SUMMARY

ECJ 10 September 2015, case C-47/14 (Holterman Ferho Exploitatie BV, Ferho Bewehrungsstahl GmbH, Ferho Vechta GmbH and Ferho Frankfurt GmbH - v - Friedrich Leopold Freiherr Spies von Büllesheim), Private international law

Facts

Holterman Ferho Exploitatie ("Ferho Exploitatie") is a Dutch holding company. It has three German subsidiaries.

Mr Spies von Büllesheim is a German national living in Germany. He was a minority shareholder in Ferho Exploitatie.

In April 2001, the shareholders' meeting of Ferho Exploitatie appointed Spies von Büllesheim as a director. In May 2001, Ferho Exploitatie and Spies von Büllesheim entered into an agreement, drafted in German, confirming his appointment as director ("Geschäftsführer") and setting out his rights and obligations in that respect. In July 2001, Spies von Büllesheim became manager of Ferho Exploitatie. From then on, he acted in two capacities: director and manager.

In 2006 the contract between Spies von Büllesheim and Ferho Exploitatie was terminated.

Ferho Exploitatie and its subsidiaries brought legal proceedings against Spies von Büllesheim before a Dutch court. They contended that he was liable for serious misconduct, arguing

primarily (i) that he had performed his duties as a manager improperly and (ii) that his misconduct constituted breach of the May 2001 contract and, in the alternative, that it qualified as a tort against the subsidiaries.

National proceedings

The court of first instance and, on appeal, the appellate court held that it lacked jurisdiction to hear the action. With regard to the alleged mismanagement of Ferho Exploitatie, the Court of Appeal reasoned that, as Regulation 44/2001 (known as "Brussels I", hereunder: the "Regulation") [now replaced by Regulation 1215/2012, Editor] does not designate any particular forum, the main rule of Article 2(1)applies. Article 2(1) provides, as the default rule where no exception applies, that persons shall be sued only in the courts of the country in which they are domiciled. Therefore, Spies von Büllesheim could only be sued in the German courts. With regard to the alleged poor performance of the contract of May 2001, the court considered that that contract was one of "individual employment" for the purposes of the Regulation and that therefore only the courts in the country of residence (in this case, Germany) have jurisdiction. With regard to the alternative claim based on tort, the court reasoned that, as the Regulation contains special rules in respect of employment, an action based on tort that is linked to employment is subject to the forum rules in respect of employment cases.

The claimants appealed to the Supreme Court and it referred questions to the ECJ. They related, in particular, to Articles 5, 18 and 20 of the Regulation. Article 5 provides that a person domiciled in a Member State may be sued in another Member State:

In matters relating to contract, in the courts of "the place of performance of the obligation in question", which, in the case of the provision of services, is the place where the services were or should have been provided;
[....]
In matters relating to tort, delict or quasi-delict, in the courts of "the place where the harmful event occurred or may occur". Articles 18 and 20 (which form part of Chapter II, Section 5 of the Regulation) provide that in matters relating to individual contracts of employment, the employee may only be sued in the Member State where he is domiciled.

ECJ's findings

By its first question, the referring court asks, in essence, whether the provisions of Chapter II, Section 5 of the Regulation must be interpreted as meaning that where a company sues a person, who has performed the duties of director and manager of that company, in order to establish misconduct, they preclude the application of Article 5 (§33).
The classification of the legal relationship between the parties cannot be decided on the basis of national law. The concept of "individual contract of employment" must be interpreted autonomously. The essential feature of an employment relationship is that for a certain period of time one person performs services for and under the direction of another in return for which he receives remuneration. It presupposes a relationship of subordination. If Spies von Büllesheim, as a minority shareholder, was able to influence the will of Ferho Exploitatie significantly, there was no subordination and the rules of Chapter II, Section 5 would not apply. If, on the other hand, there was someone who had the authority to issue him with instructions and to monitor their implementation, those rules must be applied (§34-49).
By its second question, the referring court asks, in essence, whether Article 5(1) of the Regulation must be interpreted as meaning that an action brought by a company against its former manager on the basis of an alleged breach of his obligations under company law comes within the concept of "matters relating to a contract" and, if so, whether the place where the obligation that is the basis for the claim was performed or ought to have been performed corresponds to the place where the company is domiciled (§50).
In the absence of any derogating stipulation in the articles of association of Ferho Exploitatie, or in any other document, it is for the referring court to determine the place where Spies von Büllesheim actually carried out his activities in performance of the contract, taking into consideration, in particular, the time spent in the various places and the importance of those activities (§51-65).
By its third question, the referring court asks, in essence, whether Article 5(3) of the Regulation must be interpreted as meaning that, inasmuch as the applicable national law makes it possible to commence legal proceedings simultaneously on the basis of a contractual relationship and of tort, 'delict' or 'quasi-delict', that provision covers a situation such as that at issue in the main proceedings in which a company is suing a person both in his capacity as manager of that company and on the basis of wrongful conduct. If the answer is in the affirmative, the referring court wishes to know whether the place where the harmful event occurred or may occur corresponds to the place where the company is domiciled (§66).
Inasmuch as national law makes it possible to base a claim by the company against its former manager on allegedly wrongful conduct, such a claim may come under 'tort, delict or quasi-delict' for the purposes of the jurisdiction rule set out in Article 5(3) of the Regulation only if it does not concern the legal relationship of a contractual nature between the company and the manager. If the conduct complained of may be considered a breach of the manager's contract,

that being a matter for the referring court to determine, it must be concluded that the court which has jurisdiction to rule on that conduct is the one specified in Article 5(1) of the Regulation. If not, the jurisdiction rule set out in Article 5(3) of that regulation applies (§67-71).
The term "place where the harmful event occurred" must be interpreted strictly (§72-79).

Ruling

The provisions of Chapter II, Section 5 (Articles 18 to 21) of Regulation (EC) No 44/2001 [……], in a situation such as that at issue in the main proceedings in which a company sues a person, who performed the duties of director and manager of that company in order to establish misconduct on the part of that person in the performance of his duties and to obtain redress from him, must be interpreted as meaning that they preclude the application of Article 5(1) and (3) of that regulation, provided that that person, in his capacity as director and manager, for a certain period of time performed services for and under the direction of that company in return for which he received remuneration, that being a matter for the referring court to determine.
Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action brought by a company against its former manager on the basis of an alleged breach of his obligations under company law comes within the concept of 'matters relating to a contract'. In the absence of any derogating stipulation in the articles of association of the company, or in any other document, it is for the referring court to determine the place where the manager in fact, for the most part, carried out his activities in the performance of the contract, provided that the provision of services in that place is not contrary to the parties' intentions as indicated by what was agreed.
In circumstances such as those at issue in the main proceedings in which a company is suing its former manager on the basis of allegedly wrongful conduct, Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that that action is a matter relating to tort or delict where the conduct complained of may not be considered to be a breach of the manager's obligations under company law, that being a matter for the referring court to verify. It is for the referring court to identify, on the basis of the facts of the case, the closest linking factor between the place of the event giving rise to the damage and the place where the damage occurred.

Creator: European Court of Justice (ECJ)
Verdict at: 2015-09-10
Case number: C-47/14