Neutral Citation Number: [2014] IEHC 88

THE HIGH COURT

[2009 No. 19013 P]

BETWEEN/

AIDAN McDONALD

PLAINTIFF

AND

AZ SINT ELIZABETH HOSPITAL,

DR. JOOST VAN DER SYPT AND

NORTH WEST WALES NATIONAL HOSPITAL TRUST

DEFENDANTS

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 27th day of February, 2014

1. By notice of motion dated 11th February, 2010, the first and second defendants have invoked the jurisdiction of this Court pursuant to O. 12, r. 26 of the Rules of the Superior Court 1986, as they now seek an order setting the aside the service upon them of these proceedings. These defendants are both Belgian domicilaries and they contend that this Court lacks jurisdiction in respect of the plaintiff's claim having regard to the provisions of Council Regulation No. 44/2001 (EC)("the Brussels Regulation").

2. Before explaining the nature of this claim and the legal issues which now arise, it should first be stated that the claim as against the third defendant has now been compromised and this does not require to be further considered.

3. The claim which I am now require to consider is a claim in negligence for personal injuries as against the first and second defendant and a claim for damages for breach of contract as against the first defendant only. The proceedings themselves arise from a gastric bypass procedure performed on the plaintiff, Mr. McDonald, at the AZ Sint Elisabeth Hospital, Zottegem in Eastern Flanders on 6th March, 2007.

4. Before considering these facts, it is important to stress that in the conext of this jurisdictional motion I am required to examine these background facts simply for the purposes of determining jurisdiction only. In other words, so far as the plaintiff's claims of medical negligence and breach of contract are concerned, I am treating these at face value and I am expressing no view as to the underlying merits of these claims. It is also necessary to record that as the first and second defendants have contested the jurisdiction of the Court, they have not yet had the opportunity of filing any defence to these claims.

5. In the autumn of 2006 the plaintiff was a third level student studying Health and Social Science at the University of Bangor in Wales. He concluded, however, that the course was unsuitable for his future career plans, since it focussed on careers in the UK, whereas he was interested in obtaining work in Ireland. Mr. McDonald abandoned the course at the end of the first semester and returned back to his family home in Kildare. Accordingly, whatever may have been the position while he was a student in Wales, as of the date of the contract in March 2007 the plaintiff was domiciled in Ireland for the purposes of Article 2 of the Brussels Regulation.

6. In February and March, 2007 Mr. McDonald sought treatment for obesity. Having consulted a UK-based English language website, he learned of the facilities offered by the defendant hospital. It is important to stress that the web-based promotional material is clearly directed at both the UK and Ireland. The literature was written in English and not in Flemish or French. Part of the promotional brochure stated:

> "SOS is a totally independent organisation of surgeons, health providers and caretakers. We are based in Belgium with clinics in the UK and Ireland. As part of our team. We have co-workers in the UK and Ireland, all of whom are well qualified, and who endeavour to offer you the very best possible service."

7. As if to underscore this, the brochure gave a consultation address in Dublin at a named medical centre. The prices for the initial consultation were offered in both sterling and Euros. Prospective customers were also supplied with a (named) Irish telephone number and they were told to "use this Irish phone number to dial the clinic directly." The brochure also contained a testimonial from an Irish-based patient.

8. The version of this web-based promotion literature which was exhibited in evidence dates from about 2010 or 2011 (as it refers, *inter alia*, to prospective consultation dates in Dublin and Cork in 2011), but neither party was in a position to produce the precise version of the web-site which was operational in 2007. I think I can nevertheless assume that the website which was operational then must have been in broadly similar terms.

9. There is, however, no dispute but Mr. McDonald telephoned Dr. Van Der Sypt from Ireland on two occasions to discuss the proposed procedure, the costs involved and the making of the appropriate appointments. On 5th March, 2007, Mr. McDonald flew from Dublin to Brussels Charleroi Airport and from there made his way to the hospital. He paid the appropriate invoice for the operation. His Kildare address was the address used in all correspondence between the parties and this was also the address given on the invoice. Mr. McDonald returned to Ireland after the operation.

