

## THE HIGH COURT

[2016 3926 P]

BETWEEN

LEINSTER STONE SUPPLIES LIMITED

PLAINTIFF/RESPONDENT

V.

OMAG SpA

DEFENDANT/APPLICANT

**JUDGMENT of Ms. Justice Creedon delivered on the 20 day of February, 2018****RELIEFS SOUGHT**

1. The applicant in this notice of motion seeks an order pursuant to O. 12 r. 26 of the Rules of the Superior Courts 1986 and/or pursuant to the inherent jurisdiction of this Honourable Court, setting aside service of the notice of plenary summons herein on the defendant for want of jurisdiction, by operation of Article 25 of Regulation (EU) 1215/2012 (hereinafter "Brussels I Regulation").

2. The applicant also seeks an order striking out the within proceedings, or in the alternative placing a permanent stay thereon for want of jurisdiction by operation of Article 25 of the Brussels I Regulation.

**BACKGROUND**

3. The respondent is a private company, limited by shares and incorporated in Ireland. Its business involves the production and supply of natural stone products for reward.

4. The applicant is a public limited company, incorporated in the Italian Republic. Its business involves the sale of cutting and precision machinery for reward.

5. By means of a written contract, dated 24th December, 2014, ("the contract"), the respondent agreed to purchase from the applicant a Mill 4X CNC machine ("the machine") for the sum of €145,500, exclusive of VAT. Said machine was to be used by the respondent in the course of its business to cut and polish stone.

6. Difficulties were experienced by the respondent in respect of the machine received and it was eventually replaced, 28 weeks later, on 12th September, 2015. It is arising from these difficulties that the plenary summons was issued by the respondent to recover damages for breach of contract, breach of warranty, negligence and breach of duty, including statutory duty.

7. A number of affidavits were opened to the court as follows:

1. An affidavit of John O' Leary, solicitor for the applicant; and
2. An affidavit of Mr James Kirby, Director of the respondent company; and
3. An affidavit of Giovanni Marco Cavalleri, Director of the applicant company; and
4. An affidavit of Guiseppe Cattani, an Italian lawyer acting on behalf of the applicant company.

**APPLICANT'S CASE**

8. The applicant entered an appearance, to contest the jurisdiction of the court to determine the respondent's claim.

9. The applicant referred to Article 4 of the Brussels I Regulation, which sets out the general jurisdictional rules governing litigants within the EU:

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

10. The applicant then opened Article 25(1) of the Brussels I Regulation which permits derogation from the basic provision in Article 4:

*"1. If the parties, regardless of their domicile, 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, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:*

*(a) in writing or evidenced in writing;*

*(b) in a form which accords with practices which the parties have established between themselves; or*

*(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned." (Emphasis added).*

11. The applicant referred the court to the exclusive jurisdiction clause at p. 18 of the contract, which appears in the following terms:

*"Competent court: If the parties fail to agree on a competent court should any disputes arise over the interpretation or execution of these sales conditions, it is understood that the competent court will be that of Bergamo Italy". (Emphasis*

added).

12. The applicant contended that this jurisdiction clause satisfies all of the requirements set out in Article 25 of the Brussels I Regulation, for the following reasons:

- a) The jurisdiction clause was agreed between parties and is evidenced in writing; and
- b) The jurisdiction clause does not contain any suggestion to the effect that it is intended to be anything other than exclusive, and as such, the presumption of exclusivity applies with full force to the clause.

13. The applicant argued that the clause requires that all claims arising from the “*interpretation*” or the “*execution*” of the contract be litigated in Bergamo, Italy. It stated that “*interpretation*” here refers to the construction and application of the terms of the contract and that “*execution*” refers to the applicant’s performance of its obligations on foot of said contract. It rejected the respondent’s claim that this jurisdiction clause should be narrowly construed; confining the italicised terms above to their basic meaning. In particular, counsel for the applicant noted that the contract in question does not have a tertiary signature block or any stand alone contingent pertaining to execution in this way, for example: that the contract should be executed under seal.

