

ECJ Rules on Jurisdiction over Defendants whose Domicile is Unknown

In a judgment of November 17, 2011, the first chamber of the European Court of Justice ruled in *Hypoteční banka a.s. v Lindner* (case C-327/10) that defendants with unknown domicile are domiciled at their last known domicile for the purpose of the Brussels I Regulation.

The case was concerned with a consumer (Lindner) who had borrowed money from a Czech bank (Hypoteční banka a.s.). The consumer was a German national living in the Czech Republic. The loan contract contained a jurisdiction clause in favour of “the local court of the bank”, ie Prague courts. Lindner lived 150 km away from Prague. Yet, it seems that when the bank initiated proceedings against Lindner, it brought them before the court of its former domicile. Lindner, however, had changed addresses, and the court was unable to assess where he had moved to.

This of course raised great difficulties. The applicability of the Brussels I Regulation is conditional upon the defendant being domiciled in the European Union (art. 2). Consumers must be sued at the place of their domicile (art. 16).

Last Known Domicile

The Court held that the last known domicile had to be used for the purpose of each provision of the Regulation. It explained that it struck a fair balance between the rights of the plaintiff, who must be able to identify easily the competent court, and of the consumer.

44 It is, above all, in accordance with the objective, pursued by Regulation No 44/2001, of strengthening the legal protection of persons established in the European Union, by enabling the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see, inter alia, Joined Cases C-509/09 and C-161/10 eDate Advertising and Others [2011] ECR I-0000, paragraph 50).

45 (...)

46 Lastly, for the purpose of applying Article 16(2) of Regulation No 44/2001, the criterion of the consumer's last known domicile ensures a fair balance between the rights of the applicant and those of the defendant precisely in a case such as that in the main proceedings, in which the defendant was under an obligation to inform the other party to the contract of any change of address occurring after the long-term mortgage loan contract had been signed.

The court, however, insisted to an embarrassing degree on some particular facts , and thus casted a doubt on the scope of the rule it was laying down. Its final holding is:

2. Regulation No 44/2001 must be interpreted as meaning that:

- in a situation such as that in the main proceedings, in which a consumer who is a party to a long-term mortgage loan contract, which includes the obligation to inform the other party to the contract of any change of address, renounces his domicile before proceedings against him for breach of his contractual obligations are brought, the courts of the Member State in which the consumer had his last known domicile have jurisdiction, pursuant to Article 16(2) of that regulation, to deal with proceedings in the case where they have been unable to determine, pursuant to Article 59 of that regulation, the defendant's current domicile and also have no firm evidence allowing them to conclude that the defendant is in fact domiciled outside the European Union;

- that regulation does not preclude the application of a provision of national procedural law of a Member State which, with a view to avoiding situations of denial of justice, enables proceedings to be brought against, and in the absence of, a person whose domicile is unknown, if the court seised of the matter is satisfied, before giving a ruling in those proceedings, that all investigations required by the principles of diligence and good faith have been undertaken with a view to tracing the defendant.

So, is the last known domicile rule applicable to, say, consumer sale contracts? in cases where the defendant has not "renounced his domicile"? Indeed, what does renouncing one's domicile mean in this case? Changing addresses? Subscribing to

a jurisdiction clause (irrespective of its validity)?

International Jurisdiction

The court also addressed the issue of the application of the Regulation to a case which was only international because of the nationality of the consumer. It held:

1. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application of the rules of jurisdiction laid down by that regulation requires that the situation at issue in the proceedings of which the court of a Member State is seised is such as to raise questions relating to determination of the international jurisdiction of that court. Such a situation arises in a case such as that in the main proceedings, in which an action is brought before a court of a Member State against a national of another Member State whose domicile is unknown to that court.

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