JUDGMENT OF THE COURT (First Chamber)

2 July 2009 *

In Case C-111/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Högsta domstolen (Sweden), made by decision of 4 March 2008, received at the Court on 12 March 2008, in the proceedings

SCT Industri AB i likvidation

v

Alpenblume AB,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of Chamber, A. Tizzano, A. Borg Barthet, E. Levits and J.-J. Kasel, Judges,

* Language of the case: Swedish.

Advocate General: E. Sharpston,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 February 2009,

after considering the observations submitted on behalf of:

— SCT Industri AB i likvidation, by F. Lüning, jur. kand.,

— Alpenblume AB, by L.-O. Svensson, advokat,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Spanish Government, by J. López-Medel Bascones, acting as Agent,

— the Portuguese Government, by L. Inez Fernandes and D. Pires, acting as Agents,

— the United Kingdom Government, by L. Seeboruth, acting as Agent, and A. Henshaw, Barrister,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and P. Dejmek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 1(2)(b) 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).

2 The reference was made in the context of proceedings between SCT Industri AB ('SCT Industri') and Alpenblume AB ('Alpenblume'), two Swedish companies, concerning an action to recover ownership of shares which had been held in an Austrian company by SCT Industri and which were sold to Alpenblume; the action was brought following a judgment delivered by an Austrian court which declared Alpenblume's acquisition of those shares to be invalid.

Legal framework

3 Recital 2 in the preamble to Regulation No 44/2001 provides:

'Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.'

4 Pursuant to Recital 7 in the preamble to Regulation No 44/2001, '[t]he scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters'.

5 Recital 15 in the preamble to the regulation states:

'In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.'

6 Recital 19 in the preamble to Regulation No 44/2001 provides:

'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; "the Brussels Convention")) and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities, and the 1971 Protocol (on such interpretation by the Court, as revised and amended (OJ 1998 C 27, p. 28)) should remain applicable also to cases already pending when this Regulation enters into force.'

7 Article 1 of the regulation defines its scope. According to Article 1(1) of Regulation No 44/2001, it covers all civil and commercial matters but does not extend to revenue, customs or administrative matters.

8 Article 1(2)(b) of the regulation provides:

'The Regulation shall not apply to:

…

bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings'.

9 Article 25 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1), which is headed 'Recognition and enforceability of other judgments', provides as follows:

'1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Conventions of Accession to this Convention.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.'

10 According to Article 43 of Regulation No 1346/2000,'[t]he provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done'.

The main proceedings and the question referred for a preliminary ruling

11 In 1993, insolvency proceedings were opened against SCT Industri by Malmö tingsrätt (Malmö District Court). A liquidator was appointed. In the course of those proceedings, the liquidator transferred SCT Industri's shares, that is, a holding of 47% in the capital of SCT Hotelbetrieb GmbH, a company incorporated under Austrian law, now Scaniahof Ferienwohnungen GmbH ('Scaniahof'), to Alpenblume for SEK 2. Alpenblume was registered in Austria as owner of those shares in the company.

12 The insolvency proceedings were closed in 1997 without surplus. On 19 March 2002, Malmö tingsrätt ordered SCT Industri to be wound up.

13 Further to proceedings brought before an Austrian court by SCT Industri, that court held that the liquidator appointed in Sweden had no power to dispose of assets situated in Austria and that consequently Alpenblume's acquisition of the shares was invalid. Accordingly, the Austrian court ordered Scaniahof to register SCT Industri as owner of the shares transferred from the assets in insolvency. Alpenblume appeared as intervener ('*Nebenintervenientin*') in the Austrian proceedings. The Oberster Gerichtshof (Supreme Court, Austria) dismissed the intervener's appeal ('*außerordentliche Revision*' — exceptional appeal on a point of law) on 17 May 2004.

14 On 24 August 2004, Alpenblume brought proceedings before a Swedish court against SCT Industri for restitution of title to the shares in question, requesting that SCT Industri be ordered, on penalty of a fine, to take all measures necessary for Alpenblume to be registered as rightful owner of the shares. By decision of 17 March 2005, Malmö tingsrätt, following an objection by the applicant in the main proceedings, held that there was no obstacle to examination of that request.

15 SCT Industri appealed against that decision, asking that the claim be dismissed. Alpenblume contended that it should be upheld. By decision of 26 July 2005, Hovrätten för Skåne och Blekinge (Court of Appeal for Scania and Blekinge) dismissed the appeal.

16 On appeal by SCT Industri, the Högsta domstolen (Supreme Court), by order of 4 March 2008, decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the exclusion under Article 1(2)(b) of Regulation [No 44/2001] of bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings from the scope of that regulation to be interpreted as meaning that it covers a decision given by a court in one Member State (A) regarding registration of ownership of shares in a company having its registered office in Member State A, the shares having been transferred by the liquidator of a company having its registered office in another Member State (B), where the court based its decision on the fact that, in the absence of an international agreement on the mutual recognition of insolvency proceedings, Member State A does not recognise the liquidator's powers to dispose of property situated in Member State A?'

The question referred for a preliminary ruling

17 The referring court raises the question, essentially, of recognition between the Member States of a judgment in civil proceedings linked to insolvency proceedings which took place in another Member State. More precisely, the question concerns whether a decision by which a court of another Member State has held a transfer of shares effected in the context of insolvency proceedings to be invalid, on the ground that the liquidator who made the transfer lacked the power to dispose of assets situated in that Member State, falls under the exception in Article 1(2)(b) of Regulation 44/2001 which applies to bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and other similar proceedings.

