

LITIGATING IN ENGLAND AGAINST EUROPEAN LOCAL AUTHORITIES

As the age of a truly united Europe draws closer, it is becoming more common for European nationals to work and travel in various European countries. Yet an issue recently arose in a case where Kennedys acted as to how easy it actually is to litigate 'cross border'. It appears that whilst European legislation largely provides for 'European comity' there are still some areas where a challenge to the UK's jurisdiction over certain European entities can be raised.

The facts of the case which gave rise to the jurisdictional challenge are fairly commonplace – a road traffic accident, which took place in Italy (an EU Member State) involving two English nationals riding on a hired motorcycle, one driving, one riding pillion.

The pillion passenger was seriously injured and brought a claim in the English Courts for personal injury against the driver of the motorcycle. The driver (Kennedys' client) brought a Part 20 Claim (third party claim) against the Italian city's local authority ('the Municipality') claiming an indemnity or contribution on the basis that the Municipality had caused/permitted a defective road construction to have been built (our client having crashed into a pavement build out which was not signed). The driver argued that the 1968 Brussels Convention ('the Convention'), implemented in England and Wales by the Civil Jurisdiction and Judgment Act 1982, applied to the issue of the English Court's jurisdiction over the Municipality. In addition to the Municipality, the Italian contractor who constructed the build out was also joined as a Part 20 Defendant. The contractor did not challenge the English Court's Jurisdiction.

The Municipality argued that the Convention did not apply, and thus argued it could not be sued in the English Court. Article 1 of the Convention reads:

"This Convention shall apply in Civil and Commercial matters whatever the nature of the Court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters". The Municipality argued that the claim made by our client, the driver, was not a "civil and commercial matter" for the purposes of Article 1. The Municipality argued that it was exercising a 'public function' in designing the road and was not acting as a private individual.

Alternatively, the Municipality argued that the provision of the Convention (Article 6(2)) dealing with third party (i.e. Part 20) proceedings did not apply since there was 'insufficient connection' between the claim brought by the injured pillion passenger against our client and our client's claim against the Municipality, drawing an analogy with the requirements of Article 6(1).

Article 6(2) of the Convention provides that a third party can be added to the original proceedings no matter where it is domiciled, as long as the original proceedings were not instituted tactically with the sole object of removing the third party from the jurisdiction of the Court which would be competent in its case.

Following a delay of almost a year from service of Part 20 proceedings on the Municipality (as a result of (a) adjourned hearings resulting from the Municipality changing the nature of the arguments in its jurisdictional challenge and (b) obtaining expert evidence on the interpretation of the Brussels Convention in various EU Member States) the Municipality's jurisdictional challenge was finally heard.

After lengthy submissions over the course of two days, the High Court concluded that our client's claim for indemnity/contribution is a matter of private law notwithstanding that it would be brought against a public authority against the background of its exercise of public law functions. Therefore the claim fell within Article 1 of the Convention.

The Court also declined to agree with the Municipality's second argument that the 'connection' between claims which is a requirement of Article 6(1) of the Convention was also a requirement of 6(2). In fact that Court concurred with our client's view that Article 6(2) is predicated on the possibility (if not the likelihood) of the claims as between the Claimant and a Defendant and a third party being different in nature.

In reaching its decision, the Court also considered the basic provisions of case management under the Civil Procedure Rules and the 'overriding objective'. The Court took into account that a further Italian Part 20 Defendant (the contractor) would be before the Court in any event (necessitating translation of documents etc) but, more importantly, that an Italian Court would be free to reopen issues of causation and

quantification decided in the English claim brought by the injured pillion passenger, if the Municipality did not remain a party to the English proceedings.

Since our client succeeded on the Convention issues, it thereafter became unnecessary for the Court to decide our client's further cross application based on CPR Part 6.20 i.e. whether if the Part 20 Claim did not fall within Articles 1 and 6(2), the Municipality was a 'necessary or proper party' to the proceedings which the injured pillion passenger had brought against our client. The Court concluded that if it had been asked to rule on this issue, it would have held that the circumstances of the claim were such that justice required the Part 20 Claim against the Municipality be heard in England.

What in principle had appeared to be a simple procedural step of joining a Part 20 Defendant domiciled in an EU Member State became a lengthy and expensive jurisdictional dispute. Perhaps our European legal system is not as truly integrated as we like to suppose.

*It should be noted that the 1968 Brussels Convention has now been replaced by Council Regulation (EC) No. 44/2001. This Regulation came into force on 1st March 2002 and applies to any legal proceedings issued after that date. Whilst there are some differences between the Brussels Convention and the new Regulation, the broad structure remains the same and the wording of Articles 1 and 6(2) of the Convention are restated in the Regulation.

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