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Disputes arising out of commercial agency contracts: what is the competent jurisdiction?

Business professionals will increasingly face the difficulty of identifying the court that is territorially competent to hear disputes arising from or in connection with their activities.

Even though Council Regulation (EC) No 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides some answers, national courts still must rule on the application of such Regulation.

In a decision rendered on May 14, 2013, the Commercial Chamber of the *Cour de Cassation* (French Supreme Court) was called upon to determine the territorially competent court to adjudicate disputes arising from or in connection with a commercial agency contract.

In the case at hand, an Italian company engaged in the manufacturing of toys had entered into a commercial agency contract with a Luxembourg company, BSM, for the distribution of its products in Europe. The Luxembourg company was the successor of a Belgian company that had itself been substituted to the originally appointed commercial agent, a natural person who used to conduct its business in Belgium.

The toy manufacturer terminated the agency contract and the commercial agent initiated legal proceedings before the Commercial Court of Beauvais and requested the payment of severance indemnities as well as an indemnification for the loss suffered as a result of its non-participation in a toy fair.

The commercial agent based argumentation on Article 5 of the Regulation according to which the territorially competent court is that “*of the place of performance of the obligation in question*”.

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Concerning specifically commercial agency contacts, i.e. contracts for the provision of services, the place of performance is that where *“the services were provided or should have been provided”*.

The commercial agent considered that, in the absence of a contractual provision specifying the place of performance of the contract, the place of effective performance was to be retained. It considered that such effective place of performance could be inferred from the sole criteria of the significant sales achieved by the commercial agent in a particular country, namely France.

The toy manufacturer challenged the jurisdiction of the French Commercial Court, considering that the Belgian or Luxemburg courts were the only ones competent to hear the dispute.

The *Cour de Cassation* supported the argumentation developed by the manufacturer and upheld the judgment of the Court of Appeals that had excluded the jurisdiction of French courts.

After having noted that the agency contract did not include any provision on the principal place of supply of services by the commercial agent, the Court of Appeals decided to take into account the place where the commercial agent had performed an essential part of its activities.

In the case at hand, the French client had never been solicited in France and the company BSM was based in Luxemburg. Consequently, the place of the main provision of services, as attested to by the effective performance of the contract and the domiciliation of the commercial agent, could not be France.

When determining the competent jurisdiction to hear disputes arising from or in connection with a contract for the provision of services, it will be necessary to consider the very purpose of the contract in order to identify the main place of activity of the supplier of services vis-à-vis its co-contractor, i.e. for a commercial agent, the place of solicitation of clients, the place of negotiations and the place of conclusion of contracts.

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