

Consumer protection also applies to sophisticated investors



In the context of determining the competent jurisdiction in respect of a consumer contract, Article 18 of Regulation (EU) No 1215/2012 (the “Brussels Ia Regulation”) states that a consumer may either sue the other party to a contract (i) in the courts of the Member State where that party is domiciled or (ii) in the courts where the consumer is domiciled.

The question upon which the Court was called to construe, in case C-208/18 (Jana Petruchová v FIBO Group Holdings Limited), was whether the notion of consumer within the meaning of Article 17 of the Brussels Ia Regulation covers the situation where individuals actively engage in trade on the FOREX market by placing their own orders but through a third party qualifying as a professional.

In casu, the claimant, Ms Petruchová, entered into a framework agreement with the defendant, Fibo (an investment firm based in Cyprus) enabling the claimant to make transactions on the FOREX market which Fibo shall execute through its online trading platform. The framework agreement contained a clause conferring jurisdiction on the courts of Cyprus. In the context of this agreement, the claimant placed an order in October 2014. However, the defendant executed the order with some delay causing the claimant to suffer significant loss due to the fluctuation of the relevant exchange rate. Such loss led Ms Petruchová to bring a claim before the courts of her domicile, Czech Republic, despite the jurisdiction clause conferring jurisdiction on courts of Cyprus. The claimant invoked her status of consumer to bring her claim before the courts of her domicile.

The Court considered that for a person to qualify as a consumer within the meaning of Article 17 of Brussels Ia Regulation, no account should be taken of (i) the value of the transactions, (ii) the risk incurred on the FOREX market, (iii) the knowledge of the person concerned, (iv) the expertise of the person concerned, (v) the active placing of one’s own orders and (vi) the complexity of the transactions. Instead, the sole determining factor should be whether the activity at stake falls within the profession or trade activity of the person concerned.

In conclusion, financial institutions should bear in mind that private clients, regardless of their status of sophisticated or high net worth individuals, qualify as consumers and, therefore, benefit from the protective legal framework associated thereto.

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