JUDGMENT OF THE COURT (Sixth Chamber)

20 January 1994 *

In Case C-129/92,

REFERENCE to the Court, under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the House of Lords for a preliminary ruling in the proceedings pending before that court between

Owens Bank Ltd

and

1. Fulvio Bracco

2. Bracco Industria Chimica SpA,

on the interpretation of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Official Journal 1972 L 299, p. 32), 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 (Official Journal 1978 L 304, p. 1) and by the Conven-

* Language of the case: English.

tion of 25 October 1982 on the accession of the Hellenic Republic (Official Journal 1982 L 388, p. 1), in particular Articles 21, 22 and 23.

THE COURT (Sixth Chamber),

composed of: G.F. Mancini, President of the Chamber, M. Díez de Velasco, C.N. Kakouris and F.A. Schockweiler, Judges, and P.J.G. Kapteyn, Judge-Rapporteur,

Advocate General: C.O. Lenz,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Fulvio Bracco and Bracco Industria Chimica SpA, by Barbara Dohmann QC and Thomas Beazley, Barrister,

— the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, and

— the Commission of the European Communities, by Xavier Lewis and Pieter van Nuffel, members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Fulvio Bracco and Bracco Industria Chimica SpA, represented by Barbara Dohmann QC, Thomas Beazley and Michelle Duncan, Solicitor, of the United Kingdom, represented by S. Lucinda Hudson, assisted by Sarah Lee, Barrister, and of the Commission at the hearing on 8 July 1993,

after hearing the Opinion of the Advocate General at the sitting on 16 September 1993,

gives the following

Judgment

1 By order of 1 April 1992, received at the Court on 22 April 1992, the House of Lords referred to the Court for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Official Journal 1972 L 299, p. 32) three questions on the interpretation of that Convention, 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 (Official Journal 1978 L 304, p.1) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (Official Journal 1982 L 388, p. 1) (hereinafter referred to as 'the Convention'), in particular Articles 21, 22 and 23, relating to *lis pendens* and related actions.

2 Those questions arose in proceedings between Owens Bank Ltd (hereinafter referred to as 'Owens Bank'), a company domiciled in the independent Caribbean State known as Saint Vincent and the Grenadines (hereinafter referred to as 'Saint Vincent') and Bracco Industria Chimica SpA, a company domiciled in Italy (hereinafter referred to as 'Bracco SpA'), and its chairman and managing director, Fulvio Bracco, domiciled in Italy.

3 Owens Bank claims to have lent SFR 9 000 000 in cash to Fulvio Bracco in 1979. According to a clause in the documentation relating to the loan, the High Court of Justice of Saint Vincent was to have jurisdiction to decide all disputes. On 29 January 1988 Owens Bank obtained from that court a judgment (hereinafter referred to as 'the Saint Vincent judgment') ordering Fulvio Bracco and Bracco SpA to repay

the loan. An appeal lodged by the last named parties was dismissed by the Court of Appeal of Saint Vincent on 12 December 1989.

4 In the course of those proceedings Fulvio Bracco and Bracco SpA denied that a loan was made. They alleged that the documents submitted by Owens Bank were forgeries and that certain witnesses had given false testimony.

5 On 11 July 1989 Owens Bank applied in Italy for an order for the enforcement of the Saint Vincent judgment. Before the Italian court Fulvio Bracco and Bracco SpA claimed, *inter alia*, that Owens Bank had obtained that decision by fraud.

6 On 7 March 1990 Owens Bank applied to an English court, pursuant to section 9 of the Administration of Justice Act 1920, for a declaration that the Saint Vincent judgment was enforceable in England. Fulvio Bracco and Bracco SpA maintained, as they had done in the Italian proceedings, that Owens Bank had obtained by fraud the judgment it was seeking to enforce. Relying on Articles 21 and 22 of the Brussels Convention, they also requested the English court to decline jurisdiction or to stay proceedings pending the conclusion of the Italian enforcement proceedings.

7 In support of their application the defendants relied on the fact that the question whether the plaintiff had obtained the Saint Vincent judgment by fraud had to be examined in both the English and the Italian enforcement proceedings.

