JUDGMENT OF THE COURT (First Chamber)

22 May 2008 *

In Case C-462/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour de cassation (France), made by decision of 7 November 2006, received at the Court on 20 November 2006, in the proceedings

Glaxosmithkline,

Laboratoires Glaxosmithkline

v

Jean-Pierre Rouard,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič and E. Levits, Judges,

Advocate General: M. Poiares Maduro,
Registrar: C. Strömholm, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 15 November 2007,

after considering the observations submitted on behalf of:

— Glaxosmithkline and Laboratoires Glaxosmithkline, by B. Soltner, avocat,

— M. Rouard, by C. Waquet, avocat,

— the French Government, by G. de Bergues and A.-L. During, acting as Agents,

— the German Government, by M. Lumma, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, and by W. Ferrante, avvocato dello Stato,

— the United Kingdom Government, by Z. Bryanston-Cross, acting as Agent, and by A. Howard, barrister,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 17 January 2008,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 6, point 1, and Section 5 of Chapter II 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; 'the Regulation').

2 The reference was made in the course of proceedings between Mr Rouard and Glaxosmithkline and Laboratoires Glaxosmithkline, established in the United Kingdom and France respectively, considered by Mr Rouard, by virtue of a term in his contract of employment, to have been his joint employers and from which he seeks the payment of various amounts by way of compensation for dismissal and damages for wrongful breach of that contract.

Legal context

3 Article 2, point 1, in Section 1, entitled 'General provisions' of Chapter II of the Regulation, provides:

'Subject to the provisions of this regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

4 Article 6 of the Regulation, in Section 2 of Chapter II thereof, entitled 'Special jurisdiction', states:

'A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

…

(3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

…'

5 Among the objectives of the Regulation, recital 13 states:

'In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.'

6 Section 5 of Chapter II of the Regulation, entitled 'Jurisdiction over individual contracts of employment', contains in particular the following provisions:

'*Article 18*

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

…

Article 19

An employer domiciled in a Member State may be sued:

(1) in the courts of the Member State where he is domiciled; or

(2) in another Member State:

(a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

(b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.'

The dispute in the main proceedings and the question referred to the Court

7 Mr Rouard was engaged in 1977 by the company Laboratoires Beecham Sévigné, the seat of which was in France, and he was posted to various African States.

8 Pursuant to a new contract of employment concluded in 1984 with Beecham Research UK, another company in the group, which was registered in the United Kingdom, Mr Rouard was engaged by that company and sent to Morocco. Under that contract of employment, his new employer undertook to maintain the contractual rights acquired by Mr Rouard under his initial contract of employment with Laboratoires Beecham Sévigné, and in particular to preserve his rights derived from length of service and his entitlement to compensation in the event of dismissal.

9 Mr Rouard was dismissed in 2001. In 2002 he brought an action before the Conseil de prud'hommes de Saint-Germain-en-Laye (Employment Tribunal, Saint-Germain-en-Laye) against Laboratoires Glaxosmithkline, which has assumed the rights of Laboratoires Beecham Sévigné, the seat of which is in France, and Glaxosmithkline, which has assumed the rights of Beecham Research UK, the seat of which is in the United Kingdom. Mr Rouard requests that those companies be ordered jointly and severally to pay him various amounts of compensation and damages for non-compliance with the dismissal procedure, dismissal without genuine and serious cause and wrongful breach of his employment contract.

10 Mr Rouard submits that those two companies were his joint employers. Since the French courts have jurisdiction in respect of Laboratoires Glaxosmithkline, the seat of which is in France, those courts, he submits, also have jurisdiction, pursuant to Article 6, point 1, of the Regulation, in respect of Glaxosmithkline.

11 Those companies disputed the jurisdiction of the Conseil de prud'hommes de Saint-Germain-en-Laye, which upheld that objection of lack of jurisdiction. After the Cour d'appel de Versailles (Court of Appeal, Versailles) set aside the first instance judgment, those companies appealed in cassation against the judgment of 6 April 2004 of that latter court.

