Case C-386/21

Request for a preliminary ruling

Date lodged:

24 June 2021

Referring court:

Cour d'appel de Mons (Belgium)

Date of the decision to refer:

10 May 2021

Applicant:

Ryanair DAC, formerly Ryanair Ltd

Defendant:

Happy Flights Srl

IN THE CASE OF:

RYANAIR DAC, a company incorporated under Irish law, whose registered office is at Airside Business Park, Swords 0, Dublin Airport, [Dublin, Ireland] […] [Identification of Ryanair DAC]

appellant in the main proceedings and respondent in the cross-appeal,

[…] [Identification of Ryanair DAC's lawyers] […]

V

HAPPY FLIGHTS SPRL (now SRL) […] whose registered office is at 9920 LOVENDEGEM, [Belgium], Bredestraat Kouter, 69,

respondent in the main proceedings and appellant in the cross-appeal,

[…] [Identification of the lawyers of Happy Flights SRL] […] [Considerations relating to the procedure] […]

I. Facts and background to the proceedings

1. The dispute is between Happy Flights SRL ('HF'), a company incorporated under Belgian law, which specialises in the recovery of claims, to which air passengers have assigned their rights, and the airline Ryanair DAC ('RY'), a company incorporated under Irish law, from which HF is claiming compensation due to passengers on the basis of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ('Regulation No 261/2004').

2. The present case concerns the cancellation of flight FR6351, scheduled to travel from Sofia (SOF) to Charleroi (CRL) on 17 September 2017, the passengers concerned being: […]. [Identification of the passengers concerned]

3. HF gave RY notice to pay it the sum of EUR 7 229.75, by way of compensation and reimbursement for tickets, by email dated 18 September 2017; RY acknowledged receipt of the notice but refused to pay HF.

4. By document of 2 January 2018, HF brought an action against RY before the tribunal de l'entreprise du Hainaut (Division Charleroi) (Companies Court, Hainaut (Charleroi Division)) for payment of the sum of EUR 7 229.75, together with default interest and judicially determined interest from 18 September 2017 until full payment.

5. In its observations, RY challenged the jurisdiction of the Belgian courts and brought a counterclaim for the payment of damages of EUR 5 000 for abuse of process.

6. […] [Consideration relating to the procedure]

7. The judgment under appeal, delivered *inter partes* on 21 June 2019, declares the claim admissible and well founded, orders RY to pay HF the sum of EUR 7 229.75, together with default interest and judicially determined interest from 18 September 2017 until full payment, accepts the counterclaim and declares it unfounded; dismisses RY's claim, orders RY to pay the costs and expenses of the proceedings; […] [Orders relating to the costs of the proceedings] declares the judgment provisionally enforceable notwithstanding any appeal.

8. By application dated 26 July 2019, RY brought an appeal.

9. HF has lodged a cross-appeal in respect of the costs, the admissibility of which is contested by RY.

II. Admissibility of the main appeal

10. […] [Submissions relating to the admissibility of the main appeal brought by RY. The referring court declares the appeal admissible]

III. Grounds of appeal

21. The first ground of appeal raised by RY is the inadmissibility of HF's original claim on account of its lack of *locus standi* or interest in bringing proceedings for the recovery of compensation due under Regulation No 261/2004 on the ground that HF, which is neither a consumer nor a passenger, has no right to make the claim in the absence of an assignment of claim agreement which is valid under Irish law; its second and third grounds of appeal concern the lack of jurisdiction of the Belgian courts to hear the case; its fourth and fifth grounds of appeal relate to the application of its General Terms and Conditions which require the prior submission of a claim by the passenger and prohibit the assignment of a claim.

22. However, before examining the admissibility of and the basis for a claim, the court must first ascertain whether it has jurisdiction to hear the case; accordingly, the court must verify its international jurisdiction in the first place.

