Anonymised version

Case C-497/22

Request for a preliminary ruling

Date lodged:

22 July 2022

Referring court:

Landgericht Düsseldorf (Germany)

Date of the decision to refer:

8 July 2022

Applicant and appellant:

EM

Defendant and respondent:

Roompot Service B.V.

[…]

Landgericht Düsseldorf (Regional Court, Düsseldorf)

Order

In the case of

EM […]

applicant and appellant,

[…]

v

Roompot Service B.V., […] Goes, Netherlands,

defendant and respondent,

[…]

the 22nd Civil Chamber of the Regional Court, Düsseldorf […]

ordered as follows:

The proceedings are stayed.

The following question is referred to the Court of Justice of the European Union for a preliminary ruling on the interpretation of EU law pursuant to point (b) of the first paragraph and the third paragraph of Article 267 TFEU:

Must the first sentence of Article 24(1) of Regulation (EU) No 1215/2012 be interpreted as meaning that a contract which is concluded between a private individual and a commercial lessor of holiday homes in relation to the short-term letting of a bungalow in a holiday park operated by the lessor, and which provides for cleaning at the end of the stay and the provision of bed linen as further services in addition to the mere letting of the bungalow, is subject to the exclusive jurisdiction of the State in which the rented property is situated, irrespective of whether the holiday bungalow is owned by the lessor or by a third party?

G r o u n d s:

I.

The applicant, EM, resident in Germany, booked a 10-person bungalow, including bed linen and cleaning at the end of the stay, for herself and a group of nine of her friends at the ‘Waterpark Zwartkruis’ in Noardburgum (Netherlands) for the period from 31 December 2020 to 4 January 2021 at a total rental price of EUR 1 902.80, via the German-language website www.roompot.de, operated by the defendant, a Dutch commercial lessor of holiday homes, which confirmed the booking on 23 June 202[0] […]. The group of people are members of more than two different households.

Waterpark Zwartkruis is a water park with holiday homes located directly on a lake, each with a separate jetty. Boats and canoes can be hired for an additional charge.

The applicant paid the rental price in full.

It is common ground that, at the applicant’s request, the defendant informed her by email, prior to arrival, that Zwartkruis Waterpark would be open during the period of her booking, from 31 December 2020 to 4 January 2021, despite the Covid-19 pandemic. However, due to the laws in the Netherlands on protection against infection, the applicant was permitted to stay in the accommodation only

together with her family and a maximum of two people from another household. The applicant was also offered the opportunity to rebook her stay for a later date.

The applicant did not stay at the accommodation and also did not take up the offer to rebook the stay. On 7 January 2021, the defendant repaid a partial amount of EUR 300 to the applicant.

By the present action, the applicant seeks repayment of the remainder of the rental price, in the amount of EUR 1 602.80, plus interest and costs.

The defendant contests the international jurisdiction of the German courts.

The Amtsgericht Neuss (Local Court, Neuss) dismissed the action as unfounded by judgment […] delivered on 1 October 2021.

The applicant lodged an appeal against that judgment in due form and within the prescribed period, by which she pursues the form of order sought at first instance.

The defendant defends the judgment at first instance.

II.

The success of the defendant's appeal hinges on the question set out above.

Specifically:

If the German courts do not have international jurisdiction in accordance with Regulation (EU) No 1215/2012 ('the Brussels Ia Regulation') in the present case, the action would be inadmissible from the outset and would therefore have to be dismissed.

The question arises as to whether, in the present case, the Netherlands has exclusive international jurisdiction, as the State in which the rental property is situated, in accordance with the first sentence of Article 24(1) of the Brussels Ia Regulation. Under that provision, in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated have exclusive jurisdiction.

1.

To date, the Court of Justice has delivered three relevant decisions on the almost identically worded predecessor provision, Article 16(1) of the Brussels Convention, each of which concerned holiday home contracts.

a.

The Court of Justice had initially held, in its decision of 15 January 1985 in Case 241/83, *Rösler* v *Rottwinkel*, that, first, the essential reason for the exclusive jurisdiction conferred by the first sentence of Article 24(1) of the Brussels Ia

Regulation on the courts of the Contracting State in which the immovable property is situated is that the courts of the *locus rei sitae* are the best placed, for reasons of proximity, to ascertain the facts satisfactorily, by carrying out checks, inquiries and expert assessments on the spot, and, second, the *raison d'être* of that exclusive jurisdiction is the fact that tenancies are closely bound up with the law of immovable property and with the provisions, generally of a mandatory character, governing its use, such as legislation controlling the level of rents and protecting the rights of tenants […]. Therefore, exclusive jurisdiction applies to all lettings of immovable property irrespective of their specific characteristics, even short-term lettings and even where they relate only to the use and occupation of a holiday home […]. The Court of Justice further held that any dispute concerning the existence of tenancies or the interpretation of the terms thereof, their duration, the giving up of possession to the landlord, the repairing of damage caused by the tenant or the recovery of rent and of incidental charges payable by the tenant, such as charges for the consumption of water, gas and electricity, falls within the exclusive jurisdiction of the courts of the State in which the property is situated. Accordingly, disputes concerning the obligations of the landlord or of the tenant under the terms of the tenancy fall within that exclusive jurisdiction. On the other hand, disputes which are only indirectly related to the use of the property let, such as those concerning the loss of holiday enjoyment and travel expenses, are not to fall within the exclusive jurisdiction conferred by that article […].

b.

