CIVIL COURT, FIRST HALL

The Hon Mr Justice Henri Mizzi

16 May 2025

Nru; 2

Sworn Application No. 800/2022

Loris Micheli

v

Novo Banca S.A.

Introduction

1. The plaintiff, Loris Micheli, claims that he was the victim of an elaborate fraud. He says he paid some €637,000 out of a Maltese bank account into an account held with the respondent bank in Portugal in the name of a company that no longer existed at the time of the payments; and that the money was lost.

2. The respondent bank is not accused of having committed the fraud. However, Mr Micheli says that 'if [the bank was] not directly involved, [it] knew or should have known' about

the fraud to which he had been subjected, and that the bank did not comply with its duties of diligence.

3. He therefore asked the court to find that the bank should not have allowed funds to be received into an account of a company that no longer existed; that the bank knew or should have known of the fraudulent behaviour to which he was subjected; and that the bank did not comply with its diligence obligations. He further asked the court to order the bank to return the sum of €636,951.33 transferred by him to an account held by the respondent bank in the name of a company that no longer existed at the time of the transfers.

4. The bank's first defence is that this court lacks jurisdiction.[1] The court decreed that the case should be bifurcated and this issue dealt with in a preliminary judgment.[2] This judgment is therefore limited to the bank's first defence.

The legal basis of Mr Loris's claim and the applicable jurisdictional rule

5. In its second defence, the bank claimed that Mr Loris's application did not clearly set out the legal basis of his claim. Mr Loris was requested to clarify his position in this regard, and he eventually did so by declaring that his claim is in tort or quasi-tort, according to the relevant provisions of the Civil Code.[3]

6. The parties helpfully agree that this means that the applicable jurisdictional rule is to be found in Regulation (EU) 1215/2012 (the "Regulation") to the exclusion of article 742(1) of Cap. 12. They further agree that, because the action is in tort or quasi-tort, then it is the

[1] Page 62
[2] See minutes of the hearing of 22 March 2023
[3] See minutes of the hearings of 22 January 2024 and 9 April 2024; see also Mr Loris's note of 9 February 2024, page 143

rule on special jurisdiction, as set out in Article 7(2) of the Regulation, that applies.[4] It reads as follows:

> A person domiciled in a Member State may be sued in another Member State:
>
> - omissis –
>
> (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

The question to be answered

7. The parties also agree that the question to be answered in this judgment (on the assumption, for present purposes, that the facts are as Mr Loris alleges them) is this: where did the harmful event occur? If the answer is that it occurred exclusively in Portugal, then the bank's plea must be upheld. If, on the other hand, it can be said to have occurred both in Portugal and in Malta, then this court has (concurrent) jurisdiction.

The relevant factual matrix[5]

8. Mr Loris is an Italian citizen who lives in Malta. It appears that in 2017 and also in 2018 he was convinced by third parties to make, and that he made, a number of transfers, purportedly for investment purposes, from a Maltese bank account into an account held with the respondent bank in Portugal. The account, he was told, was in the name of a company called Drayton Solutions Limited and he made the transfers to that account. He says that he discovered, at a later date, that Drayton Solutions Limited had been dissolved on 28 June 2016.[6]

---

[4] The jurisdiction is said to be special in that it is an exception to the general rule on jurisdiction, which is that a person is to be sued in the courts of the Member State in which he is domiciled: see articles 4(1) and 5(1) of the Regulation. See also C-12/15 *Universal Music International Holding BV v Michael Tétreault Schilling et*, para. 25

[5] Some of the facts can be taken as proved; others are assumed for the purposes of his judgment.

[6] See affidavit, pages 153 - 158

9. Mr Loris claims to have moved his centre of gravity to Malta in 2015. He says he has businesses and property here, and that he is now domiciled in Malta.[7] He also has property in Italy and he has bank accounts in Malta, Italy and Cyprus; and he also has a Revolut account.[8]

10. The respondent bank is domiciled in Portugal and, of course, subject to regulatory supervision in that country.[9] It does not operate, directly or indirectly, in Malta.[10]

11. The respondent bank has confirmed receipt of some $535,712 remitted by Mr Loris through a Maltese bank to into an account held with the respondent bank. The respondent bank however says that a number of other payments said to have been made by Mr Loris were not received by it.[11]

12. The respondent bank further says that the company which Mr Loris claims was dissolved was never a client of the bank and accordingly never held an account with the bank.[12]

13. Finally, the bank says that it was entirely unaware of the fraud, assuming it happened; that it certainly did not participate in it; and further that it did not fall short of any of its duties.