12 It is in those circumstances that the Cour de cassation decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does the rule of special jurisdiction stated in Article 6, point 1, of [the] Regulation …, by virtue of which a person domiciled in a Member State may be sued "where he is one of a number of defendants, in the courts for the place where any of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings", apply to proceedings brought by an employee before a court of a Member State against two companies belonging to the same group, one of which, being the one which engaged that employee for the group and refused to re-employ him, is domiciled in that Member State and the other, for which the employee last worked in non-Member States and which dismissed him, in another Member State, when that applicant relies on a clause in the employment contract to claim that the two [companies] were his co-employers from whom he claims compensation for his dismissal or does the rule in Article 18, point 1, of [R]egulation [No 44/2001], by virtue of which, in matters relating to individual contracts of employment, jurisdiction is to be determined by Section 5 of Chapter II [of that regulation], exclude the application of Article 6, point 1, [of that regulation], so that each of the two companies must be sued before the courts of the Member State where it is domiciled[?]'

The question

13 By this question the national court essentially asks whether the rule of special jurisdiction in Article 6, point 1, of the Regulation in respect of co-defendants is applicable to the action brought by an employee against two companies established in different Member States which he considers to have been his joint employers.

14 It should be pointed out, at the outset, that the Regulation now replaces in Member States' relations 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 the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and 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').

15 The rules of jurisdiction over individual contracts of employment contained in the Regulation differ appreciably from the rules applicable in that field under the Brussels Convention.

16 In the Brussels Convention the only specific rule concerning contracts of employment was introduced in 1989. That rule appeared in Section 2 of Title II of that convention, concerning special jurisdiction, and had been added in the form of a particular case of the jurisdiction rule laid down in Article 5, point 1, of the Brussels Convention in matters relating to a contract.

17 In the Regulation, jurisdiction over individual contracts of employment is the subject of a specific section, namely Section 5 of Chapter II. That section, which contains Articles 18 to 21 of the Regulation, seeks to ensure that employees are afforded the protection referred to in recital 13 of the preamble thereto.

18 As maintained, or at least acknowledged, by Glaxosmithkline and Laboratoires Glaxosmithkline, the French, German, Italian and United Kingdom Governments and the Commission of the European Communities, it is apparent from the wording of the provisions of Section 5 that they are not only specific but also exhaustive.

19 Thus, it is clear from Article 18, point 1, of the Regulation, first, that any dispute concerning an individual contract of employment must be brought before a court designated in accordance with the jurisdiction rules laid down in Section 5 of Chapter II of that regulation and, second, that those jurisdiction rules cannot be amended or supplemented by other rules of jurisdiction laid down in that regulation unless specific reference is made thereto in Section 5 itself.

20 Article 6, point 1, of the Regulation falls not within Section 5 of Chapter II of the Regulation but within Section 2 thereof.

21 Article 6, point 1, of the Regulation is not referred to at all in Section 5, unlike Article 4 and Article 5, point 5, of the Regulation, the application of which is preserved expressly by Article 18(1) thereof.

22 The rule of jurisdiction laid down in Article 6, point 1, of the Regulation is also not the subject of a corresponding provision in Section 5, unlike the rule laid down in Article 6, point 3, concerning the case of counter-claims, which has been incorporated in Article 20, point 2, of that regulation.

23 It is therefore clear that a literal interpretation of Section 5 of Chapter II of the Regulation leads to the conclusion that that section precludes any recourse to Article 6, point 1, thereof.

24 That interpretation is, moreover, supported by the 'travaux préparatoires'. The proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 1999 C 376 E, p. 1) states, in relation to Section 5 of Chapter II of the proposed regulation, which was adopted as it stood by the Community legislature, that '[t]he jurisdiction conferred by this Section is substituted for that conferred by Sections 1 [General provisions] and 2 [Special jurisdiction]'.

25 In their written observations, the French, German and Italian Governments claim, none the less, that a teleological interpretation of the Regulation, taking account of its objectives, could lead to allowing Article 6, point 1, of the Regulation to apply in matters relating to contracts of employment.