IV. Jurisdiction of the Belgian courts

A. The jurisdiction clause

23. RY relies on the choice-of-court clause contained in Article 2.4 of its General Terms and Conditions of Carriage, in accordance with which: *Except as otherwise provided by the Convention or applicable law, your contract of carriage with us, these Terms & Conditions of Carriage and our Regulations shall be governed by and interpreted in accordance with the laws of Ireland and any dispute arising out of or in connection with this contract shall be subject to the jurisdiction of the Irish Courts.*

24. In the case of a dispute between a company incorporated under Belgian law and a company incorporated under Irish law, the applicable legal framework is 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 ('Regulation No 1215/2012').

25. The Court of Justice of the European Union has been called upon recently to rule on a question referred for a preliminary ruling concerning the interpretation of Article 25(1) of that regulation in a case which concerns the application of a choice-of-court clause provided for in a contract of carriage vis-à-vis a debt collection agency to which the passenger had assigned the right of claim based on Regulation No 261/2004 (judgment of 18 November 2020, *DelayFix*, C-519/19).

26. In that dispute, a passenger had assigned to a collection agency, DelayFix, a Polish company, the right to claim compensation on the basis of Regulation No 261/2004 for the cancellation of a flight between Milan and Warsaw operated by RY; the contract of carriage between the passenger and RY provided for a choice-of-court clause in favour of the Irish courts.

27. In the action on the merits brought by DelayFix before a Warsaw court, RY relied on its choice-of-court clause against the collection agency. The Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court for the Capital city of Warsaw, Poland) rejected the objection to lack of jurisdiction raised by RY. RY brought an appeal against that decision before the Sąd Okręgowy w Warszawie (Regional Court, Warsaw, Poland), which decided to refer the following question to the Court of Justice of the European Union for a preliminary ruling:

‘*Should Articles 2(b), 3(1) and (2) and 6(1) of Directive 93/13 … and Article 25 of Regulation [No 1215/2012], as regards examination of the validity of an agreement conferring jurisdiction, be interpreted as meaning that the final purchaser of a claim acquired by way of assignment from a consumer, which final purchaser is not a consumer himself, may rely on the absence of individual negotiation of contractual terms and on unfair contractual terms arising from a jurisdiction clause?*’;

28. In that judgment, before answering the question referred to it for a preliminary ruling, the Court of Justice of the European Union decided to determine the conditions under which a jurisdiction clause could bind the collection agency to which the passenger has assigned the claim.

29. The Court considers that a jurisdiction clause incorporated in a contract may produce effects only in the relations between the parties who have given their agreement to the conclusion of that contract (paragraph 42); that the assignee (the collection agency) is not party to the contract of carriage in which that clause appears, but is a third party to that contract (paragraph 43); it infers from this that a jurisdiction clause cannot, in principle, be enforced by the airline against a collection agency to which the passenger has assigned the claim (paragraph 46), unless, in accordance with national substantive law, the third party had succeeded to an original contracting party’s rights and obligations (paragraph 47); if that is not the case, the collection agency is not bound by the choice-of-court clause.

30. According to the operative part of that judgment, Article 25 of Regulation No 1215/2012 must be interpreted as meaning that, in order to contest the jurisdiction of a court to hear and determine an action for compensation brought under Regulation No 261/2004 and against an airline, ***a jurisdiction clause incorporated in a contract of carriage concluded between a passenger and that airline cannot be enforced by the airline against a collection agency to which the passenger has assigned the claim, unless, under the legislation of the Member State whose courts are designated in that clause, that collection agency is the successor to all the initial contracting party's rights and obligations, which it is for the referring court to determine.***

31. In the present case, the referring court intends to follow the guidance given in that judgment and therefore, in order to determine whether it has international jurisdiction, it must verify whether, under Irish law – the Irish courts being designated in the clause at issue – HF is the successor to all the passengers' rights and obligations.

32. However, jurisdiction must be assessed independently of the substance of the case, using what has been said in the summons (see M. Descamps, Compétence internationale et loi applicable en matière d'obligations contractuelles et non contractuelles, in X. Obligations, Traité théorique et pratique, VII, 1.1.11 and judgment of the Court of Justice of 4 March 1982, *Effer*, 38/81, EU:C:1982:79), after a prima facie examination, without prejudice to the substance of the case.