10. It has to be admitted that the particulars given in the personal injuries summons disclose a slightly different emphasis, because it is pleaded that "when the plaintiff returned to his home in Wales after the operation his condition continued to deteriorate to the extent that he was almost totally incapacitated." These details may, however, have been supplied at a time when the private international law aspect of the claim may not have been in direct focus. It seems clear, however, from the affidavits subsequently filed in opposition to the first and second defendant's motion that Mr. McDonald returned to Ireland and thereafter travelled to Wales for the purpose of tidying up his affairs there following his earlier decision not to pursue the course. His condition further deteriorated

while in Wales. This resulted in an admission to hospital, which in turn gave rise to the claim against the third defendant hospital with which I am not presently concerned.

11. In that personal injury summons Mr. McDonald contended that during the course of the operation the second defendant had conducted an internal spillage of fluid resulting in him suffering from a serious infection in the bowels, an abscess below the diaphragm, pleural pneumonia, septicaemia and general chronic ill health. Mr. McDonald further contends that he was discharged too early by the first defendant and that they dismissed his claims that he was seriously unwell. It is again important to recall that neither Dr. Van Der Sypt or the Hospital have had an opportunity to respond to these contentions.

The Brussels Regulation and the plaintiff's claims
12. It is clear that the first and second defendants are domiciled in Belgium for the purposes of Article 2 of the Brussels Regulation. It follows, therefore, that this Court has jurisdiction in respect of the plaintiff's claims only insofar as they come within either the special jurisdiction provisions of Article 5 or Article 6 or the special rules for consumer contracts contained in Article 15.

13. There is no suggestion that the special jurisdiction provisions of Article 5 or Article 6 come into play here. Specifically, it is accepted that Belgium was the place of the obligation in question for the purposes of special jurisdiction in contract for the purposes of Article 5(1). Nor has it been suggested that the alleged "harmful event" - which would ground a jurisdiction in tort - was other than Belgium for the purposes of Article 5(3).

14. It follows, therefore, that this Court has no jurisdiction to entertain the plaintiff's claims against the first and second defendants unless the case can come within the scope of Article 15(1)(c), which provides:

> "1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:
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> (a) it is a contract for the sale of goods on instalment or credit terms; or
>
> (b) it is a contract for a loan repayable in instalments, or for any other form of credit, made to finance the sale of goods; or
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> (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities."

15. Article 16 of the Brussels Regulation therefore affords a consumer a choice of jurisdiction to bring proceedings against another party and provides, *inter alia*, the following:

> "1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.
>
> 2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled."

16. Accordingly, at issue in the present proceedings is whether (i) the plaintiff is a consumer and (ii) whether he entered a contract for services with (iii) persons providing professional services who had "directed" their activities to this State. If all of these questions can be answered in the affirmative, then this Court can assume jurisdiction in contract by reason of Article 15(1)(c). These issues may now be considered in turn.

Whether the plaintiff is a "consumer" within the meaning of Article 15(1)(c)?
17. There can, I think, be little doubt but that the plaintiff is a "consumer" for the purposes of the Article 15(1)(c). An authoritative exposition of the meaning of this term was given by the Court of Justice in Case C-269/95 *Benincasa v. Dentalkit Srl* [1997] ECR I-3767. In determining whether the contract at issue involved a consumer, the Court held that in accordance with Article 13 of the Brussels Convention 1968, the precursor to the Brussels Regulation, a person was a consumer if they were acting outside their trade or profession. The Court thus stated the following:

