Hilary Term

[2017] UKSC 13

On appeal from: [2015] EWCA Civ 143

JUDGMENT

AMT Futures Limited (Appellant) v Marzillier, Dr Meier & Dr Guntner Rechtsanwaltsgesellschaft mbH (Respondent)

before

Lord Neuberger, President

Lord Mance

Lord Clarke

Lord Sumption

Lord Hodge

JUDGMENT GIVEN ON

1 March 2017

Heard on 5 and 6 October 2016

Appellant	Respondent
Thomas de la Mare QC	Hugh Mercer QC
Andrew Scott	Pierre Janusz
(Instructed by Farrer and Co LLP)	(Instructed by Zimmers Solicitors)

LORD HODGE: (with whom Lord Neuberger, Lord Mance, Lord Clarke and Lord Sumption agree)

1.

This appeal concerns the interpretation of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the Judgments Regulation”). The question is whether the English courts have jurisdiction to hear the claim by the appellant (“AMTF”) against the respondent (“MMGR”) for damages for the tort of inducing breach of contract.

Factual background

2.

AMTF is incorporated in the United Kingdom and is based in London. It provides services as a non-advisory, "execution only", derivatives broker for clients who wish to trade in derivatives and who are referred to it by introducing brokers. Among AMTF's clients were people who were domiciled in Germany, Austria, Switzerland or Belgium ("the former clients") and who were introduced to AMTF by independent brokers based in Germany ("the introducing brokers"). AMTF charged its clients commission for its service and paid commission to the introducing brokers.

3.

About 70 former clients, who were dissatisfied with the financial results of their transactions, commenced legal proceedings in Germany against both the introducing brokers and AMTF seeking damages under the German law of delict. The claim against the introducing brokers was that they had given bad investment advice or had failed to warn of the risks of the investments. The claim against AMTF was based on a liability which was accessory to that of the brokers: it was alleged that AMTF had encouraged the brokers to behave as they did by paying them commission from the transaction accounts which it operated for its clients and that it owed and had breached a duty in delict (tort) to the clients to prevent any transactions being undertaken contrary to their interests. AMTF challenged the jurisdiction of the German court. But many of the former clients have recovered damages from AMTF by way of settlement. AMTF estimates that by August 2013 it had spent £2,191,881.68 on investigating the German claims, legal costs in Germany and England and settlement costs.

4.

The agreements between AMTF and the former clients varied over time. But each contained clauses which provided (a) that English law would govern the rights and obligations of the contracting parties and the construction of their contract and (b) that the English courts would have exclusive jurisdiction in legal proceedings relating to the contract. AMTF asserts that the former clients have breached their contracts with it by raising legal proceedings against it in Germany and asserting rights under the German law of delict. AMTF has raised legal proceedings against many of the former clients seeking damages for breach of contract in the High Court in London.

5.

MMGR is a company incorporated under the laws of Germany and carries on business as a firm of lawyers in Germany. AMTF alleges that MMGR induced the former clients to issue proceedings against it in Germany and to advance causes of action under German law, in breach of the exclusive jurisdiction and applicable law clauses in their contracts with AMTF. It has commenced proceedings in the High Court in London against MMGR, based on the English law tort of inducing breach of contract, in which it seeks both damages and injunctive relief to restrain MMGR from inducing clients to bring further claims in Germany asserting causes of action under German law. AMTF argues that the English courts have jurisdiction over its claim under article 5.3 of the Judgments Regulation, which gives jurisdiction in tort claims to the courts for the place in which the harmful event occurred or may occur. MMGR challenges the jurisdiction of the English courts to entertain this action. To that end MMGR applied for a declaration that the English courts did not have jurisdiction over it in respect of the subject matter of AMTF's claim.

The prior legal proceedings

6.