33. In the summons, HF states that it specialises in the collection of compensation due on the basis of Regulation No 261/2004 and that the passengers '*have assigned their claim on the basis of the passenger rules to the applicant in accordance with Article 1689 et seq. of the Code civil [(Civil Code)]*'; in the form of order sought, it merely submits that the assignment of the claim on which it relies is governed exclusively by Belgian law, the law chosen by the parties in the context of the assignment of claim agreement concluded between the passengers and HF.

34. Accordingly, it does not at any point demonstrate the validity and enforceability of the assignment of the claim under Irish law, and therefore its scope under Irish law, with the result that it does not demonstrate that it is the successor to all the passengers' rights and obligations under Irish legislation.

35. According to RY, Irish law does not authorise the assignment of a right of claim ('assignment of a bare legal right') to an entity which has no connection with the claim it is bringing other than that which it has created by that assignment of the right of claim, which is contrary to Irish public policy, and therefore the assignment of the claim to HF is invalid.

36. It establishes that finding by producing the opinion of Mr Justice Donal O'Donnell of the Supreme Court of Ireland and the recent judgment of 31 July 2018 of the Supreme Court of Ireland in *SPV Osus Ltd* v *HSBC Institutional Trust Services (Ireland) Ltd*, in addition to an article from Irish legal literature relating to that judgment (documents 25 and 26 in its file).

37. It follows that the jurisdiction clause is not enforceable against HF, a third party to the contract of carriage, which did not consent to that clause and cannot rely on a full assignment of the claim under Irish law.

38. It is therefore unnecessary to examine the validity, and if necessary, the unfairness of the jurisdiction clause which is not binding on HF.

B. The application of Regulation No 1215/2012

39. As the jurisdiction clause does not apply, it must be determined which court has international jurisdiction to hear an action for compensation brought on the basis of Regulation No 261/2004 by a collection agency incorporated under Belgian law against an Irish airline, pursuant to Regulation No 1215/2012.

40. Under Article 4 of that regulation, the courts of the Member State in which the defendant is domiciled, in this case the Irish courts, have jurisdiction in principle, unless there is a special jurisdiction.

41. It should be noted that HF, a third party to the contract, is neither a passenger nor a consumer, nor a consumer association, but is an undertaking within the meaning of Article I.1, 1 of the Code de droit économique (Code of Economic Law) and therefore it cannot rely on mandatory provisions on international jurisdiction which are intended to protect consumers and allow them to bring legal proceedings in their State of domicile, in accordance with Article 17 of Regulation (EU) No 1215/2012, which, for the sake of completeness, does not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

42. The *ratio legis* of that article is inter alia to prevent a consumer, who is faced with the cost and difficulties of proceedings in a State other than his own, from being deprived of access to justice, a risk which does not exist when the proceedings are brought by an undertaking in the course of its international economic activity.

43. HF relies, however, on the judgment in *Rehder*, delivered by the Court of Justice of the European Union on 9 July 2009 (C-204/08), according to which the second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 (now replaced by Article 7(1) of Regulation (EU) No 1215/2012) must be interpreted as meaning that, in the

case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation (EC) No 261/2004 is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

44. The Court considered that, where there are several places at which services are provided in different Member States, it is necessary to identify the place with the closest linking factor between the contract in question and the court having jurisdiction, in particular the place where, pursuant to that contract, the main provision of services is to be carried out (paragraph 38); it held that the only places which have a direct link to those services, provided in performance of obligations linked to the subject matter of a contract relating to air transport, are those of the departure and arrival of the aircraft (paragraph 41); given that each of those two places has a sufficiently close link of proximity to the material elements of the dispute, thereby ensuring the close connection required by the rules of special jurisdiction (paragraph 44), such a choice also satisfies the requirement of predictability and is consistent with the objective of legal certainty; however, the Court also pointed out that the applicant retains the option of bringing the matter before the courts of the defendant's domicile (paragraph 45).

