Reports of Cases

ORDER OF THE COURT (Tenth Chamber)

14 November 2013*

(Reference for a preliminary ruling — Area of freedom, security and justice — Brussels Convention — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 5(1)(b) — Jurisdiction — Special jurisdiction — Matters relating to a contract — Concept of 'provision of services' — Storage contract)

In Case C-469/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Austria), made by decision of 17 September 2012, received at the Court on 22 October 2012, in the proceedings

Krejci Lager & Umschlagbetriebs GmbH

v

Olbrich Transport und Logistik GmbH,

THE COURT (Tenth Chamber),

composed of M. Juhász, President of the Chamber, A. Rosas (Rapporteur) and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Krejci Lager & Umschlagbetriebs GmbH, by M. Stögerer, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Greek Government, by S. Chala and L. Kotroni, acting as Agents,

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

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: German.

Order

1 This request for a preliminary ruling concerns the interpretation 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).

2 The request has been made in proceedings between Krejci Lager & Umschlagbetriebs GmbH ('Krejci Lager'), a company incorporated under Austrian law, and Olbrich Transport und Logistik GmbH ('Olbrich Transport'), a company incorporated under German law, concerning payment of the price charged for the warehouse storage of goods on a site in Vienna (Austria).

Legal context

The Brussels Convention

3 Under Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32), as amended by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1; 'the Brussels Convention'):

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

(1) in matters relating to a contract, in the courts for the place of performance of the obligation in question …'

Regulation No 44/2001

4 Recital 11 in the preamble to Regulation No 44/2001 states:

'The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. …'

5 Recital 12 in the preamble to Regulation No 44/2001 states:

'In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.'

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

'Continuity between 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 …'

7 The rules on jurisdiction laid down by Regulation No 44/2001 are set out in Chapter II thereof, consisting of Articles 2 to 31.

8 Under Section 1 of Chapter II, headed ‘General provisions’, Article 2(1) of Regulation No 44/2001 provides:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

9 Article 3(1) of Regulation No 44/2001 provides:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

10 In Section 2 of Chapter II, headed ‘Special jurisdiction’, Article 5 of Regulation No 44/2001 provides:

‘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;

(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 subparagraph (b) does not apply then subparagraph (a) applies …’

11 Under Section 6 of Chapter II, headed ‘Exclusive jurisdiction’, Article 22 of Regulation No 44/2001 provides:

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

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

…’

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

12 Krejci Lager, established in Vienna, brought an action before the Bezirksgericht für Handelssachen Wien (District Commercial Court, Vienna) seeking payment from Olbrich Transport, established in Gornau (Germany), of an amount corresponding to the storage fee for goods stored on one of its sites located in Vienna. That amount concerns the period between the 40th week and the 52nd week of 2008. The storage fee was set by the applicant at EUR 325.

13 The Bezirksgericht für Handelssachen Wien declined international jurisdiction and dismissed the action. That court considered that the action was to be brought, in accordance with Article 5(1) of Regulation No 44/2001, before the courts for the place of performance of the contractual obligation at issue. That obligation includes payment of the storage fee, which constitutes a money debt corresponding to the right which is the basis of the action.

14 According to that first instance court, money debts such as that at issue in the main proceedings must be classified, in accordance with Austrian law, as 'obligations of dispatch' ('Schicksschulden') and are payable where the debtor is domiciled. Accordingly, 'the place of performance of the obligation in question', within the meaning of Article 5(1)(a) of Regulation No 44/2001, is in Germany, and consequently the Austrian courts do not have jurisdiction to rule on the dispute at issue in the main proceedings.

15 The applicant in the main proceedings lodged an appeal against that decision before the Handelsgericht Wien (Commercial Court, Vienna), asserting that Article 5(1)(a) of Regulation No 44/2001 was not applicable to the facts at issue in the main proceedings. In its view, the storage contract is a contract for the provision of services. Therefore, the place of performance of such a contract is, in accordance with Article 5(1)(b) of that regulation, the place where the service was provided. It is apparent from the order for reference that the defendant in the main proceedings claims, in contrast, that the storage contract does not involve a provision of services but making storage space available.

16 The referring court states that in proceedings where the value of the claim is less than EUR 5 000 it is the court of last instance. However, it considers that the answer to the question of interpretation of European Union law is not so obvious that no room is left for reasonable doubt.

17 In those circumstances, the Handelsgericht Wien decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is a contract for the storage of goods a contract for the "provision of services" within the meaning of Article 5(1)(b) of … Regulation … No 44/2001 …?'

Consideration of the question referred

18 Under Article 99 of its Rules of Procedure, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order. The Court considers that it is appropriate to make use of that provision in the present case.

