Norwegian Court of Appeal on Choice of Law

The Norwegian Court of Appeal (Borgarting lagmannsrett) recently handed down a decision on the question of Choice of law regarding the limitation period for money claims. The decision (Borgarting lagmannsrett (kjennelse)) is dated 2007-05-28, published in LH-2007-75346, and is retrievable from here.

Parties, facts and contentions

The plaintiff and distrainer, Østjydske Bank AS, domiciled in Denmark, served the defendant and distrainee, Joan Anni Myhre, domiciled in Norway, with a subpoena in a Norwegian Court of First Instance (Oslo byfogdembete), with the object of action to ask the court to force the defendant, by the seizure and detention of personal property, to perform an obligation to pay overdue loan of money, where upon the Court issued a distress warrant. Before the seizure was carried out, the defendant claimed the loan of money had been repaid so there subsequently was nothing to seize, where upon the Norwegian Court of First Instance reversed its first ruling. In response, the plaintiff appealed to the Court of Appeal and contended, in response to the defendant´s secondary argument, that the Danish law, on the limitation period for money claims with a limitation period of 5 years, was applicable, and, that in accordance with that law, the plaintiff still had the right to demand performance of payment since the limitation period to demand such performance was not exceeded. By contrast, the defendant contended in her secondary argument that Norwegian law, on the limitation period for money claims with a limitation period of 3 years, was applicable, and, that in accordance with that law, the plaintiff no longer had the right to demand performance of payment since the limitation period to demand such performance had been exceeded. This case

note will solely venture into the question of the limitation period for money claims since only that question involved an issue of private international law.

Ratio decidendi of the Norwegian Court of Appeal

The Norwegian Court of Appeal, succinct in its ruling, stated that in an international contractual legal relationship, the starting point for the parties to resolve the question of choice of law, is the party autonomy. Since neither of the disputing parties contended the parties had made a choice of law in accordance with the rules of private international law and its rules for the party autonomy, the question of choice of law had to be answered in accordance with the Norwegian private international law and its individualising method after which the applicable law is designated in accordance with the State to which the contractual relationship has the most significant or strongest connection. Considering that the case at hand involved a loan from a Danish Bank to a person domiciled in Denmark at the time when the loan was granted, it followed from the individualising method that Danish law was applicable.