Popplewell J in a judgment dated 11 April 2014 ([2014] EWHC 1085 (Comm)); [2015] QB 699 refused MMGR's application and held that the English courts had jurisdiction. He decided that the relevant harm which gives rise to jurisdiction under article 5.3 occurred in England as AMTF had in each case

been deprived of the benefit of the exclusive jurisdiction clause, which, he held, created a positive obligation on a former client to bring proceedings in England. The Court of Appeal in a judgment dated 26 February 2015 ([2015] EWCA Civ 143; [2015] QB 699), in which Christopher Clarke LJ wrote the leading judgment, concluded that the English courts did not have jurisdiction as the relevant harm had occurred in Germany. The Court of Appeal were not enthusiastic about the conclusion which they felt compelled to reach as it meant the ancillary claim in tort against MMGR for inducing the breach of the contracts could not be made in the court which the contract breaker had agreed would have exclusive jurisdiction over the contract. Thus AMTF's claims against its former clients for breach of contract, which could proceed in England under the exclusive jurisdiction clauses of their contracts, would be separated from the ancillary claim against MMGR. AMTF appeals to this court against that judgment. It submits that the English courts have jurisdiction.

7.
In order to address AMTF's challenge it is appropriate, first, to examine the relevant provisions of the Judgments Regulation and the authoritative case law on those provisions and, secondly, to consider how that case law applies to the facts of this case. Both AMTF and MMGR submit that the law is clear and is in their favour. In the event that this court disagrees with its interpretation, each of AMTF and MMGR seeks a reference to the Court of Justice of the European Union ("CJEU"). I therefore, thirdly, address the question whether in the light of developments of its jurisprudence it is necessary to refer a question of interpretation to the CJEU. In discussing the prior case law in this judgment I refer to both that court and its predecessor, the Court of Justice of the European Communities, by the acronym "CJEU".

The Judgments Regulation

8.
The basic rule in the Judgments Regulation is that a person may be sued in the member state of his domicile. Article 2 provides:

"1. Subject to this Regulation, persons domiciled in a member state shall, whatever their nationality, be sued in the courts of that member state."

9.
As the opening words of article 2.1 suggest, the basic rule of domicile is not an exclusive ground of jurisdiction. Other articles within the Regulation provide alternative grounds. Thus in article 5 there are rules concerning matters relating to contract and delict among others. Article 5 provides, so far as relevant:

"A person domiciled in a member state may, in another member state, be sued:

1.(a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

…

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur; …"

Article 6 provides so far as relevant:

"A person domiciled in a member state may also be sued:

1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings; …"

In relation to contracts conferring exclusive jurisdiction, article 23 provides:

"If the parties, one or more of whom is domiciled in a member state, have agreed that a court or the courts of a member state are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. …"

10.
The CJEU has provided authoritative rulings on the Judgments Regulation and its predecessor, the Brussels Convention. Rulings on the interpretation of provisions of that Convention remain valid for the equivalent provisions in the Judgments Regulation: Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA (Case C-189/08) [2010] 2 All ER (Comm) 265, para 18. I discuss the earlier case law as if it addressed the latter provisions.

11.
The Judgments Regulation contains rules of jurisdiction which are designed to promote legal certainty by allowing prospective litigants, whether claimants or defendants, to foresee with sufficient certainty which court will have jurisdiction. The aim of the Judgments Regulation is to prevent parallel proceedings between courts of different member states and thereby avoid or limit irreconcilable judgments and non-recognition of judgments. The compulsory system of jurisdiction which the Judgments Regulation creates is underpinned by the principle of mutual trust between the courts of the member states. For those propositions see, for example, Overseas Union Insurance Ltd v New Hampshire Insurance Co (Case C-351/89) [1992] QB 434, para 17; Erich Gasser GmbH v MISAT Srl (Case C-116/02) [2005] QB 1, paras 41 and 72; and Turner v Grovit (Case C-159/02) [2005] 1 AC 101, paras 24 and 28.

12.
The general principle is that civil actions are to be brought against individuals and companies in the courts of the place where they are domiciled. It would be contrary to the objectives of the Judgments Regulation to interpret it as requiring the recognition of the jurisdiction of the courts of the claimant's domicile, except where it expressly so provides, as that would enable the claimant to determine the competent court by choosing his own domicile: Dumez France SA and Tracoba Sarl v Hessische Landesbank (Helaba) (Case C-220/88) [1990] ECR I-49, paras 16-19; Kronhofer v Maier (Case C-168/02) [2004] 2 All ER (Comm) 759, para 20.