> "[12] …regard should be had to the principle laid down by the case-law (see, in particular, Case 150/77 *Bertrand* [1978] ECR 1431, paragraphs 14, 15, 16 and 19, and Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraph 13) according to which the concepts used in the Convention, which may have a different content depending on the national law of the Contracting States, must be interpreted independently, by reference principally to the system and objectives of the Convention, in order to ensure that the Convention is uniformly applied in all the Contracting States. This must apply in particular to the concept of 'consumer' within the meaning of Article 13 et seq. of the Convention, in so far as it determines the rules governing jurisdiction. …
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> [15] As far as the concept of 'consumer' is concerned, the first paragraph of Article 13 of the Convention defines a 'consumer' as a person acting 'for a purpose which can be regarded as being outside his trade or profession'. According to settled case-law, it follows from the wording and the function of that provision that it affects only a private final consumer, not engaged in trade or professional activities (*Shearson Lehman Hutton*, paragraphs 20 and 22)….
>
> [17] Consequently, only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically…"

18. Here the plaintiff was acting outside his own trade or profession when he availed of the medical services supplied by the Hospital and these were also clearly services the provision of which was personal to him.

Whether the plaintiff entered a contract with persons providing professional services with him
19. It is clear that the plaintiff had no contract with Dr. Van Der Sypt at such. He was merely a consultant employed or otherwise retained by the Hospital. It is true that the evidence suggests that Mr. McDonald personally paid Dr. Van Der Sypt, but in effect the latter received the payment on behalf of the Hospital. Insofar, therefore, as Mr. McDonald has a claim against Dr. Van Der Sypt it is a

claim in negligence only and there is no contractual relationship between the parties.

20. As Dr. Van Der Sypt is domiciled in Belgium for the purposes of Article 2 and is there is no suggestion that the "harmful event" for the purposes of Article 5(3) giving rise to the action in negligence occurred in Ireland, this Court accordingly lacks jurisdiction to entertain any claim as against Dr. Van Der Sypt. It could only have jurisdiction if there was a consumer contract for the purposes of Article 15, but as there was no contract between these parties, the issue does not arise. It follows, therefore, that the proceedings as against the second defendant, Dr. Van Der Sypt, must stand dismissed by reason of the lack of subject matter jurisdiction in respect of this defendant.

21. The position with regard to the first defendant, the Hospital, is clearly different. Here there was clearly a contract between the parties in the ordinary sense of the term, since the Hospital provided a service for which the plaintiff paid. It is, of course, true that as Kearns P. observed in *Harkin v. Towpik* [2013] IEHC 351, [2014] 1 I.L.R.M. 51 (a case presenting almost identical issues to the present one), claims of this kind are normally treated by our legal system in reality as tortuous claims for medical negligence. This cannot, however, obscure the fact that there was indeed a contract between the parties.

22. In *Finlay v. Murtagh* [1979] I.R. 249 the Supreme Court held that a professional person generally owes a concurrent duty in both contract and tort to his client. In that case the plaintiff claimed that his solicitor had negligently failed to commence proceedings in a timely fashion in respect of an industrial accident he occasioned at work so that they had become statute-barred. The plaintiff maintained that he was entitled to sue in negligence as well as contract and for that purpose he was entitled to claim (as the law then stood) a jury trial. The Supreme Court agreed with this general proposition, albeit with some subtle qualifications. Henchy J. applied the following test which had been enunciated by Greer L.J. in *Jarvis v. Moy, Davies, Smith, Vandervell & Co* [1936] 1 K.B. 399, 455:

> "The distinction, in the modern view, for this purpose, between contract and tort may be put thus: where the breach of duty alleged arising out of a liability interpedently of personal obligation undertaken by contract, it is tort, and it may be tort even though there may happen to be a contract between the parties, if the duty in fact arises out of that contract. Breach of contract occurs where that which is complained of is a breach of duty arising out the obligations undertaken by the contract."