19 By its question, the referring court asks, in essence, whether the second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a contract relating to the storage of goods constitutes a contract for the provision of services within the meaning of that provision.

20 At the outset, it must be borne in mind that Article 5(1) of Regulation No 44/2001 lays down a rule of special jurisdiction in respect of matters relating to a contract. The assignment of that special jurisdiction, the choice of which is at the applicant's discretion and which complements the general rule that jurisdiction is based on the defendant's domicile, is justified by the existence, in certain well-defined circumstances, of a close link between a dispute and the court which may be called upon to hear and determine the case (see, to that effect, Case C-204/08 *Rehder* [2009] ECR I-6073, paragraph 32).

21 It must be noted that, according to the Court's case-law, the applicant may invoke the jurisdiction of the courts of the place of performance even when the existence of the contract on which the claim is based is in dispute between the parties (see, as regards the Brussels Convention, Case 38/81 *Effer* [1982] ECR 825, paragraph 8).

22 Where the characteristic obligation of the contract at issue is the sale of goods or the provision of services, Article 5(1)(b) of Regulation No 44/2001 provides that a person domiciled in a Member State may be sued, under such a contract, in the courts of the place in another Member State where the characteristic obligation of that contract was or should have been performed. Accordingly, regarding the place of performance of the obligations arising from contracts for the provision of services, the second indent of Article 5(1)(b) of that regulation gives an autonomous definition of that linking factor, in order to reinforce the objectives of unifying the rules of jurisdiction and ensuring predictability (see, to that effect, *Rehder*, paragraphs 33 and 36, and Case C-19/09 *Wood Floor Solutions Andreas Domberger* [2010] ECR I-2121, paragraphs 23 and 26).

23 It is apparent from the information provided to the Court of Justice by the referring court that the contract at issue in the main proceedings concerns the storage of goods. The referring court states, inter alia, that it must resolve the problem of its international jurisdiction in a situation where the goods belonging to the defendant in the main proceedings, a company incorporated under German law, have been stored on a site which is located in Austria.

24 In order to ascertain whether such a situation falls within the scope of the second indent of Article 5(1)(b) of Regulation No 44/2001, it is necessary to examine whether the storage of goods constitutes a 'provision of services' within the meaning of that provision.

25 Clearly, that is the case.

26 It must be borne in mind that, according to the Court's case-law, the concept of service found in the second indent of Article 5(1)(b) of Regulation No 44/2001, implies, at the least, that the party who provides the service carries out a particular activity in return for remuneration (Case C-533/07 *Falco Privatstiftung and Rabitsch* [2009] ECR I-3327, paragraph 29).

27 In that regard, as the Austrian and Greek Governments as well as the European Commission submit in their written observations, the predominant element of a storage contract is the fact that the warehousekeeper undertakes to store the goods concerned on behalf of the other party to the contract. Accordingly, that commitment entails a specific activity, consisting, at the least, of the reception of goods, their storage in a safe place and their return to the other party to the contract in an appropriate state.

28 As regards the argument that the subject-matter of the contract at issue is the mere renting of an area of space, it must be noted that, in the context of proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and tribunals and the Court of Justice, any assessment of the facts is a matter for the national court or tribunal. In particular, the Court is empowered to rule only on the interpretation or the validity of European Union acts on the basis of the facts placed before it by the national court or tribunal (Case C-491/06 *Danske Svineproducenter* [2008] ECR I-3339, paragraph 23, and the judgment of 10 November 2011 in Joined Cases C-319/10 and C-320/10 *X and X BV*, paragraph 29).

29 According to the information provided by the order for reference, the contract at issue in the case in the main proceedings does not concern the rental of premises, but the storage of goods. Moreover, besides the fact that it is not for the Court to call into question that finding of fact, it must be noted that jurisdiction relating to the former type of contract is, in any event, governed by Article 22(1) of Regulation No 44/2001, relating to exclusive jurisdiction in the matter of tenancies of immovable property (see, as regards the Brussels Convention, Case 241/83 *Rösler* [1985] ECR 99, paragraph 24, and Case C-280/90 *Hacker* [1992] ECR I-1111, paragraph 10), under which only the courts and tribunals of the Member State where the property is situated have jurisdiction.

30 In the light of the foregoing, the answer to the question referred is therefore that the second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a contract relating to the storage of goods, such as that at issue in the main proceedings, constitutes a contract for the 'provision of services' within the meaning of that provision.

Costs

31 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 (Tenth Chamber) hereby rules:

The second indent of Article 5(1)(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 must be interpreted as meaning that a contract relating to the storage of goods, such as that at issue in the main proceedings, constitutes a contract for the 'provision of services' within the meaning of that provision.

[Signatures]