CJEU Rules on Relationship between 5 No. 1 and 3 Brussels I

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On 13 March 2014, the ECJ has rendered a significant decision on the Brussels I Regulation. Brogsitter (Case C-548/12) concerns the complex relationship between contractual and tort claims under Article 5 No 1 and 3 of the Regulation. The new key phrases coined by the ECJ in this regard are the following (emphasis is mine):

"However, the mere fact that one contracting party brings a civil liability claim against the other is not sufficient to consider that the claim concerns 'matters relating to a contract' within the meaning of Article 5(1)(a) of Regulation No 44/2001.

That is the case only where the conduct complained of may be considered a breach of contract, which may be established by ***taking into account the purpose of the contract****.*

That will a priori be the case ***where the interpretation of the contract*** *which links the defendant to the applicant* ***is indispensable to establish the lawful or****, on the contrary****, unlawful nature of the conduct*** *complained of against the former by the latter.*

It is therefore for the referring court to determine whether the purpose of the claims brought by the applicant in the case in the main proceedings is to seek damages, ***the legal basis for which can reasonably be regarded as a breach of the rights and obligations set out in the contract*** *which binds the parties in the main proceedings, which* ***would make its taking into account indispensable in deciding the action****."*

The facts of the underlying case are as follows: Brogsitter, a German watch manufacturer, entered into a contract with a Swiss resident whereby the latter undertook to design watches on his behalf. The Swiss resident and his French company also developed other watches, which they marketed independently. Brogsitter sued them both in Germany alleging that they had agreed to work

exclusively for him. The peculiarity of the case rests on the fact that he did not base his claim on contract law, but rather on the law of torts. Specifically, he invoked a violation of § 18 of the German Act against Unfair Competition (Gesetz gegen unlauteren Wettbewerb – UWG), which prohibits the use of models provided by other persons. In addition, he also claimed that the defendants had disrupted his business and committed fraud and breach of trust. All of these grounds lead to tortuous liability under German law (§ 823 para. 1, 2, § 826 BGB). Nevertheless, the German court wondered whether the claim would fall under Article 5 No 1 Brussels I Regulation given the existence of a contract between the parties.

The ECJ responded cautiously by choosing to leave the ultimate decision concerning the proper categorisation to the national court. It did however offer some insight into the relationship between Article 5 No 1 and 3 of the Regulation. After the usual repetitions about the principle of autonomous interpretation, it made clear that the court must take the purpose of the contract into account. Moreover, it held that a claim must be considered contractual if an interpretation of the agreement is "indispensable" to establishing the legality or illegality of the act and to deciding on the action. It used the term "reasonably" to circumscribe how the national court must carry out the autonomous categorisation. It remains to be seen how these guidelines will be applied by the referring court and in future cases.