The parties' respective positions on jurisdiction

14. As we have seen, the respondent bank is domiciled in Portugal. Further, the respondent bank says – and this does not appear to be contested - that the acts or omissions for which it is said to be responsible happened, if they happened, in Portugal. The bank therefore argues that the starting point in the analysis should be that the bank should be sued in

[7] That Mr Micheli has changed domicile is disputed by the respondent bank.
[8] See cross-examination, pages 174 - 182
[9] See affidavit of Luisa Soares da Silva, page 96 *et seq*., and article 63 of the Regulation.
[10] See affidavit of Luisa Soares da Silva, *ibid.*
[11] See the additional declaration of 23 February 2024, at pages 143 - 146
[12] Ibid.

Portugal unless it can be demonstrated that the harmful event can be said to have happened elsewhere as well, in this case in Malta.[13]

15. Mr Loris does not argue otherwise thus far. However, he maintains that because the impact of those (alleged) acts or omissions was felt by him in Malta (because it was his Maltese bank account that was depleted), then the harmful event occurred both in Malta and in Portugal; and that this allows him to sue in Malta. As already noted, the respondent bank accepts that it is possible, in principle, for there to be dual jurisdiction, as Mr Loris claims. However, it maintains that in order to establish jurisdiction in a Member State other than that in which the events giving rise to the harm took place, there must be a strong connecting factor or strong connecting factors, with that other State, which are absent in this case.

The jurisprudence

16. The possibility of dual (or even multiple) jurisdiction in tort cases is clearly set out in *Handelskwekerij GJ Bier BV v Mines de potasse d'Alsace SA*. In that case, the European Court of Justice held that

> ... where the place of the happening of the event which may give rise to liability in tort, delict or quasidelict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred', in Article 5 (3) of the Convention [the predecessor of Article 7(2)], must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it.[14]

17. However, that court has consistently held that article 7(2) (and its predecessor) must be interpreted both independently and strictly;[15] and it has applied dual or multiple jurisdiction with circumspection because of the need for legal certainty and foreseeability.[16] Thus, it has been held that

---

[13] See note of submissions, paragraph 29 - 30
[14] C-21/76, p. 24 among others
[15] See C-360/12, *Coty Germany* amnong others
[16] See recitals 15 and 16 of the Regulation

> 19. As the Court has held, the term 'place where the harmful event occurred' cannot be construed so extensively as to encompass any place where the adverse consequences can be felt of an event which has already caused damage actually arising elsewhere (see Case C-364/93 *Marinari* [1995] ECR I-2719, paragraph 14).
>
> 20. In a situation such as that in the main proceedings, such an interpretation would mean that the determination of the court having jurisdiction would depend on matters that were uncertain, such as the place where the victim's 'assets are concentrated' and would thus run counter to the strengthening of the legal protection of persons established in the Community which, by enabling the claimant to identify easily the court in which he may sue and the defendant reasonably to foresee in which court he may be sued, is one of the objectives of the Convention (see Case C-256/00 *Besix* [2002] ECR I-1699, paragraphs 25 and 26, and *DFDS Torline*, paragraph 36). Furthermore, it would be liable in most cases to give jurisdiction to the courts of the place in which the claimant was domiciled. As the Court found at paragraph 14 of this judgment, the Convention does not favour that solution except in cases where it expressly so provides.
>
> 21. In view of the foregoing considerations, the answer to the question referred must be that Article 5(3) of the Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State.[17]

18. In the context of financial loss, such as Mr Loris claims to have suffered, the leading cases are *Harald Kolassa vs Barclays Bank plc*[18] and *Universal Music International Holding BV vs Michael Tétreault Schilling et.*[19]

19. In *Kolassa* the facts were summarised as follows:

> 12. Mr Kolassa, as a consumer, through [an] Austrian bank ... invested EUR 68 180.36 in X1 Global EUR Index Certificates ('the certificates'). The certificates were issued by Barclays Bank, which is registered in the United Kingdom register of companies, and also has a branch i n Frankfurt-am-Main (Germany).
>
> 13. At the time of the issue of the certificates, Barclays Bank distributed a base prospectus ... At the request of Barclays Bank, that base prospectus was also distributed in Austria...
>
> *omissis*
>
> 16. As an investor having suffered loss, Mr Kolassa brought an action before the Handelsgericht Wien seeking the payment of EUR 73 705.07 in damages on the basis of ... tortious or delictual liability of Barclays Bank...

