



29 July 2019

PRESS SUMMARY

Akçil and others (Appellants) v Koza Ltd and another (Respondents) [2019] UKSC 40
On appeal from: [2017] EWCA Civ 1609

JUSTICES: Lord Reed (Deputy President), Lord Hodge, Lady Black, Lord Briggs, Lord Sales

BACKGROUND TO THE APPEAL

This appeal is about article 24(2) of the Brussels I Recast Regulation (Regulation (EU) No 1215/2012 (“the Recast Regulation”). This sets out special jurisdictional rules on the governance of corporations.

The sixth appellant (“Koza Altin”) is a publicly listed company in Turkey. It is part of the Koza Ipek Group (“the Group”), formerly controlled by the second respondent (“Mr Ipek”) and his family. The first respondent (“Koza Ltd”) is a private company in England and a wholly owned subsidiary of Koza Altin. Mr Ipek alleges that he and the Group have been targeted unfairly by the Turkish government. In September 2015, he caused a number of changes to be made to Koza Ltd’s constitution and share structure to control his interests. Their validity and effect are in issue in these English proceedings.

On 26 October 2015, in Turkish proceedings relating to a criminal investigation, a judge appointed certain individuals as trustees of Koza Altin and companies in the Group. Subsequently, he appointed the first to fifth appellants as trustees. On 19 July 2016, the trustees caused Koza Altin to serve a notice on the directors of Koza Ltd under section 303 of the Companies Act 2006 (“the 2006 Act”), requiring them to call a general meeting to consider resolutions for their removal and replacement with three of the trustees. The directors refused. On 10 August 2016, Koza Altin served a notice under section 305 of the 2006 Act to convene a meeting on 17 August. On 16 August, Mr Ipek and Koza Ltd made an urgent without notice application seeking an injunction to prevent the meeting. Injunctive relief was sought on two bases. First, that the notices of 19 July and 10 August 2016 (“the notices”) were void under section 303(5)(a) of the 2006 Act (“the English company law claim”). Second, that the notices were void because the English courts should not recognise the authority of the trustees to cause Koza Altin to do anything as a Koza Ltd shareholder, since they were interim appointees only and acting contrary to Turkish law, human rights and natural justice (“the authority claim”).

On 16 August 2016, Snowden J granted interim injunctive relief. On 18 August, Mr Ipek and Koza Ltd issued a claim seeking declaratory and injunctive relief. Koza Altin and the trustees filed an acknowledgement of service and then an application contesting jurisdiction. Koza Altin also filed a Defence and Counterclaim to the English company law claim. In turn, Mr Ipek and Koza Ltd issued a strike out application, alleging lack of authority. Asplin J, in the High Court, dismissed the jurisdiction challenge on 17 January 2017. It was common ground that the English company law claim fell within article 24(2) of the Recast Regulation. Her assessment was that the authority claim was inextricably linked with that claim, which she considered the principal subject matter of the proceedings as a whole. Koza Altin and the trustees appealed. The Court of Appeal dismissed the appeal. It largely agreed with Asplin J’s assessment and also rejected a distinct submission that the trustees are not necessary parties.

The trustees and Koza Altin appeal to this Court. The issues are: (1) whether article 24(2) of the Recast Regulation confers jurisdiction on the English courts to determine the authority claim as against Koza Altin and (2) whether article 24(2) confers exclusive jurisdiction on the English courts to determine either the authority claim or the English company law claim as against the trustees.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Sales gives the sole judgment, with which all members of the Court agree.

REASONS FOR THE JUDGMENT

The basic scheme for allocation of jurisdiction under the Recast Regulation is that persons domiciled in a member state of the European Union should generally be sued in that member state (by article 4), but they may also be sued in another member state in certain situations, including in cases of exclusive jurisdiction specified under article 24 [20]. The cases of exclusive jurisdiction within article 24 reflect situations where there is an especially strong and fixed connection between the subject matter of a dispute and the courts of a particular member state [24]. The principle of exclusive jurisdiction supersedes the other principles underlying the Recast Regulation, including the domiciliary principle of jurisdiction (under article 4) and the principle of respect for party autonomy [25].

Given the scheme of the Recast Regulation, in principle, there should be only one correct application of article 24 in relation to a given claim [28]. The interpretation and application of article 24 cannot depend on an evaluative judgment in which different courts could reasonably take different views [28]. This is consistent with the objectives of setting highly predictable rules on the allocation of jurisdiction and avoiding inconsistent judgments on the same issue by the courts of different member states [29].

Decisions of the Court of Justice of the European Union, particularly *Hassett v South Eastern Health Board* (Case C-372/07) [2008] ECR I-7403 and *Berliner Verkehrsbetriebe v JP Morgan Bank Chase Bank NA* (Case C-144/10) [2011] 1 WLR 2087, show that article 24(2) is to be construed narrowly, as an exception to the general domiciliary principle, and should not be given an interpretation broader than required by its objective [31-32, 40-41]. These decisions also stress the importance of arriving at an interpretation which avoids the risk of inconsistent decisions [39].

Therefore, the interpretation of article 24(2) adopted by the Court of Appeal cannot be sustained. An evaluative assessment of proceedings relating to a specific claim may show that a particular aspect of the claim, involving an assessment of the validity of decisions of a company's organs, is so linked with other features of the claim that it is not the "principal subject matter" of those proceedings, as required by article 24(2). Where there are two distinct claims – one, by itself, falling within article 24(2) and the other, by itself, not falling within article 24(2) – it is not legitimate to maintain that by an overall evaluative judgment as to both claims taken together the second also falls within article 24(2), giving the English courts exclusive jurisdiction. A mere link between the two claims is not sufficient. [33-34]

On issue (1), in this case, the English company law claim and the authority claim are connected in a sense, but they are distinct claims which are not inextricably bound up together. The English company law claim can be brought and made good on its own terms without regard to the authority claim, as can the authority claim. Assessing the authority claim as a distinct set of proceedings, clearly the principal subject matter does not comprise the validity of the decisions of the organs of a company with its seat in England. That interpretation and application of article 24(2) is *acte clair*. The English courts thus lack article 24(2) jurisdiction over Koza Altin and the trustees as to that claim. [35, 43]

On issue (2), since article 24(2) does not cover the authority claim, the English courts lack article 24(2) jurisdiction in relation to the trustees with respect to that claim. The proceedings against the trustees are principally concerned with the authority claim. Article 24(2) jurisdiction over the English company law claim cannot extend to the trustees, who are not necessary parties to that claim. [45]

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>