JUDGMENT OF THE COURT (First Chamber)

12 February 2009 *

In Case C-339/07,

REFERENCE for a preliminary ruling under Article 234 EC, from the Bundesgerichtshof (Germany), made by decision of 21 June 2007, received at the Court on 20 July 2007, in the proceedings

Christopher Seagon, in his capacity as liquidator in respect of the assets of Frick Teppichboden Supermärkte GmbH,

v

Deko Marty Belgium NV,

THE COURT (First Chamber),

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

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2008,

after considering the observations submitted on behalf of:

— Mr Seagon, in his capacity as liquidator in respect of the assets of Frick Teppichboden Supermärkte GmbH, by B. Ackermann, Rechtsanwältin,

— Deko Marty Belgium NV, by H. Raeschke-Kessler, Rechtsanwalt,

— the Czech Government, by T. Boček, acting as Agent,

— the Greek Government, by O. Patsopoulou, M. Tassopoulou and I. Bakopoulos, acting as Agents,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and S. Gruenheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(1) 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 Mr Seagon, in his capacity as liquidator in respect of the assets of Frick Teppichboden Supermärkte GmbH ('Frick'), and Deko Marty Belgium NV ('Deko') concerning repayment by the latter of EUR 50 000 paid to it by Frick.

Legal background

3 Recital 2 in the preamble to Regulation No 1346/2000 states:

'The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the [EC] Treaty.'

4 According to recital 4 in the preamble to that regulation '[i]t is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping)'.

5 Recital 6 in the preamble to Regulation No 1346/2000 provides:

'In accordance with the principle of proportionality this Regulation should 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. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.'

6 Recital 8 in the preamble to Regulation No 1346/2000 states:

'In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.'

7 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.'

8 Article 16(1) of Regulation No 1346/2000 states:

'Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.'

9 The first and second subparagraphs of Article 25(1) of Regulation No 1346/2000 provide:

'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. …

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.'

10 Article 1(1) of Regulation No 44/2001 defines the scope of the regulation. The latter is to apply in civil and commercial matters and is not to extend, in particular, to revenue, customs or administrative matters.

11 Article 1(2)(b) 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 question referred for a preliminary ruling

12 On 14 March 2002, Frick, which has its seat in Germany, transferred EUR 50 000 to an account with KBC Bank in Düsseldorf in the name of Deko, a company with its seat in Belgium. Pursuant to an application made by Frick on 15 March 2002, the Amtsgericht Marburg (Local Court, Marburg) (Germany) opened insolvency proceedings on 1 June 2002 in respect of Frick's assets. By application to the Landgericht Marburg (Regional Court, Marburg), Mr Seagon, in his capacity as liquidator in respect of Frick's assets, requested that court, by way of an action to set a transaction aside by virtue of the debtor's insolvency, to order Deko to repay the money.

13 The Landgericht Marburg dismissed that application as inadmissible on the ground that it did not have international jurisdiction to hear and determine it. Since the appeal brought by Mr Seagon was also dismissed he brought an appeal on a point of law ('Revision') before the Bundesgerichtshof (Federal Court of Justice) (Germany).

14 In those circumstances the Bundesgerichtshof decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

'(1) Do the courts of the Member State within the territory of which insolvency proceedings regarding the debtor's assets have been opened have international jurisdiction under Regulation [No 1346/2000] in respect of an action in the context

of the insolvency to set a transaction aside that is brought against a person whose registered office is in another Member State?

(2) If the first question is to be answered in the negative:

Does an action in the context of the insolvency to set a transaction aside fall within Article 1(2)(b) of Regulation [No 44/2001]?'

The questions referred for a preliminary ruling

15 The questions referred by the national court concern the international jurisdiction of courts in respect of actions to set a transaction aside by virtue of insolvency.

16 It is clear from the order for reference that the action to set a transaction aside is governed in German law by Paragraph 129 et seq. of the Insolvency Code (Insolvenzordnung) of 5 October 1994 (BGBl. 1994 I, p. 2866). Only the liquidator may bring such an action in the event of insolvency with the sole purpose of protecting the interests of the general body of creditors. Under the provisions of Paragraphs 130 to 146 of that code, the liquidator may challenge acts undertaken before the insolvency proceedings were opened which are detrimental to the creditors.

17 The action to set a transaction aside at issue in the main proceedings is therefore intended to increase the assets of the undertaking which is the subject of insolvency proceedings.

18 It is appropriate to examine whether these actions to set a transaction aside are included within the scope of Article 3(1) of Regulation No 1346/2000.

19 In that connection, it must be noted, as a preliminary point, that the Court has held, in its case-law relating to the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), that an action similar to that at issue in the main proceedings is related to bankruptcy or winding-up if it derives directly from the bankruptcy or winding-up and is closely connected with the proceedings for the 'liquidation des biens' or the 'règlement judiciaire' (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.

20 It is exactly that criterion that is used by recital 6 in the preamble to Regulation No 1346/2000 in order to delimit the purpose of the regulation. Thus, according to that recital, the regulation should 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.

21 Taking into account that intention of the legislature and the effectiveness of the regulation, Article 3(1) thereof must be interpreted as meaning that it also confers international jurisdiction on the Member State within the territory of which insolvency proceedings were opened in order to hear and determine actions which derive directly from those proceedings and which are closely connected to them.

22 Concentrating all the actions directly related to the insolvency of an undertaking before the courts of the Member State with jurisdiction to open the insolvency proceedings also appears consistent with the objective of improving the effectiveness and efficiency of insolvency proceedings having cross-border effects, referred to in recitals 2 and 8 in the preamble to Regulation No 1346/2000.

23 Furthermore, that interpretation is confirmed by recital 4 in the preamble to that regulation, according to which it is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).

24 The possibility for more than one court to exercise jurisdiction as regards actions to set a transaction aside by virtue of insolvency brought in various Member States would undermine the pursuit of such an objective.

25 Finally, the interpretation of Article 3(1) of Regulation No 1346/2000, as set out in paragraph 21 above, is supported by Article 25(1) of that regulation. The first subparagraph of that provision imposes an obligation to recognise judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 16 of the regulation and which concern the course and closure of insolvency proceedings, that is to say, a court with jurisdiction under Article 3(1) of that regulation.

26 Pursuant to the second subparagraph of Article 25(1) of Regulation No 1346/2000, the first subparagraph of Article 25(1) is also to apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them. In other words, that

provision allows the possibility for courts of a Member State within the territory of which insolvency proceedings have been opened, pursuant to Article 3(1) of that regulation, also to hear and determine an action of the type at issue in the main proceedings.

27 In that context, the words 'even if they were handed down by another court', at the end of the last sentence of the second subparagraph of Article 25(1) of Regulation No 1346/2000, do not mean that the Community legislature wished to exclude the jurisdiction of the courts of the State within the territory of which the insolvency proceedings for the type of actions concerned were opened. Those words mean, in particular, that it is for the Member States to determine the court with territorial and substantive jurisdiction, which does not necessarily have to be the court which opened the insolvency proceedings. Moreover, those words refer to the recognition of judgments opening insolvency proceedings, which is provided for in Article 16 of Regulation No 1346/2000.

28 Having regard to all of the foregoing considerations, the answer to the first question is that Article 3(1) of Regulation No 1346/2000 must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State.

29 Given the answer to the first question, there is no need to answer the second question.

Costs

30 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:

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State.

[Signatures]