JUDGMENT OF THE COURT (First Chamber)

2 October 2008 *

In Case C-372/07,

REFERENCE for a preliminary ruling under Article 234 EC, from the Supreme Court (Ireland), made by decision of 30 July 2007, received at the Court on 6 August 2007, in the proceedings

Nicole Hassett

v

South Eastern Health Board,

in the presence of

Raymond Howard,

* Language of the case: English.

Medical Defence Union Ltd,

MDU Services Ltd,

and

Cheryl Doherty

v

North Western Health Board,

in the presence of

Brian Davidson,

Medical Defence Union Ltd,

MDU Services Ltd,

THE COURT (First Chamber),

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

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 June 2008,

after considering the observations submitted on behalf of:

— Medical Defence Union Ltd and MDU Services Ltd, by R. Bourke, Solicitor, B. Murray, BL, and N. Travers, BL,

— R. Howard and B. Davidson, by D. McDonald, SC, and E. Regan, SC,

— Ireland, by D. O'Hagan, acting as Agent, assisted by J. O'Reilly, SC,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and M. Wilderspin, 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 point 2 of Article 22 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 proceedings in which two doctors, R. Howard and B. Davidson ('the doctors'), claimed an indemnity and/or a contribution from their mutual defence organisations, the Medical Defence Union Ltd and MDU Services Ltd (collectively, 'the MDU'), in respect of any sum which — in the context of medical

negligence actions brought by Nicole Hassett and Cheryl Doherty against the health boards for which those doctors worked — either doctor might be ordered to pay by way of indemnity to the health board concerned.

Legal framework

3 The 11th recital in the preamble to Regulation No 44/2001 states as follows:

'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. …'

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

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

5 Article 5 of that regulation provides:

‘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;

…

3. in matters relating to tort, *delict* or *quasi-delict*, in the courts for the place where the harmful event occurred or may occur;

…’.

6 Under Article 6 of Regulation No 44/2001:

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

…

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

…'.

7 Article 22 of that regulation provides:

'The following courts shall have exclusive jurisdiction, regardless of domicile:

…

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. …;

…'.

The dispute in the case before the referring court and the question referred for a preliminary ruling

8 The order for reference indicates that the dispute before the referring court arises from two actions for damages, brought before the Irish courts by Nicole Hassett and Cheryl Doherty against two Irish health boards for serious personal injuries allegedly caused through the professional negligence of the doctors, who were employed by those health boards. In both actions, a settlement was reached under which an indemnity payment was made to the claimant.

9 In the context of those actions, the health boards in question applied to have the doctors joined as a third party in each case, in order to claim an indemnity or a contribution from them.

10 At the material time, the doctors were members of the MDU. The MDU is a professional association, established as a company incorporated under English law and having its registered office in the United Kingdom. The MDU's mission is inter alia to provide indemnity to its members in cases involving professional negligence on their part.

11 Accordingly, the doctors sought an indemnity and/or a contribution from the MDU in respect of any sum which either of them might be required to pay by way of indemnity to the relevant health board. The Board of Management of the MDU, relying on Articles 47 and 48 of the company's Articles of Association, under which any decision concerning a request for an indemnity comes within its absolute discretion, refused to grant their requests.

12 On the view that those refusals infringed their rights under the MDU's Articles of Association, the doctors applied to the High Court (Ireland) for leave to join the MDU as an additional third party. This was granted by order of the High Court of 22 June 2005.

13 The MDU thereupon sought to have that order set aside on procedural grounds. It maintained that, since the claims against it concerned in essence the validity of decisions adopted by its Board of Management, they fell within the scope of point 2 of Article 22 of Regulation No 44/2001, with the result that jurisdiction lay solely with the courts of England and Wales, not with the courts of Ireland.

14 The doctors argued, on the other hand, that, in view of the nature of their claims, the Irish courts had jurisdiction pursuant to points 1 and 3 of Article 5, and point 2 of Article 6, of Regulation No 44/2001. In particular, they maintained that the MDU had acted in breach of its contractual obligations by failing to consider properly the claims for indemnity submitted to it. Moreover, as the MDU had previously assisted the doctors with their defence against the action for professional negligence, it could not refuse to indemnify them at such a late stage in the proceedings.

15 The procedural objection raised by the MDU was rejected on the ground that the doctors' claims did not come within the scope of point 2 of Article 22 of Regulation No 44/2001. The MDU appealed to the Supreme Court, which stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Where medical practitioners form a mutual defence organisation taking the form of a company, incorporated under the laws of one Member State, for the purpose of providing assistance and indemnity to its members practising in that and another Member State in respect of their professional practice, and the provision of such

assistance or indemnity is dependent on the making of a decision by the Board of Management of that company, in accordance with its Articles of Association, in its absolute discretion, are proceedings in which a decision refusing assistance or indemnity to a medical practitioner practising in the other Member State pursuant to that provision is challenged by that medical practitioner as involving a breach by the company of contractual or other legal rights of the medical practitioner concerned to be considered to be proceedings which have as their object the validity of a decision of an organ of that company for the purposes of Article 22, [point] 2, of [Regulation No 44/2001] so that the courts of the Member State in which that company has its seat have exclusive jurisdiction?'