---

[17] C-168/02, *Rudolf Kronhofer vs Marianne Maier*
[18] C-375/13
[19] C-12/15

20. The court found that the Austrian courts had concurrent jurisdiction on the basis of the following reasoning:

> 45. As regards the application of Article 5(3) of Regulation No 44/2001 in circumstances such as those of t he case in the main proceedings, it must be recalled that the expression 'place where the harmful event occurred or may occur' in that provision is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 46).
>
> 46. In that connection, according to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is based on the existence of a particularly close linking factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 47).
>
> 47. Given that identification of one of the linking factors recognised by the case-law set out in paragraph 45 above must make it possible to establish the jurisdiction of the court objectively best placed to determine whether the elements that constitute liability do in fact exist, it follows that only the court within whose jurisdiction the relevant linking factor is situated may validly be seised (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 48).
>
> 48. It should be recalled that the Court has held that the phrase 'place where the harmful event occurred' does not refer to the applicant's place of domicile by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment in *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21).
>
> 49. Therefore, the mere fact that the applicant has suffered financial consequences does not justify the attribution of jurisdiction to the courts of the applicant's domicile if, as was the situation in the case giving rise to the judgment in *Kronhofer* (EU:C:2004:364), both the events causing loss and the loss itself occurred in the territory of another Member State (see, to that effect, judgment in *Kronhofer*, EU:C:2004:364, paragraph 20).
>
> 50. By contrast, such an attribution of jurisdiction is justified if the applicant's domicile is in fact the place in which the events giving rise to the loss took place or the loss occurred.
>
> 51. In that regard, it is apparent from the decision for reference that, first, the certificates' loss of value was due, not to the vagaries of the market, but to the management of the funds in which the money from the issue of those certificates had been invested, preventing, at the end of the term, an increase in its value. Second, the actions or omissions alleged against Barclays Bank with respect to its legal information obligations took place before the investment made by Mr Kolassa and were, in his view, decisive for that investment.
>
> 52. On the assumption that the actions and omissions of Barclays Bank constituted a necessary precondition for the loss suffered by Mr Kolassa, which is sufficient for Article 5(3) of Regulation No 44/2001 to apply (see, to that effect, judgment in *DFDS Torline*, C-18/02, EU:C:2004:74, paragraph 34), it is also necessary, for that purpose, to ascertain to what extent the facts of the case in the main proceedings lead to the conclusion that the place

> in which the events causing the loss took place or in which the loss occurred was where the applicant is domiciled.
>
> 53. As regards the events giving rise to the loss claimed, namely, the alleged breach by Barclays Bank of the legal obligations relating to the prospectus and information for investors, it should be pointed out that the acts and omissions that might constitute such a breach cannot be considered to have taken place where the investor who claims to have suffered loss is domiciled, given that there is no information in the case-file to show that the decisions regarding the arrangements for the investments proposed by Barclays Bank and the contents of the relevant prospectuses were taken in the Member State in which the investor is domiciled or that those prospectuses were originally drafted and distributed anywhere other than the Member State in which Barclays Bank has its seat.
>
> 54. As regards, by contrast, the place where the loss occurred, it must be held that, in circumstances such as those summarised at paragraph 51 of this judgment, the loss occurred in the place where the investor suffered it.
>
> 55. The courts where the applicant is domiciled have jurisdiction, on the basis of the place where the loss occurred, to hear and determine such an action, in particular when that loss occurred itself directly in t he applicant's bank account held with a bank established within the area of jurisdiction of those courts.
>
> 56. The place where the loss occurred thus identified meets, in circumstances such as those referred to in paragraph 51 of this judgment, the objective of Regulation No 44/2001 of strengthening the legal protection of persons established in the European Union, by enabling the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee in which court he may be sued (see, to that effect, judgment in *Kronhofer*, EU:C:2004:364, paragraph 20), given that the issuer of a certificate who does not comply with his legal obligations in respect of the prospectus must, when he decides to notify the prospectus relating to that certificate in other Member States, anticipate that inadequately informed operators, domiciled in those Member States, might invest in that certificate and suffer loss.

21. This judgment has been quoted at length because, as well might be expected, it clearly sets out the relevant principles, and also because it was relied on by Mr Micheli.[20] But his reliance on this judgment does not help his cause. It is true that the court found dual jurisdiction in a case in which the loss was, as it is in this case, of a financial nature. However, the judgment turns on a factual scenario in which the connection with Austria was established on a basis beyond the facts that claimant was domiciled in Austria and held his assets there. As we saw, it was held in *Kolassa* that the loss occurred in Austria because the activities of Barclays Bank in Austria meant that there was a particularly close connecting factor with Austria. In turn this meant that the claimant could easily identify

[20] See paragraph 22 of Mr Michel's submissions

the courts in which he could sue, and Barclays could foresee that it could well be sued in the courts of the country in which it had exercised relevant activities.

