

German Federal Court of Justice Rules on International Jurisdiction under Articles 15, 16 and 22 of the Brussels I-Regulation

In a judgment of 23 October 2012, the German Federal Court of Justice (*Bundesgerichtshof*) had to deal with the question of whether German courts have jurisdiction over claims of a consumer against a tour operator arising out of a tenancy of a holiday house abroad. Referring to Articles 15 (1) (c) and 16 (1) of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: Brussels I-Regulation) the court answered the question in the affirmative.

The facts of the case were as follows: The plaintiffs, a German couple domiciled in Schwerin (Germany), rented from the defendant, a Danish tour operator, a holiday house located in Belgium and belonging to a third party. Upon arrival, the plaintiffs realized that the house suffered from substantial defects. When the defendant failed to fix the, the plaintiffs cut their vacation short and returned to Germany.

Back home, the plaintiffs sued the defendant for reimbursement of the travel price and compensation for wasted holiday time in Local Court (*Amtsgericht*) of Schwerin. They argued that under Article 16 (1) of the Brussels I-Regulation German courts were competent to hear the case since the contract in question was a consumer contract in the sense of Article 15 (1) lit. c) of the Brussels I-Regulation. The defendant, in contrast, argued that German courts did not have jurisdiction. Pointing to Article 22 of the Brussels I-Regulation, he argued that in proceedings which have as their object tenancies of immovable property the courts of the Member State in which the property was situated had exclusive jurisdiction.

The Local Court of Schwerin – and later the Appellate Court (*Landgericht*) of Schwerin – followed the plaintiffs' view and ordered the defendant to pay the

requested sums. The defendant, therefore, appealed to Federal Court of Justice (*Bundesgerichtshof*) which, however, confirmed the lower courts' decisions. A consumer, who rented a holiday house belonging to a third party from a commercial tour operator, could rely on Article 16 of the Brussels I-Regulation and bring proceedings in the courts of his home country. Article 22 No. 1 of the Brussels I-Regulation, in contrast, did not apply. According to the case law of the Court of Justice of the European Union, a provision, which compelled a party to bring an action in a member state in which neither party was domiciled, had to be interpreted narrowly. Application of Article 22 No. 1 of the Brussels I-Regulation, therefore, was confined to disputes between the owner and the tenant of immovable property. In contrast, the provision did not apply to disputes between a tour operator and a consumer.

The full decision will soon be available on the website of the Federal Court of Justice (in German).