Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 October 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 6(3) — Definition of 'counterclaim' — Claim based on unjust enrichment — Payment of a sum due under a decision that has been set aside — Temporal application)

In Case C-185/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 15 January 2015, received at the Court on 22 April 2015, in the proceedings

Marjan Kostanjevec

v

F&S Leasing GmbH,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— F&S Leasing GmbH, by M. Rihtar and B. Potočan, odvetnika,

— the Slovenian Government, by T. Mihelič Žitko, acting as Agent,

— the Spanish Government, by J. García-Valdecasas Dorrego, acting as Agent,

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

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016,

gives the following

* Language of the case: Slovenian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 5(1), 6(3) and 15(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 Mr Marjan Kostanjevec, domiciled in Slovenia, and F&S Leasing GmbH ('F&S'), whose registered office is in Austria, concerning the non-performance of a financial leasing contract.

Legal context

EU law

3 According to recital 2 of Regulation No 44/2001, the regulation aims, in the interests of the sound operation of the internal market, to implement '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'.

4 Recitals 11 to 13 and 15 of Regulation No 44/2001 state:

'(11) 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. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) 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.

(13) 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.

…

(15) 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. …'

5 The rules on jurisdiction laid down by that regulation are in Chapter II. That chapter includes Sections 1, 2 and 4, headed 'General provisions', 'Special jurisdiction' and 'Jurisdiction over consumer contracts' respectively.

6 Article 2(1) of the regulation, which is in Section 1 of Chapter II, reads as follows:

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

7 Article 3(1) of the regulation, which also appears in that section, 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.’

8 Under Article 5 of the regulation, which forms part of Section 2 of Chapter II:

‘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;

…’

9 In accordance with Article 6(3) of the regulation, also in Section 2 of Chapter II, a person domiciled in a Member State may also be sued ‘on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending’.

10 Article 15(1)(c) of the regulation, which is in Section 4 of Chapter II, provides:

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

…

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

11 Article 16 of the regulation provides:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending.’

12 Article 30 of the regulation reads as follows:

‘For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.’

13 In accordance with Article 66 of the regulation, which forms Chapter VI, ‘Transitional provisions’:

‘1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.

2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,

(a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State [of] origin and in the Member State addressed;

(b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.’

Slovenian law

14 Article 183 of the Zakon o pravdnem postopku (Code of Civil Procedure), on counterclaims, provides:

‘The defendant may, up to the end of the main proceedings, bring a counterclaim in the same court:

(1) if the counterclaim is linked to the original claim, or

(2) if the original claim and the counterclaim can be set off against each other, or

(3) if the counterclaim seeks a declaration of a right or a legal relationship on whose existence or absence the decision on the original claim wholly or partly depends.

A counterclaim may not be brought if another court has substantive jurisdiction over the counterclaim or if a different kind of procedure is prescribed for adjudicating on the counterclaim.

A counterclaim may be brought even if it has to be heard by a different formation of the same court.

…’

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

15 F&S, whose registered office is in Austria, concluded a financial leasing contract with Mr Kostanjevec on 14 January 1994. As a result of the non-payment of instalments that were due under the contract, F&S on 26 October 1995 demanded from Mr Kostanjevec payment of EUR 16692.22, the application for enforcement being based on an authentic instrument. In accordance with national law, Mr Kostanjevec's objection to the application for enforcement came before the Okrožno sodišče v Ptuju (Regional Court, Ptuj, Slovenia) and judicial proceedings were instituted on the basis of the application for enforcement.

16 That court, by judgment of 28 April 2004, ordered Mr Kostanjevec to pay the sum of EUR 16692.22 together with contractual interest and costs.

17 By judgment of the Višje sodišče v Mariboru (Court of Appeal, Maribor, Slovenia) of 11 April 2006 dismissing Mr Kostanjevec's appeal, the judgment of the first instance court of 28 April 2004 became final and enforceable.

18 Mr Kostanjevec appealed on a point of law against that judgment to the referring court, the Vrhovno sodišče (Supreme Court, Slovenia). Before that court ruled on the appeal, F&S and Mr Kostanjevec reached an extrajudicial settlement on 31 July 2006, by which they agreed that Mr Kostanjevec would by 30 August 2006 pay the principal sum of EUR 16692.22 and the costs of the proceedings and enforcement.

19 The referring court, by order of 9 July 2008, set aside the judgment of the Okrožno sodišče v Ptuju (Regional Court, Ptuj) of 28 April 2004 and the judgment of the Višje sodišče v Mariboru (Court of Appeal, Maribor) of 11 April 2006, and referred the case back to the court of first instance for rehearing.