14. The applicant argues that its duties are delineated cogently in the contract, and that the warranty at p. 17-18 clearly delineates the responsibilities it owes to the respondent in the event of a fault or defect in the machine:

*“OMAG guarantees its machines and relative equipment from faults and defects in materials used and manufacture for a period of 36 months from installation, and not more than 38 months from the delivery date... While the guarantee is in force, the Seller undertakes to eliminate evident faults or defects in materials or manufacture within a reasonable time on condition that the machine or equipment has been used correctly according to the rules for usage and maintenance, as established by the Seller and that the item has been installed with the assistance of the Seller’s engineers. Defective parts will be repaired or replaced at the Seller’s charge only during the warranty period.”*

15. The applicant referred to the respondent’s “Claim for Loss and Expense” document, dated 14th December, 2014. At para 2.1 of this document, the respondent sets out the parameters of its claim:

*“Leinster Stone Supplies Limited entered into a contract with OMAG, to purchase a new CNC machine. OMAG also purchased from Leinster Stone, their existing CNC machine. The new machine that was supplied by OMAG was faulty and failed to operate properly. After a protracted period of 28 weeks, the faulty machine was replaced with a largely modified designed model. The claim set out in this document is for the loss and expense that were incurred by Leinster Stone during the 28 weeks when the company was left without both the old machine that they had sold to OMAG and the new replacement CNC machine that OMAG were contracted to provide. The amount of the claim is €199,252.”*

16. The applicant pointed to the “*Claim for Loss and Expense*” document and subsequent correspondence exchanged between the parties as evidence that the respondent’s claim surrounds the performance of the applicant’s obligations under the contract. As such, it was argued that the respondent’s initiation of plenary proceedings triggered the contract’s exclusive jurisdiction clause.

17. As stated, the applicant rejected the respondent’s claim that this jurisdiction clause should be construed narrowly, and instead, advocated the use of a commercially sensible construction.

18. The obligation to construe the jurisdiction clause in a commercially sensible manner was considered in the case of *BNY Trust Company (Ireland) v. Treasury Holdings Ltd* [2007] IEHC 271, which was opened to the court. In that case Clarke J approved of the judgment of Lord Wilberforce in *Reardon Smith Line v Yngevar Hansen-Tangen* [1976] 1 WLR 989 which held the following:

*“No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as ‘the surrounding circumstances’ but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes a knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating ... When one speaks of the intention of the parties to the contract, one is speaking objectively - the parties cannot themselves give direct evidence of what their intention was - and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly, when one is speaking of the aim, or objective, or commercial purpose, one is speaking objectively of what reasonable persons would have had in mind in the situation of the parties ... what the court must do must be to place itself in thought in the same factual matrix as that in which the parties were.”* (Emphasis added).

Clarke J went on to approve of the decision of the House of Lords in *Mannai Investment Company Ltd v. Eagle Star Assurance Company Ltd* [1997] AC 749, wherein Lord Steyn emphasised:

*“In determining the meaning of the language of a commercial contract, and unilateral contractual notices, the law therefore generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way in which a reasonable commercial person would construe them. And the standard of the reasonable commercial person is hostile to technical interpretations and undue emphasis on niceties of language.”*

19. In addressing the assertion that the jurisdiction clause is insufficiently broad in scope to cover the claim being made by the respondent, the applicant opened the High Court case of *Clare Taverns v. Gill* [2000] 1 IR 286. In this case, the defendant, domiciled in Ireland, entered into an agreement with the TEC (UK) Ltd, a company of English domicile, whereby the latter agreed to sell and supply computer terminals to the defendant. These terminals were then used by the defendant in the installation of a cash control system for the plaintiff. The plaintiff alleged the system was defective and initiated proceedings against the defendant for breach of contract. TEC (UK) Ltd were joined as the first named third party and sought to have the third party proceedings against it set aside on the grounds that, by virtue of Article 17 Brussels Convention 1968 (a predecessor to Article 25 in the current Brussels I Regulation), the Irish courts lacked jurisdiction to determine the dispute between parties. This was alleged to be the case due to the inclusion by parties of the following clause in the conditions of sale agreed between them:

*‘And the buyer hereby submits to the jurisdiction of the English courts’.*

It was argued that this constituted an exclusive jurisdiction clause in favour of the English courts to determine any and all disputes arising from the contract. The defendant argued there existed no agreement or consensus between the parties as to the clause conferring exclusive jurisdiction on the courts of England in such a manner.

