

French Judgements on Article 5(1)(b) of the Brussels I Regulation

In 2006, the French supreme court for private matters (*Cour de cassation*) held in two cases that distribution contracts ought to be considered as Contracts for the Provision of Services for the purpose of article 5 (1)(b) of the Brussels I Regulation.

The first judgement was delivered on July 11, 2006. In 1997, the German company Wema Post Maschinen had undertaken to pay a 3% commission to several “intermediaries” (*intermediaires*) (whose names do not appear in the judgement) if they could make happen the sale of a machine to the Delrieu company (seemingly French). The exact nature of the 1997 contract is unclear, and is certainly not characterised by the *Cour de cassation*, which may mean that the court did not find it material. The sale happened in 2002, and the “intermediaries” sued the German party before a French Court for payment of the commission. In 2005, the Court of Appeal of Limoges held that it did not have jurisdiction over the dispute, as the payment ought to have been made in Germany. The *Cour de cassation* reversed. It held that the contract between the parties was a Contract for the Provision of Services in the meaning of article 5, and that, as the service had been provided in France, French courts had jurisdiction.

On October 6, 2006, the *Cour de cassation* held in *Solinas* (reported in the last issue of the *Journal de Droit International*) that a commercial agency contract was a Contract for the Provision of Services for the purpose of article 5. *Solinas* was the French agent of a Portuguese company, *Fabrica Textil Riopele*. In 2003, *Solinas* sued its principal before the Paris Commercial Court and sought payment of an indemnity for increasing the customers of *Fabrica Textil Riopele* and payment of damages for abusive termination of the (agency) contract. *Fabrica Textil Riopele* argued that the French court lacked jurisdiction. In 2004, the Paris Court of Appeal held that French courts lacked jurisdiction over the claim for payment of the indemnity, as it ought to be performed in Portugal, at the domicile of the principal. The *Cour de cassation* reversed and held that the contract

between the parties was a Contract for the Provision of Services in the meaning of article 5, and that, as the service had been provided in France, French courts had jurisdiction.

It is tempting to interpret these two cases as indications of the willingness of the *Cour de cassation* to rule that all distribution contracts are Contract for the Provision of Services, and that only mere sales contracts will be considered as Sales of Goods in the meaning of article 5. But after *Waeco*, it seems that these solutions should be confined to contracts which do not involve sales.

If you know of other European cases that would have ruled on the same issue, feel free to post a comment and to share this information.