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Soulier Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

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Determination of the competent court in the framework of cross-border disputes within the eu

Regulation 44/2001 known as the "Brussels I Regulation" [1] lays down rules on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within EU Member States.

It includes provisions to determine the competent court in disputes that fall within its scope of application. The basic principle, set forth in Article 2 of Regulation 44/2001, is that persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

Yet, Regulation 44/2001 provides for a number of exceptions that allow bringing a dispute before a court other than that determined under the above principle[2]. In particular, Article 5 sets out the rules applicable in matters relating to contract, tort, delict or quasi-delict. It stipulates as follows:

"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;

(…)

3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur."

While Regulation 44/2001 indisputably provides a good basis to determine the competent jurisdiction within

EU Member States, its application nevertheless raises a number of practical concerns that are settled on a case-by-case basis either by national courts or by the Court of Justice of the European Union ("CJEU").

As such, the *Cour de Cassation* (French Supreme Court) had to specify what was the competent court to hear a dispute concerning a commercial agency agreement because as this type of agreement is a contract for the provision of services, it was indispensable to determine the place of performance of such services[3].

In a decision dated March 13, 2014[4], the CJEU ruled in turn on the interpretation of Article 5 of Regulation 44/2001.

In this matter, a distributor of luxury watches domiciled in Germany entered into a contract with a master watchmaker, residing in France, pursuant to which the latter undertook to develop movements for luxury watches on behalf of the distributor.

The master watchmaker and the company it had incorporated also developed, in parallel, other watch movements, cases and watch faces, which they exhibited in their own names at world exhibitions and which they marketed also in their own names and on their own behalf.

The distributor considered that, by these activities, the master watchmaker and his company had breached the terms of their contract as they did not comply with their contractual exclusivity obligation. Accordingly, he brought the matter before German courts and sought the termination of the contentious activities and the payment of damages.

The distributor claimed that the defendants had, by their conduct, breached business confidentiality, disrupted its own business and committed fraud and breach of trust. His legal action was based on a contractual claim and a tort claim.

On the other hand, the defendants claimed that the courts should dismiss the action, filed a counterclaim and raised a plea of lack of jurisdiction on the basis that only French courts would have jurisdiction, as both the place of performance of the contract and the allegedly harmful event were situated/occurred in France.

The German courts had already ruled on the jurisdiction issue: they held that they had jurisdiction to hear and adjudicate only the civil liability claims made in tort. The other claims, in contrast, concerned a matter relating to a contract and ought, therefore, to be brought before a French court.

The remanding German jurisdiction, however, noted that the claims over which it held to have jurisdiction – event though such claims were made in tort under German law – were connected with the existence of a contract between the parties to the dispute. As such, it held that such claims were likely to be considered as a matter relating to a contract within the meaning of Regulation 44/2001, in which case the whole dispute would fall within the jurisdiction of French courts.

The remanding jurisdiction stayed the proceedings and referred a question to the CJEU for a preliminary

ruling. Basically, the question was whether civil liability claims made in tort under national law should nonetheless be regarded as concerning a matter relating to a contract within the meaning of Regulation 44/2001, taking into account the existence of a contract between the parties.

The CJEU pointed out that, according to an established case-law and in order to ensure a uniform application of Regulation 44/2001 in all Member States, the concepts of "matters relating to a contract" and "matters relating to tort, delict or quasi-delict" must not be interpreted according to how the legal relationship between the parties is classified by the relevant national law but independently, by reference to Regulation 44/2001's scheme and purpose.

It underlined that, in the matter at hand, the parties were bound by a contract but specified that this fact was not sufficient to consider that any claim brought by a party against the other necessarily concerns a matter relating to a contract. Indeed, the conduct complained of must also be considered as a breach of contractual obligations, taking into account the purpose of the contract.

That will be the case where the interpretation of the contract is indispensable to establish the lawful or unlawful nature of the conduct complained of against one party by the other.

The CJEU did not itself determine the competent court but set out the steps to be followed by the remanding jurisdiction: the latter must determine whether the purpose of the claims that were brought 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 would mean that it is indispensable to take such contract into account to rule on the dispute. If that is the case, these claims must be considered as concerning a matter relating to a contract. Otherwise, they must be considered as falling under matters relating to tort, delict or quasi-delict.

As such, claims made in tort under national law must nonetheless be considered as concerning a matter relating to a contract within the meaning of Article 5 of Regulation 44/2001, wherever the conduct complained of can be regarded as a breach of the terms of the contract, which may be established by taking into account the purpose of the contract.

As such, before bringing a matter before a court of a Member State, the parties to a contract must first address the cause of their dispute in order to determine whether it concerns a matter relating to a contract or a matter relating to tort, delict or quasi-delict, regardless of the classification of the legal basis for their claim under national law.

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[1] Council Regulation (EC) No 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[2] Articles 5 to 22 of Regulation No 44/2001.

[3] Commercial Chamber of the *Cour de Cassation*, May 14, 2013, n°11-26.631. Cf. our June 2013 e-newsletter.

[4] CJEU, March 13, 2014, C-548/12, Marc Brogister vs. Fabrication de Montres Normandes and Karsten Fräβdorf.