The question referred for a preliminary ruling

16 By that question, the national court is essentially asking the Court whether point 2 of Article 22 of Regulation No 44/2001 is to be interpreted as meaning that proceedings, such as those at issue before the referring court, in the context of which one of the parties alleges that a decision adopted by an organ of a company has infringed rights that it claims under that company's Articles of Association, concern the validity of the decisions of the organs of a company within the meaning of that provision.

17 In order to answer that question, it should be borne in mind that, according to settled case-law, the provisions of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (see, inter alia, Case C-103/05 *Reisch Montage* [2006] ECR I-6827, paragraph 29).

18 Moreover, as is stated in the 11th recital in the preamble to Regulation No 44/2001, jurisdiction based on the defendant's domicile — in accordance with the general

rule — must always be available, 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. Such situations must accordingly be interpreted strictly.

19 The Court adopted just such an interpretation in respect of the provisions of Article 16 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36; 'the Brussels Convention'), which are identical in essence to those of Article 22 of Regulation No 44/2001. The Court held in that regard that, as those provisions of the Brussels Convention introduce an exception to the general rule governing the attribution of jurisdiction, they must not be given an interpretation broader than is required by their objective, since their effect is to deprive the parties of the choice of forum which would otherwise be theirs and, in certain cases, they result in the parties being brought before a court which is not that of the domicile of any of them (see Case 73/77 *Sanders* [1977] ECR 2383, paragraphs 17 and 18; Case C-8/98 *Dansommer* [2000] ECR I-393, paragraph 21; and Case C-343/04 *ČEZ* [2006] ECR I-4557, paragraph 26).

20 Moreover, as was confirmed by the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1), by introducing such an exception in the case of companies, whereby exclusive jurisdiction is attributed to the courts of the Member State in which the company has its seat, the essential objective pursued is one of centralising jurisdiction in order to avoid conflicting judgments being given as regards the existence of a company or as regards the validity of the decisions of its organs.

21 As that report also indicates, the courts of the Member State in which the company has its seat appear to be those best placed to deal with such disputes, inter alia because it is in that State that information about the company will have been notified and made public. Exclusive jurisdiction is thus attributed to those courts in the interests of the sound administration of justice (see, to that effect, *Sanders*, paragraphs 11 and 17).

22 Contrary to the MDU's submissions, however, it cannot be inferred from the principles referred to in the preceding paragraphs that, in order for point 2 of Article 22 of Regulation No 44/2001 to apply, it is sufficient that a legal action involve some link with a decision adopted by an organ of a company (see, by analogy, in relation to Article 16(1) of the Brussels Convention, Case C-294/92 *Webb* [1994] ECR I-1717, paragraph 14, and *Dansommer*, paragraph 22).

23 As submitted by the doctors, if all disputes involving a decision by an organ of a company had to be treated as coming within the scope of point 2 of Article 22 of Regulation No 44/2001, that would in reality mean that all legal actions brought against a company — whether in matters relating to a contract, or to tort or delict, or any other matter — would almost always come within the jurisdiction of the courts of the Member State in which the company has it seat.

24 However, such an interpretation of that provision would make the exceptional jurisdiction in question applicable in the case of disputes which would not give rise to conflicting judgments as regards the validity of the decisions of the organs of a company, in that their outcome would have no bearing on that validity, and also in the case of disputes which do not require any examination of the publication formalities applicable to a company.

25 Such an interpretation would thus extend the scope of point 2 of Article 22 of Regulation No 44/2001 beyond what is required by its objective, as referred to in paragraphs 20 and 21 of this judgment.

26 It follows that — as was rightly pointed out by the doctors and by the Commission of the European Communities — that provision must be interpreted as covering only disputes in which a party is challenging the validity of a decision of an organ of a

company under the company law applicable or under the provisions governing the functioning of its organs, as laid down in its Articles of Association.

27 The order for reference does not indicate, however, that the doctors raised such challenges before the High Court.

28 In fact, in the case before the referring court, the doctors do not in any way challenge the fact that the MDU's Board of Management was empowered under that company's Articles of Association to adopt the decision rejecting their claim for indemnity.

29 What the doctors do challenge is the manner in which that power was exercised. They maintain that the MDU rejected their claim for indemnity automatically, without examining it in detail, thereby infringing their rights under the MDU's Articles of Association as members of that organisation.

30 Consequently, the disputes before the referring court between those doctors and the MDU do not fall within the scope of point 2 of Article 22 of Regulation No 44/2001.

31 In the light of the foregoing, the answer to the question referred must be that point 2 of Article 22 of Regulation No 44/2001 is to be interpreted as meaning that proceedings, such as those at issue before the referring court, in the context of which one of the parties alleges that a decision adopted by an organ of a company has infringed rights that it claims under that company's Articles of Association, do not concern the validity of the decisions of the organs of a company within the meaning of that provision.

Costs

32 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:

Point 2 of Article 22 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 is to be interpreted as meaning that proceedings, such as those at issue before the referring court, in the context of which one of the parties alleges that a decision adopted by an organ of a company has infringed rights that it claims under that company's Articles of Association, do not concern the validity of the decisions of the organs of a company within the meaning of that provision.

[Signatures]