13.
The derogations from the general rule which confers jurisdiction on the courts of the defendant's domicile, including article 5.3, must be restrictively interpreted in order to achieve the aims of the Judgments Regulation: Kronhofer v Maier (above), paras 12-14; Coty Germany GmbH v First Note Perfumes NV (Case C-360/12) [2014] Bus LR 1294, paras 43-45. The derogating grounds of jurisdiction are justified because they reflect a close connection between the dispute and the courts of a member state other than that in which the defendant is domiciled. That close connection promotes the efficient administration of justice and proper organisation of the action: Dumez France SA and Tracoba Sarl v Hessische Landesbank (above), para 17; Kronhofer v Maier (above), para 15.

14.

It is necessary, in my view, to distinguish between the terms of a derogating ground of jurisdiction on the one hand and the rationale or justification for the ground on the other as it is the former which confers jurisdiction, not the latter. I discuss this point further in para 29 below.

15.
The CJEU has ruled on the correct approach to article 5.3. It has interpreted the phrase “the place where the harmful event occurred” (a) to give the claimant the option of commencing proceedings in the courts of the place where the event occurred which gave rise to the damage or in the courts of the place where the damage occurred (if the event and damage were in different member states): Handelskwekerj GJ Bier BV v Mines de Potasse d’ Alsace SA (Case C-21/76) [1978] QB 708, para 24; (b) as “the place where the event giving rise to the damage, and entailing tortious … liability, directly produced its harmful effect upon the person who is the immediate victim of the event” and thus not the place where an indirect victim, such as the parent company of the immediate victim, suffered financial loss as a result: Dumez France and Tracoba Sarl v Hessische Landesbank (Helaba) (above), para 20; and (c) consistently with (b) above, where a victim suffered harm in one member state and consequential financial loss in another, as referring to the place where the initial damage occurred: Marinari v Lloyd’s Bank Plc (Case C-364/93) [1996] QB 217, paras 14 and 15. The focus in (b) and (c) is thus on where the direct and immediate damage occurred.

16.
Similarly, in Kronhofer v Maier (above) an investor domiciled in Austria raised an action in his country against investment consultants based in Germany who had given him investment advice by telephone which led him to send funds to Germany to be placed in an investment account and used in an unsuccessful speculative investment. He argued that, because the financial loss caused by that investment diminished the totality of his assets which were concentrated in Austria, he could sue in the courts of the country of his domicile. The CJEU did not agree. It held that article 5.3 did not allow a claimant who had suffered financial damage resulting from the loss of part of his assets in another contracting state to sue in the place of his domicile or where his assets were concentrated.

17.
The CJEU, in the interests of the sound administration of justice, has had to identify the place where a harmful event has occurred in the course of an international transaction, where that place was not evident from a straightforward application of the article. In Réunion Européenne SA v Spliethoff’s Bevrachtingskantoor BV (Case C-51/97) [2000] QB 690, which concerned a claim in damages arising out of the poor quality of a consignment of peaches which had been carried by sea from Australia to Rotterdam for delivery to a town in France, the harmful event was a breakdown of the cooling system during the sea voyage. The CJEU held (para 35) that the place where the harmful event occurred was to be regarded as the place where the maritime carrier was to deliver the goods, ie Rotterdam. The Court justified the choice by reference to the requirements of foreseeability and legal certainty and the existence of a particularly close connecting factor with the dispute (para 36).

18.
The CJEU has also had to interpret article 5.3 so that it can apply in circumstances in which it is not possible to identify one place where the relevant harm has occurred. For example, it has interpreted the phrase “place where the harmful event occurred” in contexts where a claimant suffers harm to his personality rights by the publication of libellous material in several member states. It has held that the claimant may bring an action for damages against the publisher either (a) before the courts of the member state where the publisher of the defamatory material is established, which have jurisdiction to award damages for all the harm caused by the defamation, or (b) before the courts of each member

state in which the publication was distributed and where he claims that his reputation has been injured, which have jurisdiction only in respect of the harm caused in the state of the court seised: Shevill v Presse Alliance SA (Case C-68/93) [1995] 2 AC 18, paras 31-33.

19.

The publication of material on the internet can make information which is damaging to a claimant's personality right available on a worldwide basis, making it impossible to locate the relevant harm for the purpose of article 5.3 without developing a special rule. The CJEU has recognised that the solution which it adopted in Shevill based on ascertaining damage caused by distribution within a particular member state did not address the harm caused by the availability of such information on the internet. It has therefore created an additional option for the alleged victim in such circumstances, attributing jurisdiction to the court of the place where the alleged victim had its centre of interests: eDate Advertising GmbH v X (Cases C-509/09 and C-161/10) [2012] QB 654, paras 40-48, 52.

