as follows:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.’

11 The wording of Articles 17 and 18 of Regulation No 1215/2012 corresponds with that of Articles 15 and 16 of Regulation No 44/2001.

Regulation (EC) No 593/2008

12 Recitals 7 and 17 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6, and corrigendum at OJ 2009 L 309, p. 87) state:

> '(7) The substantive scope and the provisions of this Regulation should be consistent with [Regulation No 44/2001] and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) …
>
> …
>
> (17) As far as the applicable law in the absence of choice is concerned, the concept of "provision of services" and "sale of goods" should be interpreted in the same way as when applying Article 5 of [Regulation No 44/2001] in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.'

13 Pursuant to Article 15 of Regulation No 593/2008, entitled 'Legal subrogation':

> 'Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.'

14 Article 16 of that regulation, headed 'Multiple liability', provides:

> 'If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.'

Austrian law

15 Paragraph 896 of the Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code; 'the ABGB') reads:

> 'A jointly and severally liable debtor who has paid the whole debt on his own is permitted, even without any transfer of rights, to claim reimbursement from the other debtors in equal shares if no other proportion has been previously agreed between them.'

16 Paragraph 905(2) of the ABGB, in the version prior to its amendment by the Zahlungsverzugsgesetz (Law on late payment) (BGBl. I, 2013/50), provided that 'in case of doubt, the debtor, at his own risk and cost, shall make monetary payments to the creditor at the creditor's domicile (place of establishment)'.

17 Paragraph 1042 of the ABGB states:

> 'Anyone who incurs expenditure for another, who, in accordance with the present law, should have incurred such expenditure himself, shall be entitled to claim reimbursement.'

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

18 Mr Benkö, an Austrian national domiciled in Austria, instituted proceedings before the Landesgericht St. Pölten (Regional Court, St. Pölten, Austria) against his former partner, Ms Kareda, an Estonian national who currently lives at an unknown address in Estonia, seeking the reimbursement of EUR 17145.41, plus interest and costs. According to the order for reference, while living together in Austria, in 2007, Mr Benkö and Ms Kareda bought a one-family house for EUR 190 000, and are thus each half-owners of the property. Lacking resources of their own, in March 2007 they took out three loans, for EUR 150 000, EUR 100 000 and EUR 50 000, from an Austrian bank in order to finance that purchase and the necessary construction works. Both Mr Benkö and Ms Kareda were borrowers in respect of each of those loans.

19 At the end of 2011, Ms Kareda ended her cohabitation with Mr Benkö and went to live in Estonia, in a place unknown to the applicant. It appears that, from June 2012 onwards, she ceased to meet her loan repayment obligations, and that, from that time, Mr Benkö alone has met the monthly repayments for those loans. In his action, Mr Benkö is therefore seeking, pursuant to Paragraph 1042 of the ABGB, reimbursement from Ms Kareda of the payments which he made on her behalf for the period up to and including June 2014.

20 The court of first instance, the Landesgericht St. Pölten (Regional Court, St. Pölten), unsuccessfully contacted the Estonian embassy in Austria with a view to determining Ms Kareda's place of domicile.

21 The representative appointed to accept service on behalf of Ms Kareda raised an objection of lack of jurisdiction on the basis that Ms Kareda was domiciled in Estonia. In the view of the representative, the facts set out by Mr Benkö did not come within the scope of Sections 2 to 7 of Chapter II of Regulation No 1215/2012. Furthermore, in his opinion, the court before which the action was brought did not have territorial jurisdiction, particularly since the place where the bank which granted the loans at issue had its registered office, which is accordingly the place of performance of the obligation to repay those loans, was not within the territorial jurisdiction of the Landesgericht St. Pölten (Regional Court, St. Pölten).

22 That court upheld that argument and declared that it lacked international jurisdiction to deal with the proceedings.

23 Mr Benkö brought an appeal against that decision before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), which held that, under Article 7(1) of Regulation No 1215/2012, jurisdiction was to be determined on the basis of the place of performance of the contractual obligation to repay the loans, namely, according to that court, the domicile of the debtor. Thus it held that the Landesgericht St. Pölten (Regional Court, St. Pölten) had international and territorial jurisdiction.

24 Ms Kareda's representative brought an appeal on a point of law ('Revision') against that decision of the appellate court before the referring court, the Oberster Gerichtshof (Supreme Court, Austria), seeking to establish that Austrian courts have no jurisdiction.

25 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 7(1) of Regulation No 1215/2012 be interpreted as meaning that, where a debtor under a (joint) credit agreement with a bank has, on his own, made the repayments due under that credit agreement, a reimbursement claim (compensation/recourse claim) brought by that debtor against the other debtor under that credit agreement constitutes a derived (secondary) contractual claim arising from that credit agreement?