8 The House of Lords, as court of last instance, considered that the case raised issues concerning the interpretation of the Convention and decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'1. Does the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ("the 1968 Convention") have any application to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of the judgments in civil and commercial matters of non-contracting States?

2. Do Articles 21, 22 or 23 of the 1968 Convention, or any of them, apply to proceedings, or issues arising in proceedings, which are brought in more than one Contracting State to enforce the judgment of a non-contracting State?

3. If the court in a Contracting State has the power to stay proceedings under the 1968 Convention on the grounds of *lis pendens*, what are the *communautaire* principles which should be applied by a national court in determining whether there should be a stay of the proceedings in the national court second seised?'

The first and second questions

9 Since the first and second questions are closely linked, they will be examined together.

10 Before answering them, the nature of the procedure before the national court needs to be described.

11 As the Advocate General explained in paragraphs 7 and 8 of his Opinion, there are a number of ways in which foreign judgments may be recognized and enforced under English law. The procedure followed in this case consisted in having the foreign judgment registered pursuant to section 9 of the Administration of Justice Act 1920 so that it could be enforced in the same way as a judgment given by an English court.

12 That section provides, *inter alia*, that a judgment shall not be registered if it was obtained by fraud or it was in respect of a cause of action which, for reasons of public policy, could not have been entertained by the registering court. Any such judgment, if registered, is open to challenge in legal proceedings. The court seised of the matter may then order the issue to be determined following a trial *inter partes*.

13 The first and second questions referred to the Court have therefore arisen in proceedings which are intended to pave the way in one of the States parties to the Convention (hereinafter referred to as 'Contracting States') to the execution of a judgment given in a civil and commercial matter in a State other than a Contracting State (hereinafter referred to as 'a non-contracting State').

14 In view of the purpose of such proceedings, the national court asks whether the Convention, in particular Articles 21, 22 or 23, applies to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of judgments given in civil and commercial matters in non-contracting States.

15 Fulvio Bracco and Bracco SpA maintain that such proceedings involve civil and commercial matters as defined in Article 1 of the Convention and that consequently they fall within the scope of the Convention.

16 That view cannot be accepted.

17 First, it follows from the wording of Articles 26 and 31 of the Convention, which must be read in conjunction with its Article 25, that the procedures envisaged by Title III of the Convention, concerning recognition and enforcement, apply only in the case of decisions given by the courts of a Contracting State.

18 Articles 26 and 31 refer only to 'a judgment given in a Contracting State' whilst Article 25 provides that, for the purposes of the Convention, 'judgment' means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called.

19 Next, as regards the rules on jurisdiction contained in Title II of the Convention, the Convention is, according to its preamble, intended to implement provisions in Article 220 of the EEC Treaty by which the Member States of the Community undertook to simplify formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals.

20 Moreover, according to its preamble, one of the objectives of the Convention is to strengthen in the Community the legal protection of persons therein established.

21 The experts' report drawn up at the time when the Convention was drafted (Official Journal 1979 C 59, p. 1, in particular at p. 15), states in this regard that

'the purpose of the Convention is... by establishing common rules of jurisdiction, to achieve... in the field which it was required to cover, a genuine legal systematization which will ensure the greatest possible degree of legal certainty. To this end, the rules of jurisdiction codified in Title II determine which State's courts are most appropriate to assume jurisdiction, taking into account all relevant matters...'.

22 To that end, Title II of the Convention establishes certain rules of jurisdiction which, after laying down the principle that persons domiciled in a Contracting State are to be sued in the courts of that State, go on to determine restrictively the cases in which that principle is not to apply.

23 So it is clear that Title II of the Convention lays down no rules determining the forum for proceedings for the recognition and enforcement of judgments given in non-contracting States.

24 Contrary to the arguments advanced by Fulvio Bracco and Bracco SpA, Article 16(5), which provides that in proceedings concerned with the enforcement of judgments the courts of the Contracting State in which the judgment has been or is to be enforced are to have exclusive jurisdiction, must indeed be read in conjunction with Article 25, which, it will be recalled, applies only to judgments given by a court or tribunal of a Contracting State.

25 The conclusion must therefore be that the Convention does not apply to proceedings for the enforcement of judgments given in civil and commercial matters in non-contracting States.