20 Mr Kostanjevec thereupon brought a counterclaim before the Okrožno sodišče v Ptuju (Regional Court, Ptuj), seeking from F&S reimbursement of the sum of EUR 18678.45, corresponding to the amount he had paid on 30 August 2006 pursuant to the settlement agreed with F&S on 31 July 2006, plus interest for late payment.

21 Rehearing the case, the Okrožno sodišče v Ptuju (Regional Court, Ptuj), by judgment of 4 November 2009, dismissed the claim for payment by F&S and allowed Mr Kostanjevec's counterclaim, on the ground that he had not obtained the subject matter of the leasing contract, so that F&S had not performed its contractual obligation to provide that subject matter.

22 F&S appealed against that decision to the Višje sodišče v Mariboru (Court of Appeal, Maribor), which held by judgment of 31 March 2010 that Mr Kostanjevec's counterclaim was inadmissible because 'the claims were so reciprocally dependent as to be mutually exclusive'. The court found, however, that the courts of Slovenia had jurisdiction under Article 15(1)(b) of Regulation No 44/2001.

23 That judgment, by virtue of which the judgment of the first instance court became final, was again the subject of an appeal on a point of law to the referring court, on the issue of the jurisdiction of the Slovenian courts to rule on the counterclaim. F&S submits that the conditions for a counterclaim are not satisfied, nor are the conditions satisfied for the application of the provisions concerning disputes relating to consumer contracts, since the dispute in the main proceedings does not arise from the financial leasing contract or a consumer contract but concerns instead a claim based on unjust enrichment.

24 In those circumstances, the Vrhovno sodišče (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must the term “counterclaim” within the meaning of Article 6(3) of Regulation No 44/2001 be interpreted as extending also to a claim brought as a counterclaim in accordance with national law after, in proceedings on an appeal on a point of law, a judgment delivered in proceedings on the defendant’s original claim that had become final and enforceable was set aside and the case referred back to the court of first instance for rehearing, where the applicant, in his counterclaim alleging unjust enrichment, seeks reimbursement of the amount which he was obliged to pay on the basis of the judgment delivered in the proceedings on the defendant’s original claim and set aside?

(2) Must the expression “matters relating to a contract concluded by a person, the consumer” in Article 15(1) of Regulation No 44/2001 be interpreted as extending to a situation in which the consumer brings an action, in which he pursues a claim alleging unjust enrichment, by way of counterclaim for the purposes of national law, linked to the original claim, which however relates to a case concerning a consumer contract within the meaning of that provision of Regulation No 44/2001, and in which the consumer-applicant seeks reimbursement of the amount he was obliged to pay by a judgment (subsequently) set aside, delivered in proceedings on the defendant’s original claim, and thus reimbursement of an amount arising from a case concerning a consumer contract?

(3) If, in the case described above, jurisdiction cannot be based either on the jurisdictional rules for counterclaims or on the jurisdictional rules for consumer contracts:
(a) Must the term “matters relating to a contract” in Article 5(1) of Regulation No 44/2001 be interpreted as extending to an action in which the applicant pursues a claim alleging unjust enrichment, but that is brought as a counterclaim under national law, linked to the defendant’s original claim which relates to the contractual relationship between the parties, where the purpose of the claim alleging unjust enrichment is to obtain reimbursement of the amount the applicant was obliged to pay by a judgment (subsequently) set aside, delivered in proceedings on the defendant’s original claim, and thus reimbursement of an amount arising from a contractual case?

If the foregoing question can be answered in the affirmative:
(b) In the case described above, must jurisdiction based on the place of performance within the meaning of Article 5(1) of Regulation No 44/2001 be examined on the basis of the rules governing the performance of obligations deriving from a claim alleging unjust enrichment?’

Admissibility of the request for a preliminary ruling

25 In its written observations, the European Commission pleads that the request for a preliminary ruling is inadmissible. It points out that, under Article 66(1) of Regulation No 44/2001, the regulation is to apply only to legal proceedings instituted after its entry into force. In the case of the Republic of Slovenia, the regulation is therefore applicable in that Member State only from its accession to the European Union on 1 May 2004.

26 In the Commission’s view, if the main proceedings that are pending were to be regarded as a continuation of the action brought following F&S’s application for enforcement of 26 October 1995, they would clearly go back to a date well before the entry into force of Regulation No 44/2001 in Slovenia. The regulation could apply only if Mr Kostanjevec’s claim for reimbursement of the sum paid by him under the settlement he concluded with F&S on 31 July 2006 on the basis of the judgment that was later set aside itself constituted ‘legal proceedings’ within the meaning of Article 66(1) of Regulation No 44/2001.

