JUDGMENT OF THE COURT (First Chamber)

4 June 2009 *

In Case C-285/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Cour de cassation (France), made by decision of 24 June 2008, received at the Court on 30 June 2008, in the proceedings

Société Moteurs Leroy Somer

v

Société Dalkia France,

Société Ace Europe,

* Language of the case: French.

THE COURT (First Chamber),

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

Advocate General: P. Mengozzi,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Moteurs Leroy Somer, by SCP F. Rocheteau and C. Uzan-Sarano, avocat,

— Dalkia France and Ace Europe, by SCP Coutard — Mayer — Munier-Apaire, avocat,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

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

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

— the Commission of the European Communities, by G. Wilms and J.-B. Laignelot, 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 9 and Article 13 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

2 The reference was made in the course of proceedings between Moteurs Leroy Somer, Dalkia France and Ace Europe concerning Moteurs Leroy Somer's responsibility for damage to a hospital generator due to the fact that the alternator manufactured by the latter overheated.

Legal context

Community legislation

3 The 9th and 18th recitals in the preamble to Directive 85/374 are worded as follows:

'Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property; whereas the latter should nevertheless be limited to goods for private use or consumption …;

…

Whereas the harmonisation resulting from this cannot be total at the present stage, but opens the way towards greater harmonisation; whereas it is therefore necessary that the Council receive at regular intervals, reports from the Commission on the application of this Directive, accompanied, as the case may be, by appropriate proposals.'

4 Article 1 of Directive 85/374 provides that 'the producer shall be liable for damage caused by a defect in his product'.

5 Article 4 of that directive states that 'the injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage'.

6 Article 9 of that directive provides:

'For the purpose of Article 1, "damage" means:

(a) damage caused by death or by personal injuries;

(b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of [EUR] 500, provided that the item of property:

(i) is of a type ordinarily intended for private use or consumption, and

(ii) was used by the injured person mainly for his own private use or consumption.

This Article shall be without prejudice to national provisions relating to non-material damage.'

7 Article 13 of that directive is worded as follows:

'This Directive shall not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability or a special liability system existing at the moment when this Directive is notified.'

National legislation

8 As is apparent from the order for reference, French law or settled French case-law enable a person injured by a defective product to seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage.

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

9 A generator installed in 1995 in a hospital in Lyon by a company Wartsila caught fire due to the fact that the alternator manufactured and put into circulation in 1994 by Moteurs Leroy Somer overheated.

10 Dalkia France, which was responsible for the maintenance of this installation, and its insurer, Ace Europe, paid compensation for the material damage caused to the hospital by that accident and then, having taken over the hospital's rights, brought an action against Moteurs Leroy Somer so as to obtain reimbursement of the sums paid by them.

11 By judgment of 7 December 2006, the Cour d'appel de Lyon held that Moteurs Leroy Somer was bound by an obligation to ensure safety and ordered it to pay the sum of EUR 320 143.03 to Dalkia France and the sum of EUR 229 107 to Ace Europe.

12 Before the referring court, Moteurs Leroy Somer claims in particular that the safety obligation imposed on all professional vendors does not cover damage caused to goods intended for professional use and employed by the injured person for professional purposes. By ordering it to pay compensation for the purely material damage affecting the generator ordered by the hospital for the purposes of its professional activity, the Cour d'appel de Lyon infringed the provisions of Article 1603 of the Civil Code, interpreted in the light of Directive 85/374.

13 As it considers it necessary to interpret Directive 85/374 in order to decide the appeal pending before it, the Cour de cassation decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Articles 9 and 13 of … Directive 85/374 … preclude the interpretation of domestic law or settled domestic case-law such that it enables an injured person to seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that person simply proves damage, the defect in the product and the causal link between that defect and the damage?'

The question referred for a preliminary ruling

14 By its question, the Cour de Cassation asks, in essence, whether Directive 85/374 precludes the interpretation of domestic law or the application of settled domestic case-law according to which the injured person can seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage.

15 Article 9 of Directive 85/374 defines the term 'damage' for the purposes of Article 1 of that directive, which provides that 'the producer shall be liable for damage caused by a defect in his product'.

16 According to Article 9, that term covers, as well as damage caused by death or by personal injuries, damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of EUR 500, provided that the item of property is of a type ordinarily intended for private use or consumption, and was used by the injured person mainly for his own private use or consumption.

17 It must therefore be held that damage, such as that in the main proceedings, to an item of property intended for professional use and employed for that purpose, is not covered by the term 'damage' for the purposes of Directive 85/374 and, consequently, cannot give rise to liability of the producer under Article 1 of that directive.