18 As a preliminary point, it must be noted that Regulation No 1346/2000 is not applicable to this case as the insolvency proceedings were opened before the entry into force of that regulation.

19 Therefore, it must be determined only whether a judgment such as that of the Austrian court in the case in the main proceedings falls within Regulation No 44/2001, so as to be binding on the referring court.

20 In that regard, it should first of all be noted that, with regard in particular to bankruptcy and other similar proceedings, these were excluded from the scope of the Brussels Convention both on account of the special nature of the subject-matter concerned, which necessitates specific rules, and because of major differences between the legislation of the Contracting States (see, to that effect, Case 133/78 *Gourdain* [1979] ECR 733, paragraph 3, and Report by Mr Jenard on the Brussels Convention (OJ 1979 C 59, p. 1)).

21 In its case-law relating to the Brussels Convention, the Court has thus held that an action is related to bankruptcy if it derives directly from the bankruptcy and is closely linked to proceedings for realising the assets or judicial supervision (see *Gourdain*, paragraph 4). An action with such characteristics does not, therefore, fall within the scope of that convention.

22 The case-law also indicates that, in so far as Regulation No 44/2001 now replaces the Brussels Convention in relations between the Member States, with the exception of the Kingdom of Denmark, an interpretation given by the Court concerning that convention also applies to the regulation, where its provisions and those of the Brussels Convention may be treated as equivalent (see, inter alia, Case C-180/06 *Ilsinger* [2009] ECR I-0000, paragraph 41).

23 In the scheme established by Regulation No 44/2001, Article 1(2)(b) of that regulation has the same position and performs the same role as point 2 of the second subparagraph of Article 1 of the Brussels Convention. Moreover, the wording of those two provisions is identical.

24 In view of such equivalence between a provision of the Brussels Convention and a provision of Regulation No 44/2001, it is necessary, in accordance with recital 19 in the preamble to the latter, to ensure continuity in the interpretation of those two instruments, as such continuity is also the means to ensure observance of the principle of legal certainty, which constitutes one of the cornerstones of those instruments (*Ilsinger*, paragraph 58).

25 In the light of the foregoing it is therefore the closeness of the link, in the sense of the *Gourdain* case-law, between a court action such as that at issue in the main proceedings and the insolvency proceedings that is decisive for the purposes of deciding whether the exclusion in Article 1(2)(b) of Regulation No 44/2001 is applicable.

26 It is clear, in the present case, that that link is particularly close.

27 First, according to the order for reference, the dispute in the main proceedings concerns solely the ownership of the shares which were transferred in insolvency proceedings by the liquidator on the basis of provisions, such as those enacted by the Swedish Law on insolvency (Konkurslagen) No 672 of 1987 (SFS 1987, No 672), which derogate from the general rules of private law and, in particular, from property law. In particular, such provisions provide that, in the case of insolvency, debtors lose the right freely to dispose of their assets and the liquidator has to administer the assets in insolvency on behalf of the creditors, which includes effecting any necessary transfers.

28 In other words, the transfer at issue in the main proceedings and the action for restitution of title to which it gave rise, are the direct and indissociable consequence of the exercise by the liquidator — an individual who intervenes only after the insolvency proceedings have been opened — of a power which he derives specifically from the provisions of national law governing that type of proceedings.

29 That is also evident from the fact that in the case in the main proceedings — as is clear from the documents before the Court — the assets of the undertaking which was subject to the insolvency proceedings increased following the sale of the shares at issue by the liquidator.

30 Second, it is not disputed that, in the judgment of which recognition is sought before the referring court, the ground on which the Austrian court held invalid the transfer of the shares at issue in the main proceedings relates, specifically and exclusively, to the extent of the powers of that liquidator in insolvency proceedings and, in particular, his power to dispose of the assets situated in Austria. The content and scope of that decision are therefore intimately linked to the conduct of the insolvency proceedings. That link is, moreover, not weakened by the fact that, in the case in the main proceedings, the insolvency proceedings had been closed when the action for restitution of title was brought before the Austrian courts.

31 In those circumstances, it must be held that an action such as that at issue in the main proceedings derives directly from insolvency proceedings and is closely linked with them, so that it does not fall within the scope of Regulation No 44/2001.

32 Having regard to the specific legal situation at issue in the case in the main proceedings and taking into account the close link between the action pending before the referring court and the insolvency proceedings, the principles set out in recitals 2, 7 and 15 in the preamble to Regulation No 44/2001 do not affect that assessment.

33 In the light of all of the foregoing considerations, the answer to the question referred is that the exception provided for in Article 1(2)(b) of Regulation No 44/2001 must be interpreted as applying to a judgment of a court of Member State A regarding registration of ownership of shares in a company having its registered office in Member State A, according to which the transfer of those shares was to be regarded as invalid on the ground that the court of Member State A did not recognise the powers of a liquidator from a Member State B in the context of insolvency proceedings conducted and closed in Member State B.

Costs

34 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:

The exception provided for in Article 1(2)(b) of Council Regulation No 44/2001 (EC) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as applying to a judgment of a court of Member State A regarding registration of ownership of shares in a company having its registered office in Member State A, according to which the transfer of those shares was to be regarded as invalid on the ground that

the court of Member State A did not recognise the powers of a liquidator from a Member State B in the context of insolvency proceedings conducted and closed in Member State B.

[Signatures]