In its later decision of 26 February 1992, C-280/90, *Hacker* v *Euro-Relais GmbH*, the Court of Justice partially qualified the decision of 15 January 1985 in Case 241/83, *Rösler* v *Rottwinkel* […]. It held that, in the case of tenancies, the exclusive jurisdiction of the State in which the property is situated does not apply where the principal aim of the agreement was of a different nature. In addition, the assignment, in the interests of the proper administration of justice, of exclusive jurisdiction to the courts of one Contracting State deprives the parties of the choice of the forum which would otherwise be theirs and, in certain cases, results in their being brought before a court which is not that of the domicile of any of them. Having regard to that consideration, the provision of the first sentence of Article 24(1) of the Brussels Ia Regulation must not be given a wider interpretation than is required by its objective […]. An agreement which is concluded between a travel organiser and a customer in the place where they are both domiciled also includes, irrespective of its title, and although providing a service concerning the use of short-term holiday accommodation, other services, such as information and advice, where the travel organiser proposes a range of holiday offers, the reservation of accommodation during the period chosen by the customer, the reservation of seats in connection with travel arrangements, the reception at the destination and, possibly, travel cancellation insurance. A complex contract of that type, which concerns a range of services provided in return for a lump sum paid by the customer, is outside the scope within which the exclusive jurisdiction laid down by the first sentence of Article 24(1) of the Brussels Ia Regulation finds its *raison d'être* and cannot constitute a tenancy

agreement within the meaning of that provision. Consequently, the first sentence of Article 24(1) of the Brussels Ia Regulation is to be interpreted as not applying to a contract concluded in a Contracting State whereby a business organising travel with its seat in that State undertakes to procure for a client domiciled in the same State the use for several weeks of holiday accommodation not owned by it in another Contracting State and to book the travel arrangements.

c.

In its decision of 27 January 2000, Case C-8/98, *Dansommer A/S* v *Götz*, the Court of Justice subsequently clarified further those (modified) principles with respect to the case in which a lessor brings an action against a tenant.

The Court of Justice held that the case-law in the judgment of 26 February 1992, C-280/90, *Hacker* v *Euro-Relais GmbH* […] was not relevant in this case. The contract at issue in *Hacker* had been concluded between a professional travel organiser and its customer at the place where both were domiciled, and even though that contract provided for a service concerning the use of short-term holiday accommodation, it also included other services, such as information and advice, where the travel organiser proposed a range of holiday offers, the reservation of accommodation during the period chosen by the customer, the reservation of seats in connection with travel arrangements, reception at the destination and the possibility of travel cancellation insurance. However, the unavoidable conclusion was that the circumstances of the *Dansommer* case were different from those of *Hacker*. The contract in *Dansommer* concerned exclusively the letting of immovable property. The clause in the general terms and conditions of the contract relating to insurance to cover the costs in the event of cancellation was only an ancillary provision which could not alter the status of the tenancy agreement to which it related, especially since that clause was not in issue before the referring court. The same applied in regard to the guarantee – which was, moreover, required by German legislation – of repayment of the price paid in advance by the customer in the event of the organiser's insolvency. Finally, the first sentence of Article 24(1) of the Brussels Ia Regulation was not rendered inapplicable merely because the dispute in the case was not directly between the owner and the tenant of the immovable property, given that the applicant had brought legal proceedings against the tenant after being subrogated to the rights of the owner of the immovable property which was the subject of the lease concluded between the applicant and the defendant. It was sufficient to note in this regard that, through subrogation, one person steps into the shoes of another in order to enable the former to exercise rights belonging to the latter, so that, in the main proceedings in the case, the applicant was not acting in its capacity as a professional tour operator but as if it were the owner of the property in question […].

2.

On the basis of that case-law of the Court of Justice, the German Bundesgerichtshof (Federal Court of Justice; 'the BGH') has delivered two judgments concerning international jurisdiction in the case of holiday home contracts and relating to the almost identically worded predecessor provision, Article 22(1) of the Brussels I Regulation.