20.

The CJEU has also developed special rules for the application of article 5.3 to the infringement of intellectual property rights in the context of the accessibility of the internet. Wintersteiger AG v Products 4U Sonder-maschinenbau GmbH (Case C-523/10) [2013] Bus LR 150 is a case concerning a national trademark which in principle protects only in the territory of the member state in which it is registered. The claimant, which was the proprietor of an Austrian trademark "Wintersteiger", asserted that its trademark had been infringed by the defendant's registration of the word "Wingersteiger" in the Google search engine although the registration was limited to searches carried out via the top level-domain for Germany (ie "google.de"). The obvious mischief for the claimant was that Austrian customers could readily use google.de when searching for products causing Wintersteiger to lose orders in Austria. The CJEU held that the objectives of foreseeability and the sound administration of justice pointed to treating the courts of the member state in which the property right in issue was protected (ie Austria) as the place where the damage occurred (paras 29 and 39) and identifying the place of establishment of the advertiser (Germany) as the place where the event giving rise to the damage occurred (paras 37 and 39).

21.

The CJEU has also considered the application of article 5.3 where reproductions of a work protected by copyright throughout the EU were available for sale by marketing on the internet in many member states. In circumstances of infringement of such a right via the internet to which courts does article 5.3 give jurisdiction? In Pinckney v KDG Mediatech AG (Case C-170/12) [2013] Bus LR 1313, paras 43-45, the CJEU answered the question by holding that the court of a member state which protected the copyright would have jurisdiction because the harmful event alleged might occur within its jurisdiction. But the court's jurisdiction was limited to determining the damage caused within the member state in which it was situated.

22.

Claims for damages against international cartels for breaches of EU competition law have also required the development of special rules in the interpretation of article 5.3. In Cartel Damage Claims (CDC) Hydrogen Peroxide SA v Akzo Nobel NV (Case C-352/13) [2015] QB 906, it was not possible to identify a single place where the cartel had come into being as it resulted from collusive agreements made during several meetings which had taken place in various places in Europe. It was also difficult to identify in a conventional way the place where the damage occurred as the claimants' loss consisted in a restriction of the buyers' freedom to contract as a result of the cartel supplying goods at artificially high prices. The CJEU categorised the relevant loss as the additional costs incurred

because of the artificially high prices. It held that the place where the damage occurred was identifiable only for each alleged victim taken individually and was located, in general, at each victim's registered office (paras 52 and 56). Once again, the CJEU adapted the interpretation of article 5.3 to circumstances in which the place of the relevant harm could not otherwise be identified. The CJEU relied on the justifications of the rule - the efficacious conduct of potential proceedings in a court best suited to assess the claim for damages - in devising that interpretation (para 53).

Applying the CJEU's jurisprudence in this appeal

23.
There is no dispute in this case that the event occasioning damage, the alleged inducement of the former clients by MMGR to commence the German legal proceedings, occurred in Germany. AMTF therefore relies on the alternative basis under article 5.3, the place where the relevant damage occurred, in support of its assertion that the English courts have jurisdiction. First, adopting the reasoning of Popplewell J, it asserts that the relevant harm is the deprivation of the contractual benefit of dispute resolution in England under English law so that the English courts could protect and enforce its substantive rights. Secondly, it submits that Popplewell J's judgment is supported by (a) the principles underlying article 5.3, conferring jurisdiction on a foreseeable court which has a close connection with the underlying dispute, (b) the nature of the contractual benefit conferred by an exclusive jurisdiction clause and (c) considerations of the sound administration of justice in relation to a tort which is a form of accessory liability for breach of contract. It points out that the CJEU has innovated on its interpretation of article 5.3 in cases such as eDate Advertising, Wintersteiger and Cartel Damage Claims by locating the relevant harm at the claimant's centre of interests. Such a rule, which would locate the harm in the jurisdiction of the contractually adopted court, has, it submits, the virtue of foreseeability, as the CJEU pointed out in Wintersteiger at para 23, and should be applied when the tort of inducing breach of contract occurs in the context of an exclusive jurisdiction clause.

