



Press and Information

Court of Justice of the European Union

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Judgment in Case C-438/12
Irmegard Weber v Mechtilde Weber

The exclusive jurisdiction in matters relating to immovable property attributed by the Brussels I Regulation to the courts of a Member State is not affected by the fact that the court of another Member State was first seised

The court with exclusive jurisdiction is not required to stay its proceedings or to decline jurisdiction, but must give a ruling on the action before it

By its judgment today, the Court of Justice answers questions referred by the Oberlandesgericht München (Higher Regional Court, Munich, Germany) relating to the interpretation of the Brussels I Regulation¹ on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Oberlandesgericht is dealing with a dispute between two co-owners of a property in Munich. In that dispute, one of the co-owners, after having exercised her right of pre-emption over the other co-owner's share (a right which was entered in the Land Register), seeks an order requiring the other co-owner to authorise the registration of the transfer of ownership in the Land Register. In those circumstances, the Oberlandesgericht asks the Court if it is required to give a ruling or, if necessary, to decline jurisdiction by reason of the fact that a dispute concerning the right of pre-emption at issue is already pending before the Tribunale ordinario di Milano (District Court, Milan, Italy). The buyer to whom the other co-owner wishes to sell her share sued both co-owners before the Italian courts seeking a declaration that the exercise of the right of pre-emption is invalid and that the contract concluded for the share of the property at issue is valid.

The Brussels I Regulation provides for exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property² for the courts of the Member State in which the immovable property is situated. The court of the place where the immovable property is situated is the best placed, for reasons of proximity, to ascertain the facts satisfactorily and to apply the rules and practices which are generally those of the State in which the property is situated.

The Court states that that exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property applies to actions seeking a declaration that the exercise of a right of pre-emption attaching to property, which produces effects with respect to all the parties, is invalid. An action which seeks essentially to determine whether the exercise of the right of pre-emption has enabled, for the benefit of its holder, the right to the transfer of the ownership of the immovable property subject to the dispute is a right *in rem* in immovable property. Therefore, it falls within the exclusive jurisdiction of the courts of the Member State in which the property is situated.

The Brussels I Regulation also provides that in situations of *lis pendens*, that is to say where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established³. If such jurisdiction is established any court other than the court first seised must decline jurisdiction in

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, p. 1).

² A right *in rem* attaching to immovable property produces effects with regard to all the parties, whereas a personal right may be claimed only against the debtor.

³ That is the case, in particular, where the court first seised has not declined jurisdiction of its own motion and none of the parties has challenged it, see Case [C-1/13 Cartier parfum-lunettes and Axa Corporate Solutions Assurance](#) and also Press Release No [27/14](#).

favour of the court first seised. In principle, a court other than the court first seised cannot itself examine the jurisdiction of the court first seised.

The Oberlandesgericht wishes to know whether that rule also applies where the Brussels I Regulation itself attributes exclusive jurisdiction to the court second seised.

The Court holds that, where the court second seised is the court of the Member State in which the property is situated and thus has exclusive jurisdiction, it is not required either to stay its proceedings or to decline jurisdiction in favour of the court first seised, but must give a ruling on the substance of the action before it. A judgment given by the court first seised which fails to take account of the exclusive jurisdiction of the court second seised cannot, according to the Regulation, be recognised in the Member State of the court second seised. To apply the rule relating to *lis pendens* to such a situation would not correspond to the requirement of the sound administration of justice.

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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