20. At p. 293 of her judgment, McGuinness J considered the breath and application of the jurisdiction clause agreed between parties:

*"The clause goes on to state in boldly general terms 'And the buyer hereby submits tot the jurisdiction of the English courts'. The English courts have dealt with the interpretation of purported exclusive jurisdiction clauses... the clauses in those cases, however, were considerably more sophisticated and more carefully drawn. It is, of course, obvious that the first named third party intended that clause 19 would confer exclusive jurisdiction on the English courts, but is that sufficiently clear to the buyer on the actual wording? Even a simpler clause, such as that dealt with by Geoghegan J in Holfeld Plastics Ltd v. ISAP OMV Group SpA, High Court (Unreported, High Court, Geoghegan J., 19th March, 1999), which stated under the heading Competent Courts of Law "In the event of dispute, the parties shall accept as the competent court of law, the courts in the place where the vendor has his head office" is much clearer in its intent than clause 19 in the instant case."*

Despite the broad nature of the clause, however, McGuinness J accepted that it provided for exclusive jurisdiction, in part because of the accompanying heading which leant context to its terms:

*"The relevant clause is headed 'jurisdiction and governing law', which indicates that it deals both with the law governing the contract and also with the jurisdiction to which disputes are to be referred."*

21. McGuinness J also held that although the defendant claimed negligence and breach of duty against the third parties- torts that stretched beyond breach of contract and the exclusive jurisdiction clause- it would be wholly unsatisfactory to permit a situation whereby different aspects of a claim would need to be determined in separate jurisdictions. McGuinness J summarised the position as follows at p. 299 of her judgment:

*"It seems to me that this is the correct approach and is, indeed, in accordance with business common sense. The defendant's claims of negligence, of misrepresentation, and indemnity are "closely knitted" to the contractual claim, and indeed it appears that very much the same evidence would be used in support of all the claims. If, as I have held, the contractual claim falls to be decided by the English courts under clause 19, it would be extremely difficult and costly to pursue separate proceedings in tort before the Irish courts. In my view all these inter-related claims must be tried together."*

22. This approach mirrored in the case of *Leo Laboratories Ltd. v. Crompton BV* [2005] 2 IR 225, which was opened to the court. Here, the court found that it was impossible to divorce the claim of the respondent founded in tort from that which was founded in contract.

## RESPONDENT'S CASE

23. Counsel for the respondent highlighted that Ireland is the place of performance of the contract in issue. Therefore, it was argued that Article 7 of the Brussels I Regulation indicates this as the appropriate jurisdiction in which to determine the respondent's claim:

*"A person domiciled in a Member State may be sued in another Member State:*

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

*(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:*

*— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,*

*— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;*

*(c) if point (b) does not apply then point (a) applies;*

*(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur." (Emphasis added).*

24. It was conceded that exclusive jurisdiction clauses may be given effect under Article 25 of the Brussels I Regulation. However, the respondent noted that the scope of the exclusive jurisdiction clause relied upon by the applicant in this case is limited and covers only disputes which arise over the "interpretation" or "execution" of the sales conditions, as strictly construed.