24.
I am not persuaded by those submissions. The task for the court is to identify where the relevant harm occurred. That is relatively straightforward in most circumstances, where there is no need for any special rule such as those which the CJEU has developed when it has not been possible readily to identify one place where that harm occurred. It is straightforward in this case.

25.
I deal with AMTF's first submission. The contractual obligation of the former clients was, if they chose to sue AMTF, to sue only in England. The breach of contract which MMGR is said to have induced was the raising of legal proceedings in Germany. AMTF accepts that the raising of those proceedings in Germany was the event which gave rise to the damage for the purposes of article 5.3. But AMTF also incurred damage in Germany by having to engage in the German proceedings and settle claims there.

26.
It is clear that AMTF did not get the benefit of having any dispute with the former clients determined under English law by English courts. But the former clients were under no positive obligation to sue AMTF, which could have no objection if it was not sued. They were under an obligation not to sue in Germany or elsewhere than England. The former clients could have performed their contractual obligations to AMTF either by not raising proceedings in Germany or, having raised those proceedings, by discontinuing them. Thus the circumstances of this case can be distinguished from those in Dolphin Maritime & Aviation Services Ltd v Sveriges Angfartygs Assurans Forening [2010] 1 All ER (Comm) 473, in which the contractual obligation, of which the defendants had induced the

breach, was the positive obligation to pay money into the claimants' bank account in England. In that case, the harm suffered by the victim of the tort occurred in England where the money should have been paid.

27.
It may also be, as was suggested during the legal debate in court, that the raising of the German proceedings has damaged AMTF's business model as it sought, through the exclusive jurisdiction clause, to preserve the focus of its business in London if it traded with overseas clients. But that loss of focus is consequential upon the direct harm caused by the raising of the German proceedings. On the clear jurisprudence of the CJEU in cases such as Dumez France SA and Tracoba Sarl v Hessische Landesbank (above) and Marinari v Lloyd's Bank plc (above), article 5.3 is not concerned with such consequential loss. In my view, which is essentially the same as that of the Court of Appeal, the direct harm which AMTF suffered from the alleged tort was the expenditure occasioned by the German proceedings. Thus for the purposes of article 5.3 the place where the harmful event occurred was Germany. That is sufficient to determine the appeal.

28.
It is, nonetheless, appropriate to address AMTF's second submission, which in substance seeks this court to craft a special rule for the tort of inducing breach of contract where the contractual term which has been breached is an exclusive jurisdiction clause. In my view the rule which AMTF advocates would be contrary to the clear jurisprudence of the CJEU.

29.
AMTF asserts that the outcome which it favours accords with the principles underlying or justifying article 5.3. But there is a clear distinction between a rule of special jurisdiction in the Judgments Regulation, such as article 5.3, and the justification for such a rule. The rule of special jurisdiction in a tort case is that harm has occurred or may occur within the jurisdiction of the court seised. When, as in this case, the court is not concerned with the event giving rise to the harm, it is the occurrence of the direct and immediate harm and nothing else that is the connecting factor in article 5.3. It is that connecting factor which creates the benefits of foreseeability and promotes the sound administration of justice. Those benefits, which justify the ground of jurisdiction, are not themselves connecting factors. To invoke a special ground of jurisdiction a claimant must bring itself within that ground: Folien Fischer AG v Ritrama SpA (Case C-133/11) [2013] QB 523, paras 39 and 40. A claimant cannot establish jurisdiction under the Judgments Regulation by merely invoking the justification or rationale of the ground.

30.
Similarly, a focus on the nature of the contractual benefit of which AMTF has been deprived and the accessory nature of the tort of inducing breach of contract does not assist. I have discussed the former in para 26 above and comment on the nature of the tort below. Nor does the inconvenience, which the separation of the resolution of the contractual claims against the former clients from the pursuit of the claims against MMGR entails, carry much weight when one considers the aims of the Judgments Regulation.

