

Preliminary Question on Art. 5 No. 3 Brussels I

It has not been mentioned on this blog that the German Federal Supreme Court on August 15, 2012 referred the following question relating to the interpretation of Article 5 No. 3 of the Brussels I Regulation to the Court of the European Union (Case C-387/12 - *Hi Hotel HCF SARL ./. Uwe Spoering*):

Is Article 5(3) of Regulation (EC) No 44/2001 to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) in the case where the tort or delict which forms the subject-matter of the proceedings or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tort or delict (principal act) committed in the first Member State (Member State A)?

The facts of the case are in large part disputed, but according to the Federal Supreme Court and for the sake of the preliminary ruling they are assumed to be as follows: the plaintiff (*Uwe Spoering*) is a photographer. On behalf of the defendant (*Hi Hotel*), a hotel operator in Nice in the South of France, he took various pictures of the hotel interior. He granted defendant the right to use the photographs in his brochures and on his website. However, in 2008, the plaintiff found nine of his photographs (re-)printed in two photobooks, one published by Phaidon Press (based in Berlin, Germany) and another one published by Taschen (based in Cologne, Germany). Phaidon Press had received the photographs via a Paris based sister company. The sister company, in turn, had received the photographs from the defendant.

The plaintiff brought an action for copyright infringement in Germany asking for a prohibitory injunction as well as damages. He argued that German courts were competent to hear the case under Art. 5 no. 3 of the Brussels I Regulation. According to this provision a person who is domiciled in a Member State, may be sued in matters relating to torts, delict or quasi-delict in the court of the Member State where the harmful event occurred or may occur. Plaintiff argued that the harmful event - the copyright infringement - occurred in Germany because this is where Phaidon Press distributed the photographs. He further argued that

defendant participated in the copyright infringement by handing over the photographs to Phaidon Press. Defendant, in contrast, argued that German courts did not have jurisdiction under Art. 5 No. 3 Brussels I Regulation since he handed over the photographs to Phaidon's sister company in France and not in Germany.

With the preliminary question the German Federal Supreme Courts wants to know whether jurisdiction under Art. 5 No. 3 Brussels I Regulation covers claims for copyright infringement against accomplices if the accomplice (only) acted abroad.

The full text of the decision can be found here (in German). The reference to the CEU is available here (in English).