25. The rationale for the court's strict construal of such clauses was emphasised in *Estasis Salotti v. R.U.W.A.* [1976] ECR 1831, which was opened to the court. In this case, seven written offers relating to the supply of machines were sent from the defendant to the plaintiff. Each offer referenced a particular condition of sale, No. 6904, which stated that the place of performance in respect of any claims arising out of the agreement was Cologne and the law of the Federal Republic of Germany applied to the entire legal relationship. These offers were accepted and a contract arose on foot of same. When the plaintiff refused to accept delivery of the machines, a breach occurred. The ECJ discussed the court's obligation to narrowly construe the effect of jurisdiction clauses under then Article 17 of the Brussels Convention 1968:

*"Article 17 imposes on the court before which the matter is brought the duty of examining, first, whether the clause conferring jurisdiction upon it was in fact the subject of a consensus between the parties, which must be clearly and precisely demonstrated. The purpose of the formal requirements imposed by Article 17 is to ensure that the consensus between the parties is in fact established".*

26. The case of *Besix* [2002] ECR I – 1699 was also opened to the court. Here the ECJ emphasised the importance of using clear terms when seeking to derogate from the general jurisdictional rules, then set out in Article 2 of the Brussels Convention 1968 (predecessor of Article 4 of the Brussels I Regulation):

*"That principle of legal certainty requires, in particular, that the jurisdiction rules which derogate from the basic principle of the Brussels Convention laid down in Article 2, such as the rule in Article 5(1), should be interpreted in such a way as to enable a normally well-informed defendant reasonably to foresee before which courts, other than those of the State in which he is domiciled, he may be sued."*

27. *Ryanair Ltd v. On the Beach Ltd*. [2013] IEHC 124 was opened to the court to demonstrate how this principle of strict construal has been applied in Ireland. At para 37 of her judgement Laffoy J ruled the following:

*"It has been held that a strict approach must be adopted in determining whether the formalities for jurisdiction clauses have been complied with, and also in the interpretation of such clauses. Secondly, the onus is on the party who asserts that Article 23 applies to establish that the choice of jurisdiction clause relied upon complies with the requirements of Article 23... Thirdly, by making the validity of a jurisdiction clause subject to the existence of an 'agreement' between the parties, the predecessor of Article 23 (Article 17 of the Brussels Convention) imposed on the Court before which the proceedings were brought the duty of examining first, whether the clause conferring the jurisdiction upon the Court was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated. The purpose for the requirements as to form imposed by Article 17 was to ensure that consensus between the parties is in fact established."*

28. *Clare Taverns* was referenced in order to bolster this approach, in particular p. 294 of McGuinness J's judgment where she quoted from the judgment of by Geoghegan J in *Holfeld Plastics Ltd.*, where he said:

*"In the case of an exclusive jurisdiction clause, the provisions of Article 17 of the Brussels Convention must be strictly applied and in the course of that application the clause must be interpreted in accordance with European Community law"*.

29. The respondent contended that there is no dispute concerning the "interpretation" of the sales conditions in the contract or the "execution" of the contract itself.

30. The respondent argued that the jurisdiction clause should be strictly construed and that such a construal would draw a narrow meaning from these terms. It was contended that the word "interpretation" in the clause refers to the meaning of the sales conditions as opposed to the application of same. Likewise, it was argued that the term "execution" pertains to the execution of parties' signatures to the contract, signifying their acceptance to be bound by its terms. It does not mean, the respondent argued, the implementation of the applicant's obligations under the contract. The respondent noted that the signing of the contract and the authentication of the signature is, by agreement, governed by Article 84 of the Italian Civil Code as per p. 17 of the contract.

31. The respondent's claim concerns the loss and damage suffered as a result of receiving a defective machine and the applicant's delay in replacing same. As such, the respondent argued that the exclusive jurisdiction clause is not engaged and that the appropriate jurisdiction to bring a claim against the applicant is that of Ireland.

32. It was stressed that the onus falls on the applicant to prove that the clause encompasses the matter in dispute between parties as per Laffoy J's judgment *Ryanair Ltd* set out above.