26 Thus, the Italian Government submits that the purpose of Article 6, point 1, of the Regulation, which is to preclude the risk of irreconcilable judgments, implies that that provision should be applicable to all types of disputes, including therefore those concerning contracts of employment.

27 It is true that the application of Article 6, point 1, of the Regulation to contracts of employment would make it possible to extend to disputes relating to such contracts the possibility of bringing, before the same court, related claims concerning more than one defendant. Such an extension, like that effected expressly by the Community legislature in Article 20, point 2, of the Regulation in relation to counter-claims, would reflect the general objective of sound administration of justice, which implies observance of the principle of economy of procedure.

28 However, it is settled case-law that the rules of special jurisdiction must be interpreted strictly and cannot be given an interpretation going beyond the cases expressly envisaged by the Regulation (see, inter alia, in relation to Article 6, point 1, of the Regulation, Case C-103/05 *Reisch Montage* [2006] ECR I-6827, paragraph 23, and Case C-98/06 *Freeport* [2007] ECR I-8319, paragraph 35). As has been noted in paragraph 23 of this judgment, the wording of the provisions of Section 5 of Chapter II of the Regulation precludes the application of Article 6, point 1, in disputes concerning matters relating to contracts of employment.

29 Moreover, sound administration of justice would imply that any possibility of relying on Article 6, point 1, of the Regulation should be open, as in the case of counter-claims, both to employees and to employers.

30 Such an application of Article 6, point 1, of the Regulation could give rise to consequences contrary to the objective of protection, which the insertion in that regulation of a specific section for contracts of employment sought specifically to ensure.

31 Reliance by an employer on Article 6, point 1, of the Regulation could thus deprive the employee of the protection afforded to him by Article 20, point 1, of that regulation, according to which proceedings can be brought against an employee only in the courts of the Member State in which he is domiciled.

32 As regards the possibility, suggested by the French and German Governments, of interpreting Article 6, point 1, of the Regulation as meaning that only an employee should be able to rely on that provision, it must be pointed out that that would run counter to the wording of the provisions of both Article 6, point 1, and Section 5 of Chapter II of that regulation. In addition, there would be no reason to restrict the protective logic of such an argument to Article 6, point 1, alone, and it would be necessary to accept that employees, and they alone, should be able to rely on any rule of special jurisdiction provided for in that regulation which could serve their individual interests. The transformation by the Community courts of the rules of special jurisdiction, aimed at facilitating sound administration of justice, into rules of unilateral jurisdiction protecting the party deemed to be weaker would go beyond the balance of interests which the Community legislature has established in the law as it currently stands.

33 Therefore, as regards the Community provisions currently in force, an interpretation such as that suggested by the French and German Governments would be difficult to reconcile with the principle of legal certainty, which is one of the objectives of the

Regulation and which requires, in particular, that rules of jurisdiction be interpreted in such a way as to be highly predictable, as stated in recital 11 in the preamble to the Regulation, (see, inter alia, as regards Article 6, point 1, of the Regulation, *Reisch Montage*, paragraphs 24 and 25, and *Freeport*, paragraph 36).

34 It must also be pointed out that the Regulation, in its current version, notwithstanding the objective of protection referred to in recital 13 in the preamble thereto, does not afford particular protection to an employee in a situation such as Mr Rouard's since, as a claimant before the national courts, there is no rule of jurisdiction available to him that is more favourable than the general rule laid down in Article 2, point 1, of the Regulation.

35 In those circumstances, the answer to the question referred must be that the rule of special jurisdiction provided for in Article 6, point 1, of the Regulation cannot be applied to a dispute falling under Section 5 of Chapter II of that regulation concerning the jurisdiction rules applicable to individual contracts of employment.

Costs

36 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 that the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The rule of special jurisdiction provided for in Article 6, point 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 cannot be applied to a dispute falling under Section 5 of Chapter II of that regulation concerning the jurisdiction rules applicable to individual contracts of employment.

[Signatures]