

ECJ Rules Jurisdiction Clauses do not Follow Property

On February 7th, 2013, the Court of Justice for the European Union ruled in *Refcomp SpA v. Axa Corporate Solutions Assurance SA* (Case C-543/10) that jurisdiction clauses do not follow goods along chains of successive contracts transferring their ownership.

Compressors manufactured by Italian company Refcomp were purchased by another Italian company, Climaveneta, to be sold to French company Liebert and eventually to French property developer Doumer.

The first contract between Refcomp and Climaveneta included a clause providing for the jurisdiction of Italian courts.

Doumer's insurer sued Refcomp and other parties in French courts. Refcomp challenged the jurisdiction of French courts on the ground that it benefited from a jurisdiction clause. It argued that all participants to the chain of contracts which successively transferred ownership of the goods were bound by it.

Under the French law of obligations, the action from Doumer against Refcomp would indeed be contractual. The doctrine is that the rights and obligations follow the goods.

But the French are isolated on that front in Europe. Unsurprisingly, the European Court rules that buyers who were not parties to the first contract are not bound by the jurisdiction clause. The Court had already rejected the French doctrine when it defined contractual matters under the Brussels Convention in its *Handte* decision in 1992.

Ruling:

Article 23 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 must be interpreted as meaning that a jurisdiction clause agreed in the contract concluded between the manufacturer of goods and the buyer thereof cannot be relied on against a sub-buyer who, in the course of a

succession of contracts transferring ownership concluded between parties established in different Member States, purchased the goods and wishes to bring an action for damages against the manufacturer, unless it is established that that third party has actually consented to that clause under the conditions laid down in that article.

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