33. *Cheshire, North & Fawcett's text: Private International Law* (14th ed., Oxford, 2008) was also cited. The latter states at p. 289: *"The burden of proving that the clause is exclusive is said to rest on the party who relies on it."*

34. The respondent opened the case of *Leo Laboratories Ltd.*, a case which also turned on the precise wording of the choice of jurisdiction clause. Here, the plaintiff, an Irish company, had purchased raw materials for the manufacture of pharmaceutical products from a Dutch company. The applicable terms and conditions provided that any disputes: *"arising out of or on account of a contract... shall be adjudicated, with the exclusion of any other courts, by the court having jurisdiction at Haarlem."* The plaintiff claimed that one shipment of product supplied by the defendant was contaminated and caused the company financial loss. The plaintiff launched proceedings in the Irish courts as a result. The Supreme Court held that the jurisdiction clause in favour of the Dutch courts was sufficient to deprive the Irish courts of jurisdiction:

*"The clause applies to disputes 'arising out of or on account of a contract.'... What is the dispute about? It is about the alleged delivery by the appellant of defective product. How did that product come to be delivered? Answer: it arose out of a contract. If we are to understand words in their commonsense and ordinary meaning rather than some meaning contrived for the purpose of avoiding the obvious, the dispute arises out of a contract."*

The respondent stressed that the clause referred to in *Leo Laboratories Ltd.* could be contrasted with the clause at the centre of the instant dispute. In the former case, the plaintiff's claim fell clearly and precisely within the scope of the clause due to the sheer breadth of its scope, whereas in the instant case, the respondent's claim is beyond the scope of the narrowly phrased jurisdiction clause.

35. Finally, counsel for the respondent referred to Mr. Cattani's affidavit, wherein he cites a number of legislative provisions of the Italian Republic, suggesting that they render the conditions of the contract unenforceable as a matter of Italian law. Mr. Cattani in his affidavit deals with the jurisdictional issue on behalf of the respondent and exhibits Articles 1341 and 1342 of the Italian Civil Code as well as Article 29 of the Italian Code of Civil Procedure. The Italian lawyer avers that the clause is not caught by Article 25 as a result, and as there is no replying affidavit from the applicants, the court must take the facts as he presents them.

36. Counsel for the applicant disagreed with these points in his reply. It was argued that all, bar one, of the provisions of the Italian Civil Code, relied on by Mr. Cattani, relate to the enforceability of the conditions of the contract as a whole, as opposed to the jurisdiction clause, in particular. The applicant argued that the sole provision which appears to relate to jurisdiction clauses is that of Article 25(1) of Brussels Regulation, and it simply requires that such a clause must be *"made in writing"*.

37. The applicant pointed to Article 25(5) of Brussels Regulation, which reads as follows:

*"5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract."* (Emphasis added).

The applicants argued that it is therefore impermissible for the respondent to mount a claim by reference to the alleged invalidity of the conditions as a whole. Further, the applicant quoted from *Delaney & McGrath: Civil Procedure in the Superior Courts* (3rd edition,

Round Hall 2012):

*"It is well established that a choice of jurisdiction clause will be upheld and given effect to, even if one of the parties challenges the validity of the entire contract including the clause."*

38. In response to the respondent's assertion that the choice of jurisdiction clause was never specifically drawn to its attention, the applicant again referred the court to the case of *Clare Taverns*, where the High Court was confronted with an ambiguously worded jurisdiction clause in favour of the courts of England and Wales, which was contained in the standard terms and conditions of a seller, printed on the reverse side of an invoice. McGuinness J decided that, while the buyer had held a genuine belief that the Irish courts would have jurisdiction to hear and determine all claims in relation to the contract, this belief was mistaken and was not caused by any action on behalf of the seller. The failure on the part of the buyer to read the standard terms and conditions was not a matter for which the seller could have any responsibility.

## CONCLUSION

39. The instant case turns on the construal of the jurisdiction clause in question; whether the plenary proceedings involve a dispute relating to the "interpretation" or "execution" of the contract, such that the exclusive jurisdiction clause is triggered.

40. The court has considered both parties' submissions and the extensive case law that has been opened to it, outlining the court's obligations in cases such as the instant one.

