JUDGMENT OF THE COURT (First Chamber)

10 September 2009*

In Case C-292/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 20 June 2008, received at the Court on 2 July 2008, in the proceedings

German Graphics Graphische Maschinen GmbH

v

Alice van der Schee, acting as liquidator of Holland Binding BV,

THE COURT (First Chamber),

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

* Language of the case: Dutch.

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

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Netherlands Government, by C. Wissels and C. ten Dam, acting as Agents,

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

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

— the United Kingdom Government, by H. Walker and A. Henshaw, acting as Agents,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and R. Troosters, 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 Articles 4(2)(b), 7(1) and 25(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) and 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 course of proceedings between German Graphics Graphische Maschinen GmbH ('German Graphics') and Ms van der Schee, acting as liquidator of Holland Binding BV ('Holland Binding'), concerning the enforcement of an order made by a German court.

Legal context

3 Article 3(1) of Regulation No 1346/2000 provides:

'The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.'

4 Article 4(1) and (2)(b) of that regulation states:

'1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the "State of the opening of proceedings".

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

…

(b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings.'

5 Article 7(1) of that regulation provides:

‘The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller’s rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.’

6 Article 25(1) and (2) of that regulation provides:

‘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 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 Conventions of Accession to this Convention [(“the Brussels 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.'

7 Article 1(1) of Regulation No 44/2001 defines the material scope of that regulation. That regulation covers all civil and commercial matters and does not extend to revenue, customs and administrative matters.

8 Article 1(2) of Regulation No 44/2001 provides:

'The Regulation shall not apply to:

…

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

….'

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

9 German Graphics, a company established under German law, concluded, as vendor, a contract for the sale of machines with Holland Binding, a company established under Dutch law, containing a reservation of title clause in its favour.

10 By a decision of 1 November 2006, the Rechtbank Utrecht (Utrecht District Court) (Netherlands) placed Holland Binding in involuntary liquidation and appointed a liquidator of that company.

11 By order of 5 December 2006, the Landgericht Braunschweig (Brunswick Regional Court) (Germany) granted the application made by German Graphics for the adoption of protective measures with regard to a certain number of machines situated at the premises of Holland Binding in the Netherlands. That application was based on the reservation of title clause referred to above.

12 On 18 December 2006, the voorzieningenrechter te Utrecht (the judge in Utrecht responsible for granting interim measures) declared the decision of the Landgericht Braunschweig enforceable. Subsequently, Ms van der Schee, acting as liquidator of Holland Binding, lodged an appeal against that decision with the Rechtbank Utrecht (Utrecht District Court), which, by decision of 28 March 2007, revoked that decision. German Graphics lodged an appeal in cassation against the decision of the Rechtbank Utrecht with the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

13 By order of 20 June 2008, the Hoge Raad der Nederlanden decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘1. Must Article 25(2) of [Regulation No 1346/2000] be interpreted as meaning that the words “provided that that Convention [namely Regulation No 44/2001] is applicable” featuring in that provision imply that, before it can be concluded that the recognition and enforcement provisions of [Regulation No 44/2001] are

applicable to judgments other than those referred to in Article 25(1) of [Regulation No 1346/2000], it is first necessary to determine whether, pursuant to Article 1(2)(b) of the [Regulation No 44/2001], such judgments fall outside the material scope of that regulation?

(2) Must Article 1(2)(b) of the [Regulation No 44/2001], read in conjunction with Article 7(1) of [Regulation No 1346/2000], be interpreted as meaning that it follows from the fact that an asset to which a reservation of title applies is situated, at the time of the opening of insolvency proceedings against the purchaser, in the Member State in which those insolvency proceedings are opened, that an action brought by the seller based on that reservation of title, such as that of German Graphics, must be regarded as an action which relates to bankruptcy or the winding-up of an insolvent company, within the meaning of Article 1(2)(b) of the [Regulation No 44/2001], and which therefore falls outside the material scope of that regulation?

(3) Is it relevant in the context of Question 2 that, pursuant to Article 4(2)(b) of [Regulation No 1346/2000], the law of the Member State in which the insolvency proceedings are opened is to determine the assets which form part of the estate?'