According to the case-law of the BGH, the decisive factor for the applicability of the first sentence of Article 24(1) of the Brussels Ia Regulation is whether the contracting party itself, as a tour operator, is required to make available a holiday home owned by a third party (in which case the first sentence of Article 24(1) of the Brussels Ia Regulation does not apply) or merely acts as an intermediary in the conclusion of a rental contract with the owner (in which case the first sentence of Article 24(1) of the Brussels Ia Regulation is relevant). It is not relevant in this regard whether the lessor's obligation to provide other ancillary services (such as cleaning at the end of the stay), as agreed between the parties in addition to the letting of the property, is comparable to the other services referred to by way of example by the Court of Justice in its decision of 26 February 1992, C-280/90, *Hacker* v *Euro Relais-GmbH*. This is because, in that decision, the Court of Justice did not proceed on the basis of the 'other services as such', but on the basis of the question as to whether the contract, even if it relates only to the short-term letting of a holiday home and thus to a single travel service, typically 'entails' other (ancillary) services such as those referred to in that decision. No other conclusion can be drawn from the judgment of the Court of Justice of 27 January 2000 in Case C-8/98, *Dansommer*, either. In that case, the Court of Justice did not depart from or even qualify the abovementioned case-law in *Hacker* v *Euro Relais-GmbH*, but stated that the circumstances of the main proceedings were different from those of Case C-280/90, *Hacker* v *Euro Relais-GmbH*. The main proceedings underlying Case C-8/98, *Dansommer*, concerned claims brought by the owner of a holiday home against the tenant. The applicant, a professional tour operator, had acted merely as an intermediary in the conclusion of the contract in that case and had brought the claims of the owner after being subrogated to his rights. In Case C-8/98, *Dansommer*, the Court of Justice expressly emphasised that the applicant in the main proceedings had not been acting in its capacity as a professional tour operator but as if it were the owner of the property in question. It therefore follows from the statements of the Court of Justice in Case C-8/98, *Dansommer*, that an action brought by a subrogor against the tenant of a holiday home after being subrogated to the owner's rights may be subject to the exclusive jurisdiction of the State in which the property is situated. Thus, it does not follow from the judgment of the Court of Justice in Case C-8/98, *Dansommer*, that a dispute concerning claims brought by a tenant against a professional tour operator which had itself undertaken to make available a holiday home belonging to a third party is subject to the exclusive jurisdiction of the State in which the property is situated […].

3.

In accordance with the above case-law of the Court of Justice, contracts concerning the letting of holiday homes abroad are, in principle, subject to the exclusive jurisdiction of the State in which the property is situated, as provided for in the first sentence of Article 24(1) of the Brussels Ia Regulation. An exception would exist only if the contract in the present case were to be a complex contract – within the meaning of the case-law of the Court of Justice – which concerns a range of services provided in return for a lump sum paid by the customer. According to the Court of Justice, other services, in addition to the short-term letting of a holiday home, which give the contract as a whole a character different from that of a purely rental contract, may include: information and advice, where the travel organiser proposed a range of holiday offers, the reservation of accommodation during the period chosen by the customer, the reservation of seats in connection with travel arrangements, reception at the destination and the possibility of travel cancellation insurance. However, the additional conclusion of travel cancellation insurance and insolvency insurance policies do not in themselves confer on the rental contract a character different from that of a contract concerning a range of services.

Other services which enter into consideration in the present case include: the offering of a range of bungalows with different facilities on the defendant's website ('information and advice'), the reservation of the booked bungalow on behalf of the applicant, reception at the destination and the handing over of the keys, the provision of bed linen and the carrying out of cleaning at the end of the stay. The present Chamber understands the case-law of the Court of Justice to mean that, viewed as a whole, the elements of the supply of services must have sufficient weight to give the contract a different character. According to the view taken by some authors in the German legal literature, subordinate/ancillary services such as the maintenance or cleaning of the property, the changing of linen or the provision of on-site assistance are not to be regarded as having sufficient weight […]. The question arises as to whether the above circumstances are sufficient to assume a complex contract in accordance with the case-law of the Court of Justice.

By contrast, the BGH understands that case-law of the Court of Justice to mean that the distinction must be made on the basis of whether the lessor of the holiday home, as a professional tour operator, itself undertakes to make available a holiday home owned by a third party, or merely acts as an intermediary in the conclusion of such a contract with the owner. The weight of the specifically agreed other services, in addition to the making available for use, must be irrelevant in that regard. This is because, in accordance with the case-law of the Court of Justice in Case [C-280/90], *Hacker* v *Euro-Relais GmbH*, it is sufficient that such a contract between a professional tour operator and a private individual typically entails other services, even if no such services had been agreed in the specific case […].

It would appear to be doubtful whether the above case-law of the BGH is compatible with that of the Court of Justice. In accordance with the case-law of

the Court of Justice, the decisive factor for examining the scope of the first sentence of Article 24(1) of the Brussels Ia Regulation is the distinction between pure rental contracts and complex contracts, and not whether the contracting party, as a professional tour operator, itself undertakes to make the holiday home available for use or merely acts as an intermediary in the conclusion of such a contract with the owner of the property […]. Contrary to the view taken by the BGH, it is also irrelevant whether proceedings have been brought by the lessor against the tenant or vice versa and whether the lessor acts as a professional tour operator […]. It would likewise appear to be irrelevant whether the owner of the property is the lessor himself or herself or a third party. On the basis of the wording of the first sentence of Article 24(1) of the Brussels Ia Regulation, those factors are immaterial.

Since – so far as can be ascertained – the Court of Justice has not ruled on this question to date, it must be referred for a preliminary ruling.

III.

[…]