27 However, as the Advocate General observes in point 34 of her Opinion, a claim for reimbursement brought in connection with the rehearing of an original action as a result of the setting aside of the judgment delivered in that action, which had become final, must be classified as 'legal proceedings' within the meaning of Article 66(1) of Regulation No 44/2001.

28 While the domestic laws of the Member States may differ as to how the principle of *res judicata* is implemented, the fact that under the relevant national procedural rules such a judgment has become final suffices for it to be considered that a subsequent application to a court on the basis of unjust enrichment of the other party falls within the concept of 'legal proceedings' within the meaning of that provision.

29 Furthermore, as regards the application *ratione temporis* of Regulation No 44/2001 to the main proceedings, the documents before the Court show that all the questions asked in the request for a preliminary ruling concern the legal proceedings for unjust enrichment brought by Mr Kostanjevec in 2008, so that the proceedings fall within the temporal scope of Regulation No 44/2001.

30 In those circumstances, it must be considered that the request for a preliminary ruling is admissible.

Consideration of the questions referred

Question 1

31 By its first question, the referring court asks essentially whether Article 6(3) of Regulation No 44/2001 must be interpreted as meaning that the court designated by that provision as regards counterclaims has jurisdiction to hear a counterclaim seeking the reimbursement on the ground of unjust enrichment of a sum corresponding to the amount agreed in an extrajudicial settlement, where that claim is brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement.

32 It should be recalled, first, that in paragraph 12 of the judgment of 13 July 1995, *Danværn Production* (C-341/93, EU:C:1995:239), the Court has already interpreted the term 'counterclaim' within the meaning of Article 6(3) of Regulation No 44/2001 as concerning, in substance, a separate claim seeking a judgment against the claimant, which may be made for an amount exceeding that claimed by the claimant, and can be proceeded with even if the claimant's claim is dismissed.

33 As the Advocate General observes in point 39 of her Opinion, the counterclaim must therefore be separable from the claimant's action and seek a separate judgment.

34 In circumstances such as those of the main proceedings, the claim for reimbursement of the payment made in enforcement of the original decision, before it was set aside, constitutes a separate claim by the lessee seeking for a separate judgment to be given against the lessor to repay what was wrongly paid to him. Such a claim is not therefore a mere defence to the action for payment brought by the other party.

35 Secondly, Article 6(3) of Regulation No 44/2001 additionally requires the counterclaim to arise 'from the same contract or facts on which the original claim was based'.

36 As the Advocate General states in point 43 of her Opinion, that expression must be given an autonomous interpretation, having regard to the objectives of Regulation No 44/2001.

37 It should be noted here that it is in the interests of the sound administration of justice that the special jurisdiction for counterclaims enables the parties, in the same proceedings and before the same court, to litigate all their claims against each other that have a common origin. Unnecessary multiple proceedings are thus avoided.

38 In circumstances such as those of the main proceedings, the counterclaim for reimbursement on the ground of unjust enrichment must be regarded as arising from the leasing contract from which the lessor's original action originated. The alleged enrichment in the amount of the sum paid in enforcement of the judgment that has since been set aside would not have taken place without that contract.

39 Consequently, it must be considered that in such circumstances a counterclaim for reimbursement on the ground of unjust enrichment arises, within the meaning of Article 6(3) of Regulation No 44/2001, from the leasing contract concluded between the parties to the main proceedings.

40 In the light of the foregoing, the answer to Question 1 is that Article 6(3) of Regulation No 44/2001 must be interpreted as meaning that the court designated by that provision as regards counterclaims has jurisdiction to hear a counterclaim seeking the reimbursement on the ground of unjust enrichment of a sum corresponding to the amount agreed in an extrajudicial settlement, where that claim is brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement.

Questions 2 and 3

41 In so far as, in accordance with the answer to Question 1, the court designated as regards counterclaims by Article 6(3) of Regulation No 44/2001 has jurisdiction in circumstances such as those of the main proceedings, and that answer enables the referring court to establish jurisdiction, there is no need to answer Questions 2 and 3.

Costs

42 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 (Third Chamber) hereby rules:

Article 6(3) 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 the court designated by that provision as regards counterclaims has jurisdiction to hear a counterclaim seeking the reimbursement on the ground of unjust enrichment of a sum corresponding to the amount agreed in an extrajudicial settlement, where that claim is brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement.

[Signatures]