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International jurisdiction regarding actions for negative declaratory judgments

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On 22 April 2024, the Swiss Federal Supreme Court (hereinafter ‘Supreme Court’) handed down a landmark decision concerning international civil procedural law (4A_249/2023, intended for official publication) in a case dealing with an action for a negative declaratory judgment in a tort matter.

Given the implications for Swiss producers and foreign customers of Swiss companies, the decision warrants further examination.

Factual background: bicycle accident in Italy

An Italian cyclist had suffered an accident in Sicily, Italy in 2017 while riding a racing bicycle he had purchased from a Swiss manufacturer in a store in Italy. The judgment reveals that the components of the bicycle had been manufactured in China while the bike had been assembled in the Netherlands and the finished product had finally been distributed from a warehouse located in Belgium.

The Italian cyclist was severely injured and asserted claims for damages in Italy under product liability in the amount of €270,000 against the Swiss bicycle manufacturer based on an alleged manufacturing defect. He based his claim on a legal opinion ordered at the instance of an Italian court at his place of residence in pre-trial proceedings.

Application for a negative declaratory judgment in Switzerland

The Swiss bicycle manufacturer denied liability, claiming that the Italian cyclist had modified the bicycle and that the accident had been caused by insufficient braking capacity due to the use of non-original spare parts. The Swiss manufacturer therefore brought an action for a negative declaratory judgment in Switzerland in 2021, arguing that this was the place of the tortious act in accordance with Article 5, paragraph 3 of the Lugano Convention 2007.^[1] The Swiss bicycle manufacturer took the view that the Swiss court was competent since it had designed the bicycle and verified its conformity with the ISO standards in Switzerland.

The defendant disputed the Swiss jurisdiction because the accident had occurred in Italy where, in addition, his place of residency was. Accordingly, he argued that he had to be sued either at his place of residence in Italy (Article 2, Lugano Convention 2007) or at the place of the accident in Italy.

Lower instance court proceedings

The first instance court in Switzerland had found that the place of effective manufacture of the bicycle had not been in Switzerland but rather in China where the component parts had been produced. Alternatively, the place of manufacture would have been in Holland, where the assembly of the bicycle had occurred. The Swiss court held that it could not consider the place where the bike was designed, ie, in Switzerland, because the design was not in dispute. Rather the issue turned on whether a manufacturing defect in the bike's fork had been present. This question did not have a particularly close connection to Switzerland.

Consequently, the first instance court denied its jurisdiction. The cantonal appeal court upheld the first instance judgment and found that in line with the narrow concept of manufacture pursuant to the case law of the Court of Justice of the European Union (CJEU) it concurred that the bicycle had not been manufactured in Switzerland.

The bicycle company took this decision to the Supreme Court for judicial review.

Place of jurisdiction

The Supreme Court confirmed the application of the Lugano Convention and that Article 5, paragraph 3 of the Lugano Convention 2007 established a place of jurisdiction both at the place of the causal event

which gave rise to the damage, ie, the place where the tortious act was committed ('Handlungsort') and also at the place where the damage materialises, ie, the place of the result of the act ('Erfolgort').

Citing CJEU jurisprudence, the Supreme Court found that according to Article 5, paragraph 3 of the Lugano Convention 2007, an action in tort, delict or quasi-delict, such as a product liability claim, could, at the choice of the claimant, be brought before the court at the place where the act was committed or where the result of the act manifested itself.^[2] This right of choice also applied to the potentially culpable party intending to bring an application for a negative declaratory judgment.^[3]

The Supreme Court confirmed that the possibility of reversal of roles opened up by this jurisprudence did not violate any fundamental rights intended to protect a weaker party. There was no rule that presupposed that the alleged victim had to file a claim for compensation. Positive and negative actions for a declaration of rights essentially concerned the same matters of fact and law. According to the Supreme Court, they have the same object and the same cause of action. The court of one of the two places covered by this rule will have jurisdiction, regardless of the fact whether the claim was brought by the potential debtor and not by the alleged victim.

In the case at hand, both the Italian cyclist (regarding a positive action) and the Swiss bicycle manufacturer (regarding an action for a negative declaratory judgment) could therefore seek court redress at the place where the tortious act was committed.^[4]

Place of committing the tortious act

The Supreme Court then turned to the contentious issue of where the tortious act had been committed. In distinguishing from earlier CJEU judgments which had stated that in principle (but not a hard and fast rule) the place of manufacturing would be deemed determinant, the Supreme Court noted that the terms 'designer/producer/manufacture' and 'place of design/production/manufacture' had to be interpreted in good faith, taking into account the objectives pursued by the jurisdictional rules.

The Supreme Court concluded that in instances where a product was manufactured at various possible locations, it had to be assumed in principle that the decisive place of action depended on the location of the (defending) manufacturer of the product and not on the various places where the manufacturer had the product (partially) produced by third parties.^[5]

The Supreme Court concluded that the injured defendant did not intend to sue the part producers in China, which were not even known to him. These companies just as the assembling companies performed mere auxiliary functions for the claimant, which was liable for the final product.^[6]

The Supreme Court overturned the lower court decisions and ruled in favour of the claimant, finding that there indeed was jurisdiction in Switzerland for the Swiss bicycle manufacturer's action for a negative declaratory judgment against the Italian cyclist.

Conclusion: forum running possible

This new decision by the Supreme Court offers a strong argument to Swiss producers to secure local court jurisdiction where a design defect is alleged by an overseas-based customer. It would seem that the place where the components of a product are manufactured is not decisive. Equally, the place where the product is assembled and from where it is distributed would seem not to play a role.

The Supreme Court's decision of 22 April 2024 would seem to establish the possibility for parties domiciled in Switzerland to avoid, with a local action for a negative declaratory judgment, having to defend damages claims in other countries brought against them on the basis of non-contractual liability.^[7]

At the same time, it should be noted that if a claimant commences foreign (e.g. Italian) damages proceedings before a Swiss manufacturer can invoke a Swiss court, the Swiss court would have to deny jurisdiction.

^[1] Convention of 30 October 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

^[2] Swiss Federal Supreme Court, 4A_249/2023 dated 22 April 2024, cons 3.3.

^[3] Ibid, cons 3.5.

^[4] Ibid, cons 3.6.

^[5] Ibid, cons 4.2.

^[6] Ibid, cons 4.3.

^[7] Philipp H. Haberbeck, brief discussion of some judgments of interest to the practice of litigation lawyers, in Lawstyle No. 18/2024, 24 et seq, 27.