

Reference for preliminary ruling on relationship Insolvency Regulation and Brussels I

It has been a while, but this reference for a preliminary ruling is nevertheless worth mentioning. In its judgment of 20 June 2008, the Dutch Supreme Court, in a case between the German company Graphics Graphische Maschinen GmbH and A. van der Schee, acting as liquidator of Holland Binding BV, referred questions to the ECJ concerning the relationship between the Insolvency Regulation and the Brussels I Regulation (*Hoge Raad*, 20 June 2008, R07/124HR; LJN: BD0138). The questions arose in the context of the application by German Graphics of a declaration of enforceability of a German order (*Beschluss*) against the Dutch liquidator of Holland Binding to relinquish assets which are subject to retention of title. The Dutch Supreme Court referred the following questions to the ECJ in this case, pending as Case C-292/08:

“1) Must Article 25(2) of the Insolvency Regulation be interpreted as meaning that the words ‘provided that that Convention [that is to say, the Brussels I Regulation] is applicable’ featuring in that provision imply that, before it can be concluded that the recognition and enforcement provisions of the Brussels I Regulation are applicable to judgments other than those referred to in Article 25(1) of the Insolvency Regulation, it is first necessary to examine whether, pursuant to Article 1(2)(b) of the Brussels I Regulation, such judgments fall outside the material scope of that regulation?”

2) Must Article 1(2)(b) of the Brussels I Regulation, in conjunction with Article 7(1) of the Insolvency Regulation, be interpreted as meaning that it follows from the fact that an asset to which a reservation of title applies is situated, at the time of the opening of insolvency proceedings against the purchaser, in the Member State in which those insolvency proceedings are opened, that a claim of the seller based on that reservation of title, such as that of German Graphics, must be regarded as a claim which relates to bankruptcy or the winding-up of an insolvent company, within the meaning of Article 1(2)(b) of the Brussels I Regulation, and which therefore falls outside the material scope of that regulation?”

3) Is it relevant in the context of Question 2 that, pursuant to Article 4(2)(b) of the Insolvency Regulation, the law of the Member State in which the insolvency proceedings are opened is to determine the assets which form part of the estate?"