45. HF infers from this that, in the present case, the Belgian courts have international jurisdiction since the place of departure or place of arrival of the flight at issue is Charleroi Airport (Hainaut, Belgium).

46. However, in the context of the judgment in *Rehder*, the action had been brought by the air passenger himself, a direct party to the contract who was bound by the contract relating to air transport, and not by a third party, an assignee, who is not a party to the contract.

47. RY states that, if the assignee is a third party to the contract concluded between the passenger and the airline, it is not bound by the contract of carriage concluded between the passenger and the airline and, consequently, it cannot be bound by the clauses contained therein, whether this be the choice-of-court clause or the clause regarding the place of departure or place of arrival agreed between the passenger and the airline in the contract of carriage.

48. Therefore, RY submits that, since the assignee is extraneous to the place of performance of the contract of carriage between the airline and the passenger, it cannot rely on the place of performance of the contract concluded between the airline and the passenger in order to bring proceedings against the airline, but must sue the airline in the courts of the State in which the defendant is domiciled, in accordance with the general

rule contained in Article 4 of Regulation No 1215/2012, that is to say, in the present case, the Irish courts.

49. RY submits that the judgment of the Court of Justice of the European Union of 7 March 2018 in *Air Nostrum and Others* (Joined Cases C-274/16, C-447/16 and C-448/16) does not in any way call into question the foregoing since, in that judgment, the Court does not at any point analyse the possibility for an assignee who is a third party to the contract of carriage to bring an action against an airline on the basis of the place of performance of the contract of carriage.

50. In that judgment, the Court of Justice of the European Union was called upon to rule on the question of the place of performance of contractual obligations under a contract for carriage by air in the case of connecting flights operated by different airlines (place of arrival of the second flight); the Court also had to answer the question whether the concept of 'matters relating to a contract', within the meaning of Article 7(1) of Regulation No 1215/2012, covered a claim brought by air passengers for compensation made under Regulation No 261/2004 against an operating air carrier with which the passenger concerned does not have contractual relations.

51. The Court answered that question in the affirmative, relying inter alia on the second sentence of Article 3(5) of Regulation No 261/2004 which states that, where an operating air carrier which has no contract with the passenger performs obligations under that regulation, it is to be regarded as doing so on behalf of the person having a contract with that passenger, as the obligations of the third-party carrier arise under the contract for carriage by air and therefore, in the circumstances of the case, the application for compensation for the long delay of a flight carried out by an operating air carrier such as Air Nostrum, with which the passengers concerned do not have contractual relations, must be considered to have been introduced in respect of contracts for carriage by air concluded between those passengers and Air Berlin and Iberia respectively.

52. In the present case, the situation is different since the claim for compensation is brought against the air carrier with which the passengers have contractual relations, but by a collection agency, a third party to the contract of carriage by air, which relies on its status as assignee of the claim, but does not demonstrate that it is the successor to all the passengers' rights and obligations.

53. Therefore, the question arises as to the application and interpretation of Article 7(1) of Regulation No 1215/2012.

54. It is therefore appropriate to refer the questions set out in the operative part of this judgment to the Court of Justice of the European Union for a preliminary ruling.

ON THOSE GROUNDS

The Court

[…] [Considerations relating to the procedure] […] refers the following questions to the Court of Justice of the European Union for a preliminary ruling:

1. ***Must Article 7(1)(a) of 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 be interpreted as meaning that the concept of 'matters relating to a contract', within the meaning of that provision, covers an action for compensation brought on the basis of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, by a collection agency, a third party to the contract of carriage by air, which relies on its status as assignee of the claim, even though that agency does not demonstrate that it is the successor to all the initial contracting party's rights and obligations?***

2. ***If the first question is answered in the affirmative, must Article 7(1)(a) and 7(1)(b) of 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 be interpreted as meaning that the place of performance of the obligation in question is the place of performance of the contract of carriage by air, that is to say the place of departure or place of arrival of the flight, or, if appropriate, another place?***

[…] [Suspension of proceedings]

[…] [Closing procedural wording, signatures and date]