41. The court is satisfied that there was consensus as to scope and operation of the jurisdiction clause in question and that this is clearly demonstrated with regard to its construction.

42. In reaching this conclusion, the court gave special consideration to Clarke J's judgment in *BNY Trust Company (Ireland)* where he approved the judgment of the House of Lords in *Reardon Smith Line*, which held the following:

*"What must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties... what the court must do must be to place itself in thought in the same factual matrix as that in which the parties were." (Emphasis added).*

In the latter case, Lord Steyn emphasised:

*"In determining the meaning of the language of a commercial contract, and unilateral contractual notices, the law therefore generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way in which a reasonable commercial person would construe them. And the standard of the reasonable commercial person is hostile to technical interpretations and undue emphasis on niceties of language."*

43. The court notes that the ECJ's judgment in *Besix* echoes this spirit of 'reasonableness':

*"That principle of legal certainty requires, in particular, that the jurisdiction rules which derogate from the basic principle of the Brussels Convention laid down in Article 2, such as the rule in Article 5(1), should be interpreted in such a way as to enable a normally well-informed defendant reasonably to foresee before which courts, other than those of the State in which he is domiciled, he may be sued..."*

44. It is the view of this court that a reasonable commercial entity would infer from the construction of the exclusive jurisdiction clause that any matters pertaining to the "execution" of the applicant's obligations under contract are subject to the jurisdiction of the Italian courts. The respondent's proposed interpretation of the term "execution" seems far too technical a construction, especially given that the contract contains no tertiary signature block or stand alone executory obligations, for example: that the contract be executed under seal.

45. The court places particular emphasis on the judgment of McGuinness J in *Clare Taverns*. Here, the question before the court was whether the jurisdiction clause in question amounted to an exclusive jurisdictional clause at all. The learned Judge noted the breadth of the clause, which read:

*"And the buyer hereby submits to the jurisdiction of the English courts."*

Despite the broad nature of the clause, however, McGuinness J accepted that it provided for exclusive jurisdiction, in part because of the accompanying heading, which lent context to its terms:

*"The relevant clause is headed 'jurisdiction and governing law', which indicates that it deals both with the law governing the contract and also with the jurisdiction to which disputes are to be referred."*

46. The applicant in the instant case seems to come from a slightly stronger starting position than the first named third party in *Clare Taverns*, as it is common case in these proceedings that the jurisdiction clause in question is exclusive in nature. The dispute instead surrounds the scope of clause.

47. The heading used in the jurisdiction clause in the instant case is that of "Competent Court". The breadth and generality of this descriptor seems to further temper the supposedly narrow construction that the respondent advocates.

48. Furthermore, it is the view of this court that it would not be appropriate for the respondent's contractual claims to be resolved in a different jurisdiction to those arising from tort. The court again defers to *Clare Taverns* on this point, where McGuinness J held that it would be wholly unsatisfactory to permit a situation whereby different aspects of a claim would need to be determined in separate jurisdictions.

49. With regards to Mr. Cattani's evidence, insofar as Mr. Cattani is asserting that the contract as a whole is unenforceable, the court notes that the law supports the contention that a jurisdiction clause can be evaluated in isolation of the contract as a whole in order to determine its scope or enforceability. Insofar as Mr. Cattani is asserting lack of compliance with the requirements of Article 25, the court is satisfied that the requirements under this section have been met.

50. Finally, the court notes that it is common case between parties that no matter where the plenary proceedings are heard, they will

be decided in accordance to Italian Law, as per the contract. It seems to the court that it would be unsatisfactory and likely repugnant to the original intentions of the parties, to have an Irish court navigate potential disputes with regard to the law of another jurisdiction.

51. It is therefore the court's view that, on the balance of probabilities, the respondent's claim triggers the contract's jurisdiction clause and as such, the appropriate jurisdiction to hear this dispute is the Italian Republic.

52. Accordingly, this court has no jurisdiction to hear and determine the respondent's claim against the applicant, and this court must set aside the service of the notice of plenary summons herein on the respondent and strike out the within proceedings.