18 However, in its observations submitted to the Court, Moteurs Leroy Somer takes the view that Directive 85/374, by not subjecting damage to an item of property intended for professional use and employed for that purpose to the system of liability that it establishes, prevents the Member States from providing for a system of liability for that

damage on the same basis as that provided for by that directive, namely on the simple proof of damage, of the defect and of the causal link.

19 In that regard, it must be held that the system at issue in the main proceedings makes the possibility for the injured person to seek compensation for damage to an item of property intended for professional use and employed for that purpose subject to burdens of proof which correspond to those provided for by Article 4 of Directive 85/374, namely that the injured person prove the damage, the defect and the causal link between the defect and the damage.

20 It is, furthermore, true that the Court has held that the margin of discretion available to the Member States to make provision for product liability is entirely determined by Directive 85/374 itself and must be inferred from its wording, purpose and structure (Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 22 and the case-law cited).

21 In that respect, the Court has pointed out that Directive 85/374 seeks to achieve, in the matters regulated by it, complete harmonisation of the laws, regulations and administrative provisions of the Member States (*Skov and Bilka*, paragraph 23 and the case-law cited).

22 It is also true that the Court has held that Article 13 of Directive 85/374, which provides that the directive is not to affect any rights which an injured person may have according to the rules of contractual or non-contractual liability or a special liability system existing at the moment when that directive was notified, could not be interpreted as leaving it open to the Member States to maintain a general system of product liability different from that provided for in the directive (*Skov and Bilka*, paragraph 39 and the case-law cited).

23 Furthermore, the Court has held that Article 13 of Directive 85/374 must be interpreted as meaning that the system of rules put in place by the directive does not preclude the application of other systems of contractual or non-contractual liability based on other grounds, such as fault or a warranty in respect of latent defects (*Skov and Bilka*, paragraph 47 and the case-law cited).

24 However, the fact remains that Directive 85/374 can preclude a system of liability such as that at issue in the main proceedings only on condition that that system is covered by the scope of application of that directive.

25 Although Directive 85/374, as was pointed out in paragraph 21 of the present judgment, seeks to achieve, in the matters regulated by it, complete harmonisation of the laws, regulations and administrative provisions of the Member States, it does not, however, as is apparent from the 18th recital in the preamble thereto, seek exhaustively to harmonise the field of liability for defective products beyond those matters.

26 As Dalkia France, Ace Europe, the French and Austrian Governments and the Commission contend in their respective observations submitted to the Court, a system of liability such as that at issue in the main proceedings is not covered by the scope of application of Directive 85/374.

27 It is apparent both from the wording and from the structure of Directive 85/374, and in particular from Article 1, Article 9 and the ninth recital in the preamble thereto, that compensation for damage to an item of property intended for professional use and employed for that purpose is not one of the matters regulated by that directive, such damage not being covered, as was pointed out in paragraph 17 of the present judgment, by the term 'damage' for the purposes of Article 1 of Directive 85/374, as defined in Article 9 thereof.

28 It must therefore be held that compensation for damage to an item of property intended for professional use and employed for that use is not covered by the scope of application of Directive 85/374.

29 That interpretation is not invalidated by the fact that Directive 85/374, as is clear from the first recital in the preamble thereto and from the case-law of the Court (Case C-52/00 *Commission* v *France* [2002] ECR I-3827, paragraph 17; Case C-154/00 *Commission* v *Greece* [2002] ECR I-3879, paragraph 13; and Case C-183/00 *González Sánchez* [2002] ECR I-3901, paragraph 26), aims not only to avoid differences in levels of consumer protection, but also to ensure undistorted competition between traders and to facilitate the free movement of goods.

30 Nothing in the wording of Directive 85/374 leads to the conclusion that the Community legislature, by limiting compensation for damage to goods under that directive to items of property intended for private use or consumption, intended, so as to ensure undistorted competition and to facilitate the free movement of goods, to deprive the Member States of the power, concerning compensation for damage to an item of property intended for professional use and employed for that purpose, to provide for a system of liability which corresponds to that established by that directive.

31 Therefore, as the harmonisation brought about by Directive 85/374 does not cover compensation for damage to an item of property intended for professional use and employed for that purpose, that directive does not prevent a Member State from providing in that respect for a system of liability corresponding to that established by that directive.

32 In view of all the foregoing considerations, the answer to the question referred is that Directive 85/374 must be interpreted to mean that it does not preclude the interpretation of domestic law or the application of settled domestic case-law according to which an injured person can seek compensation for damage to an item of property intended for professional use and employed for that purpose, where the

injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage.

Costs

33 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:

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted to mean that it does not preclude the interpretation of domestic law or the application of settled domestic case-law according to which an injured person can seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage.

[Signatures]