

Once Again: German Federal Supreme Court Refers Question on Art. 15(1) lit. c) Brussels I to the CJEU

On 15 May 2014 the German Federal Supreme Court has - once again - referred a question relating to Art. 15(1) lit. c) to the Court of Justice of the European Union (Court order of 15 May 2014, III ZR 255/12). Here is an (unofficial) translation:

May the consumer in accordance with Art. 16(1) Brussels I-Regulation sue in the state where he is domiciled if the contract that is the immediate basis for the claim was not concluded under the conditions set out in Art. 15(1) lit. c) Brussels I Regulation, but serves to ensure the economic success of another contract concluded between the same parties under the conditions set out in Art. 15(1) lit. c) Brussels I-Regulation?

The question arises in a case based on the following facts: the claimant, a consumer domiciled in Germany, entered into a contract with the defendant, a Spanish real estate agency. On the basis of this contract the defendant arranged the conclusion of an option contract between the claimant and a German construction company relating to the purchase of a yet to be built apartment in a Spanish holiday complex. This option contract eventually led to the conclusion of a sales contract between the consumer and the construction company. After payment of the first two installments under the sales contract, the construction company ran into financial difficulties. This, in turn, jeopardized the completion of the holiday complex. The defendant, therefore, turned to the claimant and offered to look into the matter. The claimant happily accepted - and travelled to Spain to sign a contract to that effect with the defendant. In the following months the claimant made several payments to the defendant under the second contract. Then the relationship fell apart. The claimant cancelled the second contract and filed a law suit in Germany asking the defendant to refund all payments made under that contract.

The court of first and second instance declined to hear the case for lack of jurisdiction arguing that the Spanish real estate agency – regarding the second contract and the service offered under that contract – had not directed its activities towards Germany. The Federal Supreme Court, however, was not so sure and decided to refer the above question to the CJEU. How the CJEU will decide, remains to be seen. Chances are that the highest European court will continue its extremely consumer-friendly interpretation of Art. 15(1) lit. c) (cf. CJEU, C-190/11 – Mühlleitner, CJEU, C-218-12, Emrek) and allow consumers to sue at home even if only an economically related, but not the immediate contract was concluded under the conditions set out in Art. 15(1) lit. c) Brussels I-Regulation. A narrow interpretation, however, would rather argue against application of Art. 15 et seq Brussels I-Regulation: Art. 15(1) lit. c) makes clear that the contract in dispute must fall into the scope of the professional's directed activities (*"In matters relating to a contract concluded by a ... consumer ... jurisdiction shall be determined by this Section ... if ... (c) ... the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities."*)

The irony of the case, however, is that the question referred to the CJEU by the German Federal Supreme court does not actually arise in the case at bar: according to the court's (undisputed) statement of facts the defendant, i.e. the Spanish real estate agency, turned to the consumer and offered his help when the German construction company ran into difficulties. The court doesn't say how the defendant turned to the claimant and how he offered his help. But there is little doubt that the consumer was sitting at home in Germany and was actively approached by the defendant. Therefore, the defendant clearly directed his activities towards the consumers habitual residence. And the contract that was eventually concluded clearly fell into the scope of these activities since it was the direct result of the defendant's efforts. That the consumer eventually travelled to Spain to conclude the contract doesn't hinder application of Art. 15 et seq Brussels I Regulation (cf. CJEU, C-190/11, Mühlleitner).

But why keep things simple?