



Press and Information

Court of Justice of the European Union

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Judgment in Case C-543/10

Refcomp SpA v Axa Corporate Solutions Assurance SA, Axa France IARD,
Emerson Network and Climaveneta SpA

In the context of successive contracts concluded between parties established in different Member States, a jurisdiction clause incorporated in a contract for sale between the manufacturer and the buyer of goods cannot be relied on by a sub-buyer of those goods, unless he has agreed to that clause

The Brussels Regulation¹ determines the jurisdiction of the courts in civil and commercial matters, the basic principle being that the courts having jurisdiction are those in the Member State where the defendant is domiciled. However, in certain cases, the defendant may be sued before the courts of another Member State. That is the case, in particular, where the parties – at least one of which is domiciled in the EU – have included a clause in the contract by which they agree which courts are to have jurisdiction.

SNC Doumer ('Doumer') had renovation work carried out on a building complex in Courbevoie (France). It was insured by Axa Corporate whose registered office is in France. During the renovation work air conditioning units were installed, each equipped with a set of compressors which were manufactured by an Italian company Refcomp SpA, bought from that company and fitted by Climaveneta, also an Italian company and, finally supplied to Doumer by the company Liebert, to whose rights the company Emerson is subrogated, which is itself insured by Axa France both of whom have registered offices in France. Irregularities occurred in the air conditioning system and an expert report ordered by the court revealed that those failures resulted from a manufacturing fault in the compressors.

Axa Corporate, successor in title to Doumer to which it paid compensation as the insured party, sued Refcomp the Italian manufacturer, the fitter Climaveneta and the seller Emerson before the Tribunal de grande instance de Paris seeking an order for them to pay in solidum for the damage suffered. Refcomp challenged the jurisdiction of the French courts and relied on a jurisdiction clause in favour of the Italian courts in the contract concluded between it and Climaveneta. Since the court rejected the objection of lack of jurisdiction raised by Refcom, the latter appealed against that decision and then appealed in cassation.

Therefore, the Court of cassation (France) asks the Court of Justice whether a jurisdiction clause in a contract for sale, concluded between the manufacturer and the initial buyer of goods, which is part of a chain of contracts concluded between parties established in different Member States, produces its effects with regard to the sub-buyer so as to allow him to bring an action for damages against the manufacturer.

In its judgment today, the Court states that the Brussels Regulation does not indicate whether a jurisdiction clause² may be transmitted, beyond the circle of parties to the initial contract, to a third party, a party to a subsequent contract and successor to the rights and obligations of one of the parties.

¹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12). It replaces the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36).

² Regulation No 44/2001 (Article 23)

The Court recalls that it is for the national court hearing the case to examine whether the parties have in fact agreed to the jurisdiction clause, because the verification as to whether the parties concerned have really consented is one of the objectives pursued by the regulation. The Court concludes that the jurisdiction clause incorporated in a contract may produce effects only in the relations between the parties which have agreed to conclude that contract. It follows that that clause may be relied on against a third party only if the latter has in fact consented to it.

Therefore, in so far as the Court has already held, in the context of the regulation, that the sub-buyer and the manufacturer cannot be regarded as being united by a contractual link³, it must be concluded that they cannot be regarded, within the meaning of the regulation, as having 'agreed' to the court designated as having jurisdiction in the initial contract concluded between the manufacturer and the first buyer.

That interpretation of the regulation, which does not refer to the national legal systems, thereby avoids different solutions arising in the Member States which would be likely to compromise the objective of unifying the rules of jurisdiction pursued by the regulation. Such a reference to national law would also be an element of uncertainty incompatible with the concern to ensure the foreseeability of jurisdiction which is one of the objectives of the regulation.

Accordingly, the Court's answer is that the regulation must be interpreted as meaning that a jurisdiction clause in a contract for sale concluded between the manufacturer of goods and the initial buyer, may only be relied on against a third party sub-buyer who, at the end of a succession of contracts transferring ownership concluded between the parties established in different Member States, has purchased those goods and wishes to bring an action for damages against the manufacturer, unless it is established that that third party has given his consent to that clause.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ Case C-26/91 Handte [1992] ECR I-3967.