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Court: European Court of Justice, Fourth Chamber

Case: Daniela Mühlleitner v. Ahmad Yusufi and Wadat Yusufi

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Plaintiff Daniela Mühlleitner (“Mühlleitner”), domiciled in Austria, brought proceedings against Defendants Ahmad Yusufi and Wadat Yusufi (the “Yusufis”), who were conducting business in Germany. The suit concerned the rescission of a contract for the sale of a motor vehicle on the grounds of hidden defects, reimbursement of the purchase price, and a claim for damages.

Background:

Mühlleitner, domiciled in Austria, searched online for a German-made car and obtained a list of vehicles corresponding to the make and type of vehicle she specified. After selecting the vehicle that matched her criteria best, Mühlleitner was directed to an offer from the Defendant, the Yusufis, who operate a motor vehicle retail business via Autohaus Yusufi GbR (“Autohaus”), a partnership established in Hamburg, Germany. Mühlleitner contacted the Yusufis to obtain more information about the vehicle offered using the telephone number stated on the website of Autohaus. As the vehicle in question was not available, the Yusufis offered Mühlleitner another vehicle, details of which were subsequently sent by email. She was also informed that her Austrian nationality would not bar her from purchasing the vehicle. Subsequently, Mühlleitner went to Germany, signed a sale contract on September 21, 2009, and purchased the vehicle at a price of EUR 11,500, taking immediate delivery of it. On her return to Austria, Mühlleitner discovered the vehicle was defective; consequently, she asked the Yusufis to repair it. When the Yusufis refused to repair the vehicle, Mühlleitner brought proceedings in the court of her place of domicile, Landesgericht Wels, Austria, for rescission of the contract pursuant to Article 15(1)(c) of the Brussels I Regulation (“Article 15(1)(c)”).

Procedural History:

On May 10, 2010, the Austrian court dismissed the action due to lack of jurisdiction. The Court determined activity using the website of Autohaus was not enough to give the court jurisdiction. Mühlleitner then appealed to the Higher Regional Court in Linz, Austria. The appellate court confirmed the decision of trial court, holding that a purely passive internet site is not sufficient to establish jurisdiction. Further, the contract must be concluded “at a distance.” Mühlleitner subsequently filed an appeal to the Supreme Court. The Supreme Court stayed the proceeding pending delivery of the court's judgment in the Pammer and Hotel Alpenhof cases to clarify the concept of activity directed to the state of the consumer's domicile. Pammer and Hotel Alpenhof confirmed that the Yusufis directed their commercial activities to Austria. Nevertheless, the Supreme Court raised the question whether it follows the judgment in Pammer and Hotel Alpenhof in that Article 15(1)(c) applies only to distance contracts. With respect to this question, the case was referred to this Court for a preliminary ruling.

Discussion:

The question at issue asks whether Article 15(1)(c) must be interpreted as requiring the contract between the consumer and the trader to be concluded at a distance. While the aim of Article 15(1)(c) is to protect consumers, it does not imply that the protection is absolute. The need for the consumer contracts to be concluded at a distance is mentioned in the joint statement by the Council and the Commission on Articles 15 and 73 of the Brussels I Regulation, made on the occasion of the adoption of that regulation (the “Joint Statement”). However, according to the governments that submitted observations and the Commission, the origin and teleological interpretation of Article 15(1)(c) militate against the need for the consumer contracts to be concluded at a distance.

First, Article 15(1)(c) does not expressly prohibit its application if contracts have been concluded at a distance. According to the language of the article, it applies when two specific conditions are satisfied: (1) the trader pursues commercial or professional activities in the state of the consumer's domicile, or directs such activities to that state or to several states including that state; and (2) the contract at issue falls within the scope of such activities. Moreover, in the explanatory memorandum accompanying the proposal for council regulation and the recognition and enforcement of judgments in civil and commercial matters, the Commission states that Article 15(1)(c) applies to contracts concluded in a state other than the consumer's domicile.

This Court also noted that the language of Article 15(1)(c) is not identical in every respect to that of the first paragraph of Article 13 of the Brussels Convention. In particular, the conditions for application which consumer contracts must fulfill are now worded more generally in order to ensure better protection for consumers. Accordingly, the European Union legislature replaced the two conditions in Article 15(1)(c) requiring the following: (1) the trader to have addressed a specific invitation to the consumer or to have advertised in the state of the consumer's domicile; and (2) the consumer to have taken in that state the steps necessary for the conclusion of the contract with conditions applicable to the trader alone.

In addition, on September 18, 2000, the European Parliament's Committee report on Legal Affairs and the Internal Market regarding the proposal for the Brussels I Regulation discussed the advisability of adding the condition that consumer contracts must be concluded at a distance. They eventually concluded that such an amendment would not be adopted.

Second, with respect to a teleological interpretation of Article 15(1)(c), the addition of a condition concerning the consumer contracts at a distance would run counter to the objective of that provision in its new, less restrictive formulation, especially the objective of protecting consumers as the weaker parties to the contract.

Last, with respect to the judgment in *Pammer and Hotel Alpenhof*, this Court notes that that judgment represents only the Court's reply to the arguments adduced by the Defendant. Thus, the significance of the judgment cannot extend beyond the particular circumstances of that case. In the present case, accordingly, the essential condition to which the application of Article 15(1)(c) is subject is that the Yusufis have directed a commercial or professional activity to the state of Mühlleitner's domicile. In that respect, both the establishment of contact at a distance, as

in the present case, and the reservation of goods or services at a distance, or a fortiori the conclusion of a consumer contract at a distance, are indications that the contract is connected with such an activity.

Ruling:

In light of the considerations discussed above, Article 15(1)(c) must be interpreted as not requiring the contract between the consumer and the trader to be concluded at a distance.