23. Henchy J. then went on to describe the facts of *Jarvis* as one where a client sued his stockbrokers for damages for breach of contract. He continued, however, by noting ([1979] I.R. 249, 255):-

> "…but the particulars given in the writ show that the substance of the complaint was that the stockbrokers had departed from the specific instructions given by the client. Therefore, the cause of action arose from the breach of a particular binding provision created by the parties, and not from any general obligation of care arising from the relationship of stockbroker and client.The nub of the matter was that the stockbrokers had defaulted on a special personal obligation which is imposed by the contract. They could not have been made liable otherwise than in contract and the court held correctly that the claim was 'founded on contract' in the words of the statute which was being applied".

24. Having discussed the test in *Jarvis* and other contemporary case law, Henchy J. then went on to state ([1979] I.R. 249, 257):-

> "On a consideration of those cases of the authorities mentioned in them, I am satisfied that the general duty of care created by the relationship of solicitor and client entitles the client to sue in negligence if he has suffered damage by reason of the solicitor's failure to show due professional care and skill, notwithstanding that the client could sue alternatively in contract for breach of the implied term in the contract of retainer that the solicitor will deal with the matter in hand with due professional care and skill. The solicitor's liability in tort under the general duty of care extends not only to a client for award, but to any person for whom the solicitor undertakes to act professionally without award, and also to those…with whom he has made no arrangement to act but who as he knows or ought to know, will be relying on his professional care and skill. For the same default there should be the same of cause of action. If others are entitled to sue in tort for the solicitor's want of care, so also should the client; that is unless the solicitor's default arises not from a breach of the general duty of care arising from the relationship but from a breach of a particular and special term of the contract in respect of which the solicitor would not be liable if the contract did not contain such a term. Thus, if the client's instructions were that the solicitor was to issue proceedings within the specified time or to close the sale by a particular date or, generally to do or not to do some act, and the solicitor defaulted in that respect any resulting right of action which the client might have would be in contract only unless the act or default complained of falls within the general duty of care owed by the solicitor."

25. It follows, therefore, that any claim in contract rests not on the general duty of care which the law of negligence sees fit to impose on all professional persons performing professional services, but rather from the specific terms which are expressly or implied (if necessary, by law) to be derived from the contractual relationship between the plaintiff and the Hospital.

26. It may be noted that in the particulars of breach of contract on the part of the Hospital supplied by the plaintiff in the personal injuries summons it is alleged simply that by virtue of s. 39 of the Sale of Goods and Supply of Services Act 1980:

> "it was an implied term of the aforesaid contract that the [Hospital] possessed the necessary skills to supply the aforesaid service and that it would supply the service with the due skill, care and diligence, in breach of the aforesaid contract, the [Hospital] failed to supply the aforesaid service to the plaintiff in any or any adequate manner."

27. Accordingly, if Irish law applies as the proper law of the contract, then these are the implied terms which (according to the plaintiff at least) define the parameters of the Hospital's contractual obligations. In this respect, it would be hard to say that these contractual obligations differ materially from the obligations imposed by the general law of negligence with regard to health care professionals. While it was for those reasons that Kearns P. suggested in *Harkin* that claims of this kind would more naturally be characterised by the Irish legal system as tortious in nature, yet this cannot take from the fact there was a subsisting contract between the patient and the Hospital.

28. Additionally, the concept of "contract" for the purposes of Article 15 must naturally be interpreted autonomously by reference to the European sense of that term (cf. by analogy the comments of the Court of Justice with regard to the meaning of Article 13 of the Brussels Convention in *Benincasa* and Article 15 of the Brussels Regulation in Case C-144/09 *Hotel Alpenhof GmbH* [2010] E.C.R. I-

12527) and it cannot be diluted or qualified by reference to purely national practices or understandings. One might add that the very object of Article 15(1)(c) is also relevant in this context, since it is designed to ensure that consumers who are induced to travel to avail of services elsewhere in the European Union by advertising directed at them in their country of origin are not deprived of a key aspect of consumer protection, namely, the right to sue for damages for breach of contract in the courts where they are domiciled. If it were otherwise, it might mean that such consumers would be dissuaded by the complexities of foreign litigation from pursuing legitimate claims against service providers domiciled in foreign jurisdictions. This is so irrespective of whether such claims would normally be regarded as in essence tortuous in nature by particular legal systems (such as is the case in Ireland), provided, of course, that there is (as here) an underlying contract between the parties.