(2) If Question 1 is answered in the affirmative:

Is the place of performance of a debtor's reimbursement claim (compensation/recourse claim) against the other debtor arising out of the underlying credit agreement to be determined:

(a) in accordance with the second indent of Article 7(1)(b) of Regulation No 1215/2012 ("provision of services") or

(b) in accordance with Article 7(1)(c), in conjunction with Article 7(1)(a), of Regulation No 1215/2012 on the basis of the *lex causae*?

(3) If Question 2(a) is answered in the affirmative:

Is the service characterising the credit agreement the granting of the loans by the bank, and is, therefore, the place of performance of that service determined in accordance with the second indent of Article 7(1)(b) of Regulation No 1215/2012 by the registered office of the bank, if the loans were provided exclusively at that place?

(4) If Question 2(b) is answered in the affirmative:

For the purpose of determining the place of performance for the non-performed contractual obligation in accordance with Article 7(1)(a) of Regulation No 1215/2012, is the decisive date:

(a) the date on which the two debtors took out the loans (March 2007) or

(b) the dates on which the loan debtor entitled to recourse made to the bank the payments from which he derives the recourse claim (June 2012 to June 2014)?'

Consideration of the questions referred

The first question

26 By its first question, the referring court asks, in essence, whether Article 7(1) of Regulation No 1215/2012 must be interpreted as meaning that a recourse claim between jointly and severally liable debtors under a credit agreement constitutes a 'matter relating to a contract', as referred to in that provision.

27 For the purposes of answering that question, reference should be made to the interpretation given by the Court concerning Article 5(1) of Regulation No 44/2001 and Article 5(1) of the Brussels Convention, which also applies to Article 7(1) of Regulation No 1215/2012 given that those provisions may be regarded as equivalent (see, to that effect, judgment of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 28).

28 It is apparent from that case-law, first, that the concept of 'matters relating to a contract', within the meaning of Article 5(1) of Regulation No 44/2001, must be interpreted autonomously in order to ensure that that concept is applied uniformly in all Member States and, secondly, that, in order to come within the scope of that concept, the claimant's action must place in issue a legal obligation freely consented to by one person towards another (see, to that effect, judgments of 14 March 2013, *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraphs 45 to 47, and of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraphs 37 and 39).

29 In that regard, it should be recalled at the outset that the linking factors set out in Article 5(1)(b) of Regulation No 44/2001 apply to all claims founded on one and the same contract (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraph 33).

30 Secondly, in the case where non-performance of a contract is relied upon to support a claimant's action, all obligations arising under that contract must be considered to come within the concept of matters relating to a contract (see, to that effect, judgments of 6 October 1976, *De Bloos*, 14/76, EU:C:1976:134, paragraphs 16 and 17, and of 8 March 1988, *Arcado*, 9/87, EU:C:1988:127, paragraph 13).

31 The same applies to obligations arising between two jointly and severally liable debtors, such as the parties to the main proceedings, and in particular to the possibility for a jointly and severally liable debtor who has paid, in whole or in part, the other debtor's share in the common debt to reclaim the amount thus paid by bringing a recourse claim (see, by analogy, judgment of 12 October 2016, *Kostanjevec*, C-185/15, EU:C:2016:763, paragraph 38). As the Advocate General has observed in point 31 of his Opinion, given that the purpose of the action in the main proceedings is itself linked to the existence of that contract, it would be artificial, for the purposes of the application of Regulation No 1215/2012, to separate those legal relationships from the contract which gave rise to them and on which they are based.

32 Finally, even though the provisions of Regulation No 1215/2012 must be interpreted in the light of the objectives of that regulation and the system which it establishes (see, to that effect, judgment of 16 January 2014, *Kainz*, C-45/13, EU:C:2014:7, paragraph 19), it is necessary to take into account the objective of consistency in application, particularly in regard to Regulation No 1215/2012 and the Rome I Regulation (see, to that effect, judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic*, C-359/14 and C-475/14, EU:C:2016:40, paragraph 43). An interpretation to the effect that a recourse action, such as that at issue in the main proceedings, must be regarded as being covered by the concept of 'matters relating to a contract', within the meaning of Regulation No 1215/2012, is also consistent with that objective of consistency. Indeed, Article 16 of the Rome I Regulation expressly links the relationship between a number of debtors to that between the debtor and the creditor.

33 In the light of the foregoing, the answer to the first question is that Article 7(1) of Regulation No 1215/2012 must be interpreted as meaning that a recourse claim between jointly and severally liable debtors under a credit agreement constitutes a 'matter relating to a contract', as referred to in that provision.