31.
The fact that a claim in tort is connected with a contractual claim has not led the CJEU to elide the grounds of jurisdiction in matters relating to a contract with those in matters relating to tort. In Kalfelis v Bankhaus Schröder, Münchmeyer, Hengst and Co (Case C-189/87) [1988] ECR 5565 (paras 21-23) the CJEU held that where a claimant pursued a claim based on tort and contract and for unjust

enrichment, the court which had jurisdiction under article 5.3 to deal with the claim in tort did not have jurisdiction to deal with the other elements of the same claim. More recently, in Réunion Européenne SA v Spliethoff's Bevrachtingskantoor BV (above) (paras 49-51) the CJEU confirmed the principle in Kalfelis.

32.
In both Kalfelis and Réunion Européenne the CJEU has recognised that the scheme of the Judgments Regulation creates the difficulty that one jurisdiction may not be able to deal with all the related points in a dispute. This inconvenience is the price which the scheme in the Judgments Regulation imposes by setting out well-defined rules in order to achieve its primary purpose of ensuring that there shall be no clash between the jurisdictions of member states of the EU, as Lord Goff of Chieveley observed in Airbus Industrie GIE v Patel [1999] 1 AC 119, pp 131-132.

33.
This difficulty is evident in the wording of the Judgments Regulation. Article 6 of the Judgments Regulation does not confer jurisdiction on the courts of a member state over a co-defendant as a result of the close connection of the claims unless one of the defendants is domiciled in that member state. Jurisdiction on an article 5 ground does not suffice. Similarly, article 23 can confer exclusive jurisdiction on a court as a result of the agreement of the parties but that jurisdiction cannot be pleaded against people who are not parties to the agreement.

34.
Under the Judgments Regulation there is no scope outside the rules for identifying a forum conveniens. The German courts, if seised of the matter, can apply English law if it is the governing law. The fact that parties to a contract have selected a jurisdiction to resolve their dispute does not entitle the courts of the selected member state to review or seek to restrain the jurisdiction of the court on which a rule of the Judgment Regulation has conferred jurisdiction: West Tankers Inc v Allianz SpA (formerly RAS Riunuine Adriatica di Sicurità SpA) (Case C-185/07) [2009] AC 1138, paras 29-32.

35.
The application of the Judgments Regulation, as I construe it, will separate the determination of AMTF's contractual claims against its former clients from the determination of its tort claim against MMGR. But such inconvenience is the price of achieving the legal certainty and foreseeability which are among the principal aims of the Judgments Regulation, as the CJEU has recognised and endorsed. Further, I do not see any jurisdictional difficulty for AMTF if it were to seek to protect itself against any future attempts by MMGR to induce AMTF's other clients to breach their contractual obligations: AMTF can raise proceedings in Germany, in the courts of MMGR's domicile.

Whether a reference to the CJEU is mandated?

36.
Mr De la Mare for AMTF submits as a fall back that if it is not clear that article 5.3 should be applied as he submits where the contractual provision which has been breached as a result of the defendant's inducement is an exclusive jurisdiction clause, this court should refer the issue to the CJEU. Guidance would be needed as to whether article 5.3 would establish the jurisdiction of the English courts where MMGR's alleged tortious behaviour has undermined the contractual creation of a sole jurisdiction in England, a connecting factor which has the advantage of foreseeability, would promote the sound administration of justice and avoid the fragmentation of disputes.

37.
I do not agree.

38.
The circumstances which have caused the CJEU to develop special rules to interpret article 5.3 in order to identify the place where the harmful event occurred, such as to locate harm at a claimant's registered office (Cartel Damage Claims) or at its centre of interests (eDate Advertising) do not arise in this case, in which there is no difficulty in locating where the relevant harm has occurred. The event giving rise to harm and the relevant harm which that event directly caused both occurred in Germany.

39.
AMTF also submits that EU legislation has recently shown more favour towards exclusive jurisdiction clauses. Article 31(2) of the recast Judgments Regulation (Regulation EU No 1215/2012 of the European Parliament and of the Council of 12 December 2012) provides that where a court, on which the parties have conferred exclusive jurisdiction by an agreement which complies with article 25, is seised, any court of another member state must stay its proceedings until the former court declares that it has no jurisdiction. AMTF submits that this may mean that the CJEU would take a more accommodating approach to exclusive jurisdiction clauses. Be that as it may, it does not assist AMTF to establish for the purpose of jurisdiction under article 5.3 that the place where the harmful event occurred was England.

