

ECJ Rules on Jurisdiction for Claims based on Promissory Notes

On March 14th, 2013, the Court of Justice of the European Union delivered its judgment in *Ceská spontelna, a.s. v. Gerald Feichter* (Case C 419/11).

The case was concerned with a blank promissory note issued by a Czech company (Feichter) in favour of another Czech company (Ceská spontelna) in order to guarantee the first company's obligations under an overdraft agreement. Mr Feichter, having his domicile in Austria, also signed, as an individual, the promissory note on its face, marking it 'per aval' and thus undertaking to guarantee its payment. The beneficiary of the note eventually sued the avaliste (guarantor) in the Czech Republic.

✘ Mr Feichter first argued that he was a consumer and should benefit from Article 16 of the Brussels I Regulation. The Czech court also wondered whether the action under the promissory note ought to be characterized as contractual in character for the purpose of Article 5(1) of the Regulation.

Consumer Protection

The ECJ held

36 *It is common ground that the giver of the aval in the case in the main proceedings became the guarantor of the obligations of the company of which he is the managing director and in which he has a majority shareholding.*

37 *Accordingly, even if the obligation on the giver of the aval is of an abstract nature and is thus independent of the obligation on the maker of the note for which the giver of the aval became guarantor, the fact remains, as the Advocate General observed in point 33 of her Opinion, that the aval of a natural person, given on a promissory note issued in order to guarantee the obligations of a commercial company, cannot be regarded as having been given outside and independently of any trade or professional activity or purpose while that individual has close professional links with that company, such as being its managing director or majority shareholder.*

Contractual Claim

The ECJ held

48 *As regards whether such an obligation exists in circumstances such as those at issue in the main proceedings, it must be noted, as it was by the Advocate General at point 45 of her Opinion, that, in the present case, the giver of the aval, by signing the promissory note on its face under the indication 'per aval', voluntarily consented to act as the guarantor of the obligations of the maker of that promissory note. His obligation to guarantee those obligations was thus, by his signature, freely accepted, for the purposes of that provision.*

49 *The fact that that signature was made on a blank promissory note is not such as to cast doubt on that finding. Account must be taken of the fact that the giver of the aval, by also signing the agreement on the right to complete the note, freely accepted the conditions concerning the manner in which that promissory note would be completed by the payee filling in the missing information, even though signature of that agreement did not, in itself, result in the aval coming into being.*

Final Ruling

1. *Article 15(1) 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 natural person with close professional links to a company, such as its managing director or majority shareholder, cannot be considered to be a consumer within the meaning of that provision when he gives an aval on a promissory note issued in order to guarantee the obligations of that company under a contract for the grant of credit.*

Therefore, that provision does not apply for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.

2. *Article 5(1)(a) of Regulation No 44/2001 applies for the purposes of determining the court having jurisdiction over judicial proceedings by which the payee of a promissory note, established in one Member State, brings claims under that note, which was incomplete at the date of its signature and was subsequently completed by the payee, against the giver of the aval, domiciled in another Member State.*

H/T: Severine Menetrey