The second question

34 By its second question, the referring court asks, in essence, whether the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, concluded between a credit institution and two jointly and severally liable debtors, must be classified as a 'contract for the provision of services' for the purposes of that provision.

35 According to the Court's case-law, the concept of 'services', within the meaning of Article 5(1)(b) of Regulation No 44/2001, the wording of which is identical to that of Article 7(1)(b) of Regulation No 1215/2012, implies, at the least, that the party who provides the service carries out a particular activity in return for remuneration (see, to that effect, judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 37 and the case-law cited).

36 As the Advocate General has observed in point 40 of his Opinion, in a credit agreement between a credit institution and a borrower, the supply of services lies in the transfer of a sum of money by the credit institution to the borrower, in return for fees paid by the borrower, in principle, in the form of interest.

37 It must therefore be held that such a credit agreement must be classified as a 'contract for the provision of services', within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012.

38 Consequently, the answer to the second question is that the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, between a credit institution and two jointly and severally liable debtors, must be classified as a 'contract for the provision of services' for the purposes of that provision.

The third question

39 By its third question, the referring court asks, in essence, whether the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, where a credit institution grants a loan to two jointly and severally liable debtors, the 'place in a Member State where, under the contract, the services were provided or should have been provided', within the meaning of that provision, is, unless otherwise agreed, the place where that institution has its registered office, and whether this also applies with a view to determining the territorial jurisdiction of the court called upon to hear and determine an action for recourse between those debtors.

40 In this regard, it is necessary to establish, in accordance with the case-law of the Court, the obligation which characterises the contract (see, to that effect, judgment of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 33).

41 As the Advocate General has observed in point 45 of his Opinion, in the context of a credit agreement, the characteristic obligation is the actual granting of the sum loaned, while the borrower's obligation to repay that sum is merely a consequence of the performance of the service by the lender.

42 It must therefore be held that the place where the services were provided, within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012, is, in the case of a credit institution granting a loan, the place where that institution has its registered office, except in a scenario where, as raised by the referring court in its question, it has been agreed otherwise.

43 With regard to ascertaining whether that consideration is also relevant for the purpose of determining which court has territorial jurisdiction to hear and determine a recourse claim between debtors who are jointly and severally liable for a repayment obligation, it is important to note that, as is apparent from paragraph 31 of the present judgment, such an action is founded on the credit agreement concluded between the jointly and severally liable debtors and the credit institution.

44 It follows from the foregoing and from the objectives of predictability, unification and the proper administration of justice which are pursued by Regulation No 1215/2012, in accordance with recitals 15 and 16 thereof, that the second indent of Article 7(1)(b) of that regulation must be interpreted as meaning that jurisdiction lies with the court for the place in the Member State where that credit institution has its registered office, given that that is the place of performance of the obligation on which such a recourse action is based.

45 In that regard, no relevance attaches to the observation made by each of the parties to the main proceedings that they both have the status of 'consumers' and must accordingly enjoy the benefit of the jurisdiction rules for contracts entered into by consumers laid down in Articles 17 and 18 of Regulation No 1215/2012. As the Court has pointed out in relation to Articles 15 and 16 of Regulation No 44/2001, those rules cannot apply to relations between two consumers (see, to that effect, judgment of 5 December 2013, *Vapenik*, C-508/12, EU:C:2013:790, paragraph 34).

46 In the light of the foregoing, the answer to the third question is that the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, where a credit institution has granted a loan to two jointly and severally liable debtors, the 'place in a Member State where, under the contract, the services were provided or should have been provided', within the meaning of that provision, is, unless otherwise agreed, the place where that institution has its registered office, and this also applies with a view to determining the territorial jurisdiction of the court called upon to hear and determine an action for recourse between those joint debtors.

The fourth question

47 In the light of the answer given to the third question, there is no need to reply to the fourth question.

Costs

48 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:

1. Article 7(1) 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 must be interpreted as meaning that a recourse claim between jointly and severally liable debtors under a credit agreement constitutes a 'matter relating to a contract', as referred to in that provision.

2. The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that a credit agreement, such as that at issue in the main proceedings, between a credit institution and two jointly and severally liable debtors, must be classified as a 'contract for the provision of services' for the purposes of that provision.

3. The second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, where a credit institution has granted a loan to two jointly and severally liable debtors, the 'place in a Member State where, under the contract, the services were provided or should have been provided', within the meaning of that provision, is, unless otherwise agreed, the place where that institution has its registered office, and this also applies with a view to determining the territorial jurisdiction of the court called upon to hear and determine an action for recourse between those joint debtors.

[Signatures]