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Court of Justice of the European Union

PRESS RELEASE No 147/18

Luxembourg, 4 October 2018

Judgment in Case C-337/17

Feniks sp. z o.o. v Azteca Products & Services SL

A creditor's action seeking to render a fraudulent disposal of property by its debtor ineffective as regards that creditor is a 'matter related to a contract' within the meaning of the regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

The creditor's action seeking to preserve its interests in the performance of the obligations arising from the contract for construction works can be brought in a Member State where, by virtue of that contract, those works were carried out

The Polish company Coliseum ('Coliseum'), whose head office is in Poland, acting as a general contractor, entered into a contract for construction works as part of a property investment project in Gdansk (Poland) with the Polish company Feniks ('Feniks'), also established in Poland. In order to perform that contract, Coliseum entered into a number of subcontracts. Since Coliseum did not fulfil its obligations towards part of its subcontractors, Feniks was bound to pay them pursuant to provisions of the Civil Code on the joint and several liability of investors and so became the creditor of Coliseum in the total sum of PLN 1 396 495.48 (approximately €336 174).

Under contracts concluded in 2012 in Szczecin (Poland), Coliseum sold, to the company Azteca ('Azteca'), whose head office is in Alcora (Spain), immovable property located in Szczecin for the sum of PLN 6 079 275 (approximately €1 463 445) in partial set off against earlier debts held by Azteca. Azteca nevertheless still owed Coliseum the sum of PLN 1 091 413.70 (approximately € 262 732). Due to Coliseum's lack of assets, in 2016 Feniks brought an action on the basis of the Polish Civil Code against Azteca before the Sąd Okręgowy w Szczecinie (Szczecin Regional Court, Poland) to have that transaction declared void as prejudicial to its interests ('*actio pauliana*'), seeking a declaration that that contract of sale is ineffective as regards Feniks, since it was concluded by its debtor fraudulently and in breach of Feniks' rights.

That court asks the Court of Justice to determine whether an *actio pauliana* is a 'matter related to a contract' within the meaning of Regulation No 1215/2012.¹

In today's judgment, the Court recalls first of all the general rule that persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of that State. However, in addition to the jurisdiction in the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. Thus, in matters relating to a contract, a person domiciled in one Member State may be sued in another Member State in the courts for the place of performance of the obligation which forms the basis of the claim. Next, the Court points out that the application of that rule of special jurisdiction presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based.

The Court notes that, in the present case, Feniks paid the subcontractors which Coliseum used to carry out the construction works, in accordance with a provision of national law establishing the joint and several liability of the investor towards those carrying out the works. Accordingly, both the lien that Feniks holds over the debtor's assets and the action for a declaration that the contract of

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

sale concluded by Coliseum with a third party is ineffective as regards Feniks have their origin in the obligations freely undertaken by Coliseum with regard to Feniks by the conclusion of their contract relating to those construction works.

In the view of the Court, where the *actio pauliana* is based on debts arising from obligations entered into by the conclusion of a contract, the holder of those debts may bring that action in the courts 'for the place of performance of the obligation in question'. Were it otherwise, the creditor would be bound to bring its action before the courts of the place where the defendant is domiciled, which forum possibly has no link to the obligations of the debtor with regard to its creditor.

In the present case, since the action was brought by the creditor to preserve its interests in the performance of the obligations flowing from the contract for construction works, it follows that 'the place of performance of the obligation in question' is, under that contract, the place where the works were carried out, namely Poland.

The Court considers that such a conclusion satisfies the objective of the predictability of the rules of jurisdiction, especially where a professional who entered into a contract for the purchase of immovable property can, where a creditor of the other party to that contract claims that the contract unduly hinders the performance of that other party's obligations vis-à-vis that creditor, reasonably expect to be sued in the courts of the place of performance of those obligations.

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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