The first question

14 By its first question, the referring court asks in essence whether before being able to declare that a judgment should be recognised for the purposes of Article 25(2) of Regulation No 1346/2000 on the basis of the provisions of Regulation No 44/2001, the court responsible for enforcing it must determine whether that judgment is within the scope of application of the latter regulation.

15 The recognition of judgments relating to insolvency proceedings is governed by Articles 16 to 26 of Regulation No 1346/2000. In that context, Article 25 of that regulation concerns, in particular, the recognition and enforceability of judgments other than those directly concerning the opening of insolvency proceedings.

16 The first subparagraph of Article 25(1) refers, first, to 'judgments … which concern the course and closure' of such proceedings, and, secondly, in the second and third subparagraphs thereof, to those 'deriving directly from the insolvency proceedings and which are closely linked with them' and judgments relating to certain preservation measures, and, in paragraph 2 thereof, to 'judgments other than those referred to in paragraph 1 …, provided that that Convention [namely, the Brussels Convention] is applicable'.

17 Consequently, the judgments referred to in Article 25(2) of Regulation No 1346/2000 are not judgments falling within the scope of application of that regulation. Furthermore, it is conceivable that, among those judgments, there are some judgments which will come within the scope of application neither of Regulation No 1346/2000 nor of Regulation No 44/2001. In that regard, it follows from the wording of Article 25(2) that the application of Regulation No 44/2001 to a judgment within the meaning of that provision is subject to the condition that that judgment fall within the material scope of Regulation No 44/2001.

18 It follows that, if the judgment concerned does not apply to civil or commercial matters, or if it is excluded from the scope of application of Regulation No 44/2001, as laid down by Article 1 thereof, that regulation cannot be applied.

19 Accordingly, the court responsible for the enforcement must, before declaring that a judgment should be recognised which is not within the scope of application of Regulation No 1346/2000, in accordance with Regulation No 44/2001, determine whether the judgment at issue is within the material scope of the latter regulation.

20 It follows from the above that the answer to the first question is that Article 25(2) of Regulation No 1346/2000 must be interpreted as meaning that the words 'provided that that Convention is applicable' imply that, before it can be concluded that the recognition and enforcement provisions of Regulation No 44/2001 are applicable to judgments other than those referred to in Article 25(1) of Regulation No 1346/2000, it is necessary to determine whether such judgments fall outside the material scope of Regulation No 44/2001.

The second and third questions

21 By its second and third questions, which should be examined together, the referring court asks, in essence, whether as a result of the opening of insolvency proceedings against a purchaser, where the asset covered by the reservation of title is situated in the Member State of the opening of those proceedings, an action brought by the seller against that purchaser based on the reservation of title clause is excluded from the scope of application of Regulation No 44/2001.

22 In order to answer those questions, it is necessary to refer to the recitals in the preamble to Regulation No 44/2001. The second of those recitals states that certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. The seventh recital in the preamble to that regulation provides that its scope must cover all the main civil and commercial matters. The 15th recital in the preamble to that regulation makes clear the need, in the interests of the harmonious administration of justice, to ensure that irreconcilable judgments will not be given in two Member States.

23 Those recitals indicate the intention on the part of the Community legislature to provide for a broad definition of the concept of 'civil and commercial matters' referred to in Article 1(1) of Regulation No 44/2001 and, consequently, to provide that the article should be broad in its scope.

24 Such an interpretation is also supported by the first sentence of the sixth recital in the preamble to Regulation No 1346/2000, according to which that regulation should, in accordance with the principle of proportionality, be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings.

25 Consequently, the scope of application of Regulation No 1346/2000 should not be broadly interpreted.

26 That stated, it must be noted that, in its case-law relating to the Brussels Convention, the Court has 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 Case 133/78 *Gourdain* [1979] ECR 733, paragraph 4). An action with such characteristics does not, therefore, fall within the scope of that convention (see Case C-339/07 *Seagon* [2009] ECR I-767, paragraph 19).

