The competent jurisdiction when the current domicile of the defendant is unknown, in accordance with Brussels I Regulation

- News on legislation [1]

Thu, 11/17/2011

The Court of justice of the European Union finds that, in a case where a consumer's current domicile is unknown, the courts of the place where the consumer had his last known domicile may have jurisdiction to deal with proceedings against him. The fact that it is not possible to identify the current domicile of the defendant must not deprive the applicant of his right to bring proceedings

Bu judgment dated 17 November 2011 (C-327/10), the Court of justice of the European Union finds that, in a case where a consumer's current domicile is unknown, the courts of the place where the consumer had his last known domicile may have jurisdiction to deal with proceedings against him. The fact that it is not possible to identify the current domicile of the defendant must not deprive the applicant of his right to bring proceedings

A Czech bank and a German national concluded a mortgage loan contract for the purpose of financing the purchase of immovable property. At the time when that loan contract was concluded, Mr Linder was domiciled in Czech Republic and, pursuant to that contract, was under an obligation to inform the bank of any change of domicile. In addition, that contract provided that the local court of the bank, determined according to its registered office, would have general jurisdiction in respect of any disputes. The bank brought an action before the Cheb District Court (Czech Republic) by which it sought an order requiring Mr Lindner to pay to it the sum by way of arrears on the loan. That court established that Mr Lindner was no longer staying at the address indicated in the contract and it was unable to determine where he was residing in the Czech Republic. In those circumstances, the Czech court made a reference to the Court of Justice for a preliminary ruling in which it requested an interpretation of the regulation on jurisdiction1 and, inter alia, asked whether that regulation precludes a provision of a Member State's national law under which proceedings may be brought against persons whose domicile is unknown.

The Court observes, first of all, that the regulation does not expressly define jurisdiction in a case where the domicile of the defendant is unknown. The Court goes on to point out that, according to the regulation, proceedings against a consumer must be brought by the other party to the contract in the courts of the Member State in which the consumer is domiciled. If, however, the national court is unable to identify the place where the consumer is domiciled within the Member State of that court, it must then examine whether he is domiciled in another Member State of the European Union. If the national court, first, is unable to identify the place of domicile of the consumer in the territory of the European Union and, second, has no firm evidence to support the conclusion that the consumer is in fact domiciled outside the European Union, the rule according to which, in the event of a dispute, jurisdiction is vested in the courts of the Member State in which the consumer is domiciled must be understood as referring not only to his current domicile but also to his last known domicile.

Such an interpretation of the regulation enables the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued. Likewise, it enables a situation to be avoided in which the fact that it is not possible to identify the current domicile of the defendant precludes determination of the court having jurisdiction, thereby depriving

the applicant of his right to judicial redress. In addition, such a solution ensures a fair balance between the rights of the applicant and those of the defendant in a case in which the defendant was under an obligation to inform the applicant of any change of address occurring after a long-term mortgage loan contract had been signed. Consequently, the Court finds that the Czech courts have jurisdiction to deal with the proceedings which the bank has brought against Mr Lindner in so far as it has been impossible for them to identify his current domicile.

Lastly, the Court considers the possibility, provided for under Czech law in such circumstances, of taking further steps in the proceedings without the defendant's knowledge through the appointment of a guardian ad litem on whom notification of the action may be served. The Court observes that, while those measures constitute a restriction of the rights of the defence, that restriction is, none the less, justified in view of the applicant's right to effective protection. Indeed, were it not for the appointment of a guardian ad litem on whom notification of the action may be served, the applicant would be unable to exercise that right against someone whose domicile is unknown. The Court concludes, however, that the court seised of the matter must always satisfy itself that all necessary steps have been taken to trace the defendant in order to ensure that he can defend his interests.

Read the judgment of the court [2]

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