

ECJ Refuses to Extend the Scope of Article 5 (3) Brussels I to Coperpetrator

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On May 16th, the Court of Justice of the European Union rendered its judgment in *Melzer v. MF Global UK Ltd* (C-228/11) in which the judges refused the extension of the scope of article 5 (3) suggested by the Landgericht Düsseldorf.

A German individual residing in Berlin was solicited by telephone by a German company (WWH) based in Düsseldorf which opened an account for him in an English brokerage company (MF Global UK) trading in futures in return for remuneration. The investment did not go as planned; the German client lost almost all of his initial investment and decided to go to Court in order to obtain compensation for his loss.

Oddly enough, the plaintiff decided to sue only the English company in Düsseldorf and to base his claim on tortious liability. Thus, the Court in Düsseldorf needed to assess its jurisdiction in regard to article 5 (3) of Brussels I. In this case, the German court considered that the damage occurred in Berlin where the plaintiff had his assets and that the harmful events occurred in London where the English company conducted its business, and in Düsseldorf where the German company is based. But as the German company was not a party to the litigation, the court explored whether it could apply the national principle of “reciprocal attribution of the place where the event occurred”.

This principle, as understood by the CJEU, is derived from provisions of the German Civil Code (§830) and the German Code of Civil Procedure (§32). It allows a Court to retain jurisdiction insofar as it is the place where the event giving rise to the damage has been caused by a presumed joint participant or accomplice, even though this accomplice is not himself a defendant.

Unsurprisingly, the CJEU answered negatively to the question asked by the German Court and held that as an exception to article 2, article 5 (3) has to be interpreted restrictively. In the present case, it found that there was no

connecting factor between the English defendant and the Court of Düsseldorf. Moreover, the CJEU ruled that the use of national legal concepts to interpret Brussels I regulation would lead to different outcomes among the Member States and thus be contrary to the objective of legal certainty.

Finally, the Court mentioned that several other possibilities could have been used by the plaintiff who could have based his claim on contractual liability or could have sued both companies in Düsseldorf under article 6(1) of the Regulation.

Ruling:

Article 5(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 2001 must be interpreted as meaning that it does not allow jurisdiction to be established on the ground of a harmful event imputed to one of the presumed perpetrators of damage, who is not a party to the dispute, over another presumed perpetrator of that damage who has not acted within the jurisdiction of the court seised.