27 In so far as Regulation No 44/2001 has now replaced the Brussels Convention in relations between Member States, the interpretation provided by the Court in respect of the provisions of the Brussels Convention also applies to the provisions of Regulation No 44/2001 whenever both sets of provisions may be regarded as equivalent. It is also clear from the 19th recital in the preamble to Regulation No 44/2001 that continuity of interpretation should be ensured between the Brussels Convention and Regulation No 44/2001 (Case C-167/08 *Draka NK Cables and Others* [2009], ECR I-3477, paragraph 20).

28 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 (Case C-111/08 *SCT Industri* [2009] ECR I-5655, paragraph 23).

29 In the light of the above it is therefore the closeness of the link, in the sense of the case-law resulting from *Gourdain*, between a court action such as the one 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.

30 It should be noted that, in a case such as the one at issue in the main proceedings, that link is neither sufficiently direct nor sufficiently close to exclude the application of Regulation No 44/2001.

31 It appears from the order for reference that German Graphics, the applicant in the proceedings before the Landgericht Braunschweig, has requested the recovery of assets owned by it and that the only question before the court relates to the ownership of certain machines situated on the premises of Holland Binding in the Netherlands. The answer to that question of law is independent of the opening of insolvency proceedings. The action brought by German Graphics sought only to ensure the application of the reservation of title clause in its own favour.

32 In other words, the action concerning that reservation of title clause constitutes an independent claim, as it is not based on the law of the insolvency proceedings and requires neither the opening of such proceedings nor the involvement of a liquidator.

33 In those circumstances, the mere fact that the liquidator is a party to the proceedings is not sufficient to classify the proceedings brought before the Landgericht Braunschweig as proceedings deriving directly from the insolvency and being closely linked to proceedings for realising assets.

34 It must, therefore, be held that a claim such as that brought by German Graphics before the Landgericht Braunschweig does not fall outside the scope of application of Regulation No 44/2001.

35 The referring court has, however, doubts concerning the extent to which Article 7(1) of Regulation No 1346/2000 is liable to influence the classification of actions having a link with insolvency proceedings. That provision merely states that 'the opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings'. In other words, that provision only constitutes a substantive rule intended to protect the seller with respect to assets which are situated outside the Member State of opening of insolvency proceedings.

36 Furthermore, in the main proceedings, Article 7(1) of Regulation No 1346/2000 is inapplicable, since German Graphics' assets were situated, at the time of the opening of insolvency proceedings, in the Netherlands, that is to say, in the Member State of the opening of those proceedings.

37 As regards the possible effect of Article 4(2)(b) of Regulation No 1346/2000 on the answer given by the Court concerning the classification of the action in the main proceeding, it must be noted that that provision only constitutes a rule intended to prevent conflicts of law by providing that the law of the State of opening of the insolvency proceedings is to apply in order to determine 'the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings'. That provision has no effect on the scope of application of Regulation No 44/2001.

38 Regard being had to all of the above considerations, the answer to the second and third questions is that the exception provided for in Article 1(2)(b) of Regulation No 44/2001, read in conjunction with Article 7(1) of Regulation No 1346/2000, must be interpreted, account being taken of the provisions of Article 4(2)(b) of the latter regulation, as meaning that it does not apply to an action brought by a seller based on a reservation of title against a purchaser who is insolvent, where the asset covered by the reservation of title is situated in the Member State of the opening of those proceedings at the time of opening of those proceedings against that purchaser.

Costs

39 Since these proceedings are, for the parties to the main proceedings, a step in the claim 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:

1. **Article 25(2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the words 'provided that that Convention is applicable' imply that, before it can be concluded that the recognition and enforcement provisions 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 are applicable to judgments other than those referred to in Article 25(1) of Regulation No 1346/2000, it is necessary to determine whether such judgments fall outside the material scope of Regulation No 44/2001.**

2. **The exception provided for in Article 1(2)(b) of Regulation No 44/2001, read in conjunction with Article 7(1) of Regulation No 1346/2000, must be interpreted, account being taken of the provisions of Article 4(2)(b) of the latter regulation, as meaning that it does not apply to an action brought by a seller based on a reservation of title against a purchaser who is insolvent, where the asset covered by the reservation of title is situated in the Member State of the opening of those proceedings at the time of opening of those proceedings against that purchaser.**

[Signatures]