29. I should add in passing that I am here assuming that Irish law is, in fact, the proper law of the contract, but this matter may yet have to be determined, having regard to the provisions of Article 4 and (perhaps especially) Article 5(2) of the Rome Convention on Contractual Obligations 1980 (which Convention is given the force of law in the State by s. 2(1) of the Contractual Obligations (Applicable Law) Act 1991).(The provisions of the replacement Regulation, Regulation 593/2008 ("Rome II") apply only to contracts made after 17th December, 2009, whereas the contract in the present case dates from March 2007). For present purposes, it is unnecessary to express any further views on the choice of law issues which were not, in any event, argued before me.**Were the Hospital's services "directed" at this jurisdiction for the purposes of Article 15(1)(c)?**

30. At the hearing much debate centred on whether the present case was governed by the decision of Kearns P. in *Harkin v. Towpik* [2013] IEHC 351, [2014] 1 I.L.R.M. 51. In that case an Irish-based plaintiff had travelled to Poland for the purposes of certain cosmetic surgery. Having examined the judgment of the Court of Justice in Case C-144/09 *Hotel Alpenhof GmbH* v. Oliver Heller [2010] E.C.R. I-12527, Kearns P. concluded on the facts of that case that the services in that case had not been "directed" to this jurisdiction.

31. The decision in *Hotel Alpenhof* concerned the non-payment of a hotel bill for a stay booked by a German national in Austria on the internet, in which the Austrian national court asked the Court of Justice to determine whether the fact that a website of the party with whom a consumer concluded a contract can be consulted on the internet was sufficient to warrant a finding that an activity was being "directed" to the Member State in question within the meaning of Article 15(1)(c).

32. The Court of Justice noted that the notion in Article 15(1)(c) of activity "directed to" the Member State of the consumer's domicile was not defined in the Regulation. It accordingly held that the term "must be interpreted independently by reference to principally to the system and objectives of the Regulation, in order to ensure it is fully effective". The Court of Justice further stated that whilst there is no doubt that the aim of Article15(1)(c) and Article 16 of the Regulation is to protect consumers:

> "that does not imply that that protection is absolute…if that had been the intention of the European Union legislature, it would have laid down as a condition for the application of the rules relating to consumer contracts not the 'directing of activities to a Member State' but the mere existence of the website."

33. The Court of Justice instead found that in order for Article 15(1)(c) to apply:

> "[75]…the trader must have manifested its intention to establish commercial relations with consumers from one or more other Member States, including that of the consumer's domicile.
>
> [76] It must therefore be determined, in the case of a contract between a trader and a given consumer, whether, before any contract with that consumer was concluded, there was evidence demonstrating that the trader was envisaging doing business with consumers domiciled in other Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with those consumers."

34. The Court of Justice then held that evidence demonstrating the above did not include:

> "[77]…mention on a website of the trader's email address or geographical address, or of its telephone number without an international code. Mention of such information does not indicate that the trader is directing its activity to one or more other Member States, since that type of information is, in any event, necessary to enable a consumer domiciled in the Member State in which the trader is established to make contact with it."

35. In considering what criteria must be met by a website in order for the activities engaged in by the trader to be capable of being regarded as 'directed to' the Member State of the consumer, the Court of Justice observed:

> "[80] Among the evidence establishing whether an activity is directed to the Member State of the consumer's domicile are all clear expressions of the intention to solicit the custom of that State's consumers.
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> [81] Clear expressions of such an intention on the part of the trader include mention that it is offