

ECJ on Pammer and Hotel Alpenhof

On 7 December the ECJ has delivered its judgement in cases C-585/08 and C-144/09 (AG's Opinion was presented on 18 May 2010).

The references for a preliminary ruling concern the interpretation of Article 15(1)(c) and (3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The references have been made (i) in proceedings between Mr Pammer and Reederei Karl Schlüter GmbH & Co KG (Case C-585/08) and (ii) in proceedings between Hotel Alpenhof GesmbH and Mr Heller (Case C-144/09). The cases were joined for the purposes of the judgment pursuant to Article 43 of the Rules of Procedure of the Court, given the similarity between the second question in Case C-585/08 and the only question in Case C-144/09.

The dispute in case C-585/08 involved Mr Pammer, who resides in Austria, and Reederei Karl Schlüter, a company established in Germany. It concerns a voyage by freighter from Trieste (Italy) to the Far East organised by that company, which gave rise to a contract between it and Mr Pammer ('the voyage contract'). Mr Pammer booked the voyage through company whose seat is in Germany, which operates in particular via the internet. The voyage booked by Mr Pammer was described on the website of the company.

The day of departure Mr Pammer refused to embark on the ground that the abovementioned description did not, in his view, correspond to the conditions on the vessel; he also sought reimbursement of the sum which he had paid for the voyage. Since Reederei Karl Schlüter reimbursed only a part of that sum Mr Pammer claimed payment of the balance, together with interest, before an Austrian court of first instance, the Bezirksgericht (District Court) Krems an der Donau. The plea was dismissed at first instance, though the court held that it had jurisdiction on the ground that the voyage contract was a consumer contract. The appellate court declared that the Austrian courts lacked jurisdiction, denying the characterisation of the voyage contract as consumer contract. The Oberster Gerichtshof (Supreme Court) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does a “voyage by freighter” constitute package travel for the purposes of Article 15(3) of [Regulation No 44/2001]?’

2. If the answer to Question 1 is in the affirmative: is the fact that an intermediary’s website can be consulted on the internet sufficient to justify a finding that activities are being “directed” [to the Member State of the consumer’s domicile] within the meaning of Article 15(1)(c) of Regulation No 44/2001?’

The dispute in case C-144/09 involved Hotel Alpenhof, a company which operates a hotel with the same name located in Austria, and Mr Heller, who resides in Germany. Mr Heller reserved a number of rooms for a period of a week in January 2008 through the website of the hotel. His reservation and the confirmation thereof were effected by email. Mr Heller is stated to have found fault with the hotel’s services and to have left without paying his bill. Hotel Alpenhof brought an action before an Austrian court. Mr Heller raised the plea that the court before which the action had been brought lacked jurisdiction. He submitted that, as a consumer, he could be sued only in the courts of the Member State of his domicile (German courts), pursuant to Article 15(1)(c) of Regulation No 44/2001. Both the the Bezirksgericht Sankt Johann im Pongau and (on appeal) the Landesgericht Salzburg dismissed the action before them, holding that the Austrian courts lacked jurisdiction to hear it. Hotel Alpenhof appealed to the Oberster Gerichtshof. Since the Oberster Gerichtshof was not sure that the Court would answer its second question in Case C-585/08 (his own answer being dependent upon the answer given by the ECJ), it considered it necessary to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is the fact that a website of the party with whom a consumer has concluded a contract can be consulted on the internet sufficient to justify a finding that an activity is being “directed” within the meaning of Article 15(1)(c) of [Regulation No 44/2001]?’

The ECJ has answered as follows:

1- A contract concerning a voyage by freighter, such as that at issue in the main proceedings in Case C-585/08, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Council Regulation (EC) No 44/2001 of 22 December

2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

2. In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established