22. *Kolassa* was distinguished in the other judgment that is most relevant to ours, namely *Universal Music International Holding BV vs Michael Tétreault Schilling et*.[21] In *Universal Music* the court first reiterated the relevant principles as they were set out in *Kolassa* and proceeded as follows:

> 34. In that context, it should be noted that the term 'place where the harmful event occurred' may not be construed so extensively as to encompass any place where the adverse consequences of an event, which has already caused damage actually arising elsewhere, can be felt (judgment of 19 September 1995 in *Marinari*, C-364/93, EU:C:1995:289, paragraph 14).
>
> 35. In the wake of that case-law, the Court has also held that that expression does not refer to the place where the applicant is domiciled and where his assets are concentrated by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Member State (judgment of 10 June 2004 in *Kronhofer*, C-168/02, EU:C:2004:364, paragraph 21).
>
> 36. It is true that in the case which gave rise to the judgment of 28 January 2015 in *Kolassa* (C-375/13, EU:C:2015:37), the Court found, in paragraph 55 of its reasoning, jurisdiction in favour of the courts f or the place of domicile of the applicant by virtue of where the damage occurred, if that damage materialises directly in the applicant's bank account held with a bank established within the area of jurisdiction of those courts.
>
> 37. However, as the Advocate General stated in essence in points 44 and 45 of his Opinion in the present case, that finding is made within the specific context of the case which gave rise to that judgment, a distinctive feature of which was the existence of circumstances contributing to attributing jurisdiction t o those courts.
>
> 38. Consequently, purely financial damage which occurs directly in the applicant's bank account cannot, in itself, be qualified as a 'relevant connecting factor', pursuant to Article 5(3) of Regulation No 44/2001 [the predecessor of article 7(2) of the Regulation]. In that respect, it should also be noted that a company such as Universal Music may have had the choice of several bank accounts from which to pay the settlement amount, so that the place where t hat account is situated does not necessarily constitute a reliable connecting factor.
>
> 39. It is only where the other circumstances specific to the case also contribute to attributing jurisdiction to the courts for the place where a purely financial damage occurred, that such damage could, justifiably, entitle the applicant to bring the proceedings before the courts for that place.

[21] C-12/15

> 40. In the light of the foregoing considerations, the answer to the first question is that Article 5(3) of Regulation No 44/2001 [the predecessor of article 7(2) of the Regulation] must be interpreted as meaning that, in a situation such as that in the main proceedings, the 'place where the harmful event occurred' may not be construed as being, failing any other connecting factors, the place in a Member State where the damage occurred, when that damage consists exclusively of financial damage which materialises directly in the bank account of the applicant and is the direct result of an unlawful act committed in another Member State.

23. Mr Micheli's case is, in effect, summarised in the following passage taken from his submissions:

> 21. It is applicant's humble submission that the respondent's arguments regarding jurisdiction under Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of the 12 December 2012 are based on a restrictive interpretation of the applicable legislation and fail to adequately consider the broader jurisprudence of the CJEU on the matter. While the respondent argues that the breaches occurred in Portugal, the applicant contends that the harmful event occurred in Malta, where the financial damage was sustained. The interpretation of *"the place where the harmful event occurred"* under Article 7(2) of Regulation 1215/2012 has been broadly construed by the CJEU to include both the place where the causative event took place and the place where the damage materialised. This dual interpretation is crucial for ensuring effective access to justice, particularly in cross-border disputes. The respondent's assertion that the harmful act occurred solely in Portugal is a restrictive interpretation that fails to consider the CJEU's jurisprudence on the matter.

24. Although Mr Micheli is correct in his assertion that the phrase 'the place where the harmful event occurred' has been interpreted so as to include both the place where the events giving rise to the loss happened and the place where the loss was suffered, the remainder of his submission does not reflect the case-law summarised above. In cases of losses which are purely financial, as in this case, the loss cannot be said to have been suffered in the Member State where the assets were depleted or where the claimant is domiciled.[22] Other connecting factors must exist.

[22] The respondent bank disputes Mr Micheli's assertion that he is domiciled in Malta. The court does not need to take a position on this, and it proceeds on the assumption that Mr Micheli's assertion is correct.

25. None have been suggested, much less demonstrated, in this case.

Decision

For the reasons set out above, the court upholds the respondent bank's first defence and finds that it has no jurisdiction in this matter.

The case is dismissed, with costs against Mr Micheli.

Mr Justice Henri Mizzi

Tristan Duca
Deputat Reġistratur