French Judgment on Article 5 (1) b of the Brussels I Regulation, Part III

On March 27, 2007, the French supreme court for private matters (*Cour de cassation*) delivered yet another judgment on Article 5 (1) b of the Brussels I Regulation (for previous judgments on the issue, see here and here). In *SA ND Conseil v. Le Méridien Hotels et Resorts World Headquarters*, the *Cour de cassation* held that, first, the combination of the conception, the making and the delivery of documents could be regarded as a single operation, and that, second, the operation had to be characterised as a provision of service.

In *SA ND Conseil v. Le Méridien Hotels et Resorts World Headquarters*, English company Le Meridien Hotels had hired French advertisement company ND Conseil. Under the contract, which had been concluded on June 5, 2002, ND Conseil was to promote the Le Meridien hotel chain by designing and making advertisement documents to that effect, to be delivered to Le Méridien Hotel company. The judgment of the *Cour de cassation* is not very detailed on the facts, nor on the arguments of the parties, but it seems that it was argued that the design of the documents took place in France, while the delivery took place in England. Eventually, Le Méridien Hotel terminated the contract, and ND Conseil sued for wrongful termination before French courts.

The first instance court (the commercial court of Nanterre, in the suburbia of Paris) retained jurisdiction in a judgment of December 2004. The Court of appeal of Versailles reversed and declined jurisdiction in March 2006. ND Conseil appealed to the *Cour de cassation*.

The *Cour de cassation* confirmed the judgment of the court of appeal and held that French courts did not have jurisdiction under the article 5 of the Brussels I Regulation. The judgment of the French highest court can be summarized as follows. First, ND Conseil had undertaken to perform two series of obligations. On the one hand, designing the documents. On the other hand, making them physically and delivering them. Second, under the contract, the making and the delivery of the documents were not only ancillary to their design, but also

intertwined with it. As a consequence, there was one single contractual operation. Third, this operation was a provision of service in the meaning of article 5. Fourth, this service was provided in London.

The case raises many issues. As usual, the judgment of the *Cour de cassation* is so short that it could be interpreted in many ways. Here are a few of them.

First, no explanation is clearly given as to why the single operation is a provision of services, and not a sale of goods, or neither of the above. Indeed, one would have rather expected, after recent decisions of the court, that it would easily find that a given contract was neither a provision of services, nor a sale of goods. The judgment could be interpreted as meaning that the court is of the opinion that it should be a provision of services because the sale was ancillary to the services.

Second, the judgment insists on the fact that the operation was a single one under the contract. This may mean that the architecture of the contract will matter, but again this is unclear.

Third, no explanation is given on why the global service was performed in London.