26 Fulvio Bracco and Bracco SpA argue that a distinction should be made between an order for enforcement *simpliciter* and a decision of a court of a Contracting State on an issue arising in proceedings to enforce a judgment given in a non-contracting State, such as the question whether the judgment in question was obtained by fraud. Decisions of the second type are, they argue, independent of the enforcement proceedings and should be recognized in the other Contracting States in accordance with Article 26 of the Convention.

27 According to the defendants, that interpretation follows from the principles and objectives of the EEC Treaty and of the Convention, as identified by the Court. It is therefore necessary, in the interests of the proper administration of justice, to

prevent parallel proceedings before the courts of different Contracting States and the conflicting decisions which might result from them, and, similarly, to preclude as far as possible a situation where a Contracting State refuses to recognize a decision of another Contracting State on the ground that it is irreconcilable with a decision given between the same parties in the State in which recognition is sought. They refer in this regard to the judgments in Case 144/86 *Gubisch Maschinenfabrik* [1987] ECR 4861, Case C-220/88 *Dumez France and Tracoba* [1990] ECR I-49 and Case C-351/89 *Overseas Union Insurance and Others* [1991] ECR I-3317.

28 That interpretation cannot be accepted.

29 First, the essential purpose of a decision given by a court of a Contracting State on an issue arising in proceedings for the enforcement of a judgment given in a non-contracting State, even where that issue is tried *inter partes*, is to determine whether, under the law of the State in which recognition is sought or, as the case may be, under the rules of any agreement applicable to that State's relations with non-contracting States, there exists any ground for refusing recognition and enforcement of the judgment in question. That decision is not severable from the question of recognition and enforcement.

30 Secondly, according to Articles 27 and 28 of the Convention, read in conjunction with Article 34, the question whether any such ground exists in the case of judgments given in another Contracting State falls to be determined in the proceedings in which recognition and enforcement of those judgments are sought.

31 There is no reason to consider that the position is any different where the same question arises in proceedings concerning the recognition and enforcement of judgments given in non-contracting States.

32 On the contrary, the principle of legal certainty, which is one of the objectives of the Convention (see the judgment in Case 38/81 *Effer* [1982] ECR 825, paragraph 6), militates against making the distinction advocated by Fulvio Bracco and Bracco SpA.

33 The rules of procedure governing the recognition and enforcement of judgments given in a non-contracting State differ according to the Contracting State in which recognition and enforcement are sought.

34 Lastly, it is clear from the judgment in Case C-190/89 *Rich* [1991] ECR I-3855, at paragraph 26, that if, by virtue of its subject-matter, a dispute falls outside the scope of the Convention, the existence of a preliminary issue which the court must resolve in order to determine the dispute cannot, whatever that issue may be, justify application of the Convention.

35 Fulvio Bracco and Bracco SpA also argue that, even assuming that the jurisdiction of the courts seised is not conferred by the Convention, the judgment in *Overseas Union Insurance*, cited above, shows that Articles 21, 22 and 23 of the Convention apply even where the courts seised derive their jurisdiction, not from the provisions of the Convention, but from the applicable national law.

36 In response to that argument, it is sufficient to state that the judgment in *Overseas Union Insurance* relates to proceedings which, unlike those with which the present dispute is concerned, fell, by virtue of their subject-matter, within the scope of the Convention.

37 The answer to the first and second questions must therefore be that the Convention, in particular Articles 21, 22 and 23, does not apply to proceedings, or issues arising in proceedings, in Contracting States concerning the recognition and enforcement of judgments given in civil and commercial matters in non-contracting States.

The third question

38 In view of the answer given to the first and second questions, the third question does not call for a reply.

Costs

39 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the House of Lords, by order of 1 April 1992, hereby rules:

The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, in particular Articles 21, 22 and 23, does not apply to proceedings, or issues arising in proceedings, in Contract-

ing States concerning the recognition and enforcement of judgments given in civil and commercial matters in non-contracting States.

Mancini Díez de Velasco Kakouris

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 20 January 1994.

J.G. Giraud
Registrar

G.F. Mancini
President of the Sixth Chamber