40.
Recent case law of the CJEU does not suggest that the court has moved from the principles and approach which I have set out in paras 11 to 13, 15 and 16 above. The CJEU has repeatedly stated in recent times that the provisions of the Regulation must be interpreted independently by reference to its scheme and purpose, and derogations from the general rule that jurisdiction is given to the court of the defendant's domicile have to be interpreted restrictively: Melzer v MF Global UK Ltd (Case C-228/11) [2013] QB 1112, paras 22 and 24; Coty Germany (above), paras 43-45; and Kolassa v Barclays Bank Plc (Case C-375/13) [2015] ILPr 14, para 43.

41.
The focus in article 5.3, which is relevant to AMTF's claim, remains on the place where the event resulted in the initial damage: Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA (above), paras 26-32; Universal Music International Holding BV v Schilling, Schwarz, Brož (Case C-12/15) (EU:C:2016:449), paras 30-34. There is no complexity in the present case in identifying that place which might cause the CJEU to develop a special rule as to the location of the harmful event.

42.
In support of an innovative interpretation of article 5.3, AMTF relies on the characteristics of the English law tort of inducing breach of contract and the application of the tort to an exclusive jurisdiction clause. Creating a special rule in this way to accommodate the domestic law of tort of a particular member state would, in my view, undermine the certainty and foreseeability of that ground of jurisdiction, which is available to people and organisations in all of the member states of the EU.

43.
These considerations, which depend on EU law and not domestic law and are thus equally obvious to the courts of other member states, persuade me that the matter is acte clair and that no reference is mandated, having regard to the criteria laid down in CILFIT v Ministero della Sanità (Case C-283/81) [1982] ECR 3415.

Whether consideration of AMTF’s claim by the English court would infringe EU law

44.
As I have concluded that the Judgments Regulation does not give jurisdiction to the English courts over AMTF’s claim, it is not necessary to address the issue, which MMGR raised, as to whether the English court which purports to hear AMTF’s claim thereby breaches EU law by impermissibly interfering with the judgments of the German courts.

MMGR’s cross appeal on costs

45.
MMGR appeals against the decision of the Court of Appeal to award it only part of its costs at first instance and on appeal (the part relating to the issue whether the place of the harmful event was in England) and to require it to pay AMTF’s costs at first instance and on appeal on the question of whether AMTF’s claim had real prospects of success.

46.
At first instance, MMGR had challenged the prospects of success of AMTF’s claim on the basis that the exclusive jurisdiction clause was unenforceable because the former clients were consumers who were protected by the Unfair Terms in Consumer Contracts Regulations 1999 and articles 16, 17 and 23(5) of the Judgments Regulation. Popplewell J rejected this submission. In the Court of Appeal the argument took the form that the English courts could not grant an injunction or award damages against MMGR without impermissibly attacking the assumption of jurisdiction by the German courts. The Court of Appeal did not require to determine this question but observed that it did not appear to be well founded (a) because an injunction against MMGR from inducing a breach of contract did not preclude anyone from commencing proceedings in Germany and (b) because a claim for damages against MMGR for the loss occasioned by the breach of contract which MMGR had induced was not a collateral attack on the jurisdiction of the German courts.

47.
I deal with this challenge to the award of costs briefly. The court has a broad discretion in relation to costs under CPR rule 44.2. While there is a starting point that the unsuccessful party will pay the costs of the successful party (CPR rule 44.2(2)(a)), the court is entitled in CPR rule 44.2(4) to have regard to the parties’ relative success on the issues raised. The court has a discretion on the question of relative success and an appellate court will overturn its decision on such a matter only if it has gone beyond the limits of its discretion or otherwise erred in law.

48.
MMGR did not renew in the Court of Appeal its challenge based on the alleged status of the former clients as consumers. The Court of Appeal expressed a clear although not conclusive view on the challenge on the merits which MMGR advanced before them.

49.
I see no basis for impugning the discretionary decision of the Court of Appeal. Insofar as the challenged element of the award covered MMGR’s submission on the merits before Popplewell J, an argument with which MMGR has not persisted, the Court of Appeal’s award should stand. Insofar as MMGR, in raising the second issue in this court, has renewed the arguments it advanced on the merits before the Court of Appeal, it can raise the question of costs in relation to those arguments in any submissions on costs which it chooses to make to this court after the court’s judgment is handed down.

Conclusion

50.
I would dismiss the appeal.