

# The Italian Supreme Court on Jurisdiction in Purely Financial Damages

## The case

In a recent decision published October 30<sup>th</sup>, 2020 (ordinanza 24110/2020) the Italian Supreme Court has applied two provisions of the Brussels Ia Regulation, namely art. 8 n. 1, and art. 7 n. 2, in a context of multiple actions for fraud started by the Italian investors against a number of defendants. The first being a UK based bank for alleged breaches of its duties of control over financial experts who collected money from investors. The others being a UK based financial company and a financial expert who were supposed to invest the collected money by way of establishing trust. As emerges from the order of the Supreme Court, all investments collected in Italy were spent in gambling houses in Italy.

Proceedings were collectively started in Italy against all defendants, who challenged the Italian jurisdiction before the court of first instance, which thus requested the Supreme Court to settle the issue.

## Last known domicile of one of the defendants

Following a logical order, the Italian Supreme Court seeks to determine in the first place if one of the defendants is domiciled in Italy. In this regard, the solution of the Court is interesting in that it focuses on the last known domicile of the financial expert, whose actual whereabouts have become unknown. According to the Court, the simple fact that current domicile of the party is unknown, and that consequently service of documents has followed domestic rules for unknown residents, is *per se* not sufficient to argue that that person is no longer domiciled in Italy. To some extent, even though this decision is not clearly mentioned in the order of the Italian Supreme Court, this conclusion seems consistent with the *ratio* expressed by the Court of Justice of the European Union in *Hypotecní banka a.s. v Lindner* (case C-327/10), where it was argued that defendants with unknown domicile are domiciled at their last known domicile for the purpose of

the Brussels I(a) Regulation (see para. 42 ff).

### **Art. 8 n. 1 Brussels Ia Regulation**

Having established that Italian jurisdiction exists under art. 4 Brussels Ia Regulation at least in respect to one of the defendants (i.e. the financial expert cooperating with the British financial company who should have been appointed as trustee for the management of the investments), the Italian Supreme Court turns to the analysis of Italian jurisdiction over the UK investment company and the UK Bank under art. 8 n. 1 Brussels Ia Regulation.

The Supreme Court concedes that the special head of jurisdiction is subject to a restrictive interpretation and should not be applied when the different proceedings have different *petitum* and *causa petendi*, or where there is no subordination between the actions with no risk of *incompatible* judgments - the mere 'inconsistency' between decisions being insufficient to trigger art. 8 n. 1 Brussels Ia Regulation and derogate from art. 4.

In the case at hand, however, even though the action against the UK bank was contractual in nature for alleged violation of its control duties, and non-contractual in nature against the other parties, the Italian Supreme Court notes how the non-contractual liability of those who have collected the money to unlawfully spend it in gambling houses in Italy is strictly interconnected and intertwined with the contractual conduct of the bank - as proper *ex ante* controls by this subject might have avoided the investment in favor of companies who had unclear bank operations incompatible with investment activities. Moreover, damaged parties have started proceedings seeking damages collectively against all parties for solidary liability - in the Court's eye, this renders it fundamental to unitarily address all conducts even though these are grounded on different titles. Again, a solution that appears to be consistent with the case law of the Court of Justice of the European Union (*Freeport plc v Olle Arnoldsson*, case C-98/06, para. 41).

For these reasons, the Italian Supreme Court argues that the Italian jurisdiction extends from that of the Italian domiciled also to both the British investment company and the British bank.

## **Art. 7 n. 2 Brussels Ia Regulation**

The Italian Supreme Court also addresses the existence of the Italian jurisdiction under art. 7 n. 2 Brussels Ia Regulation. The Court does not however determine at this stage local competence - referring the issue to the court of first instance.

The case deals *in concreto* with damages following investment frauds - in this sense the only 'damage' for the purposes of the provision at hand is financial in nature. The Italian Supreme Court quotes the decision of the European Court of Justice in Volkswagen AG (Verein für Konsumenteninformation v Volkswagen AG, case C-343/19) to support the idea that the place of financial loss might ground the existence of Italian international jurisdiction, as in Italy the investors transferred their sums (thus lost their money).

The Supreme Court additionally argues that the 'conduct' can be localized in Italy as well - thus Italian jurisdiction follows. In Italy the sums were allegedly fraudulently collected from investors, and in Italy such sums were allegedly fraudulently used in Italian gambling houses (contrary to contractual indications). With a brief passage, the Court gives a strong value to this specific head of jurisdiction, the place of the 'harmful conduct', as it can be used by the plaintiffs to ground their actions superseding uncertainties that could follow the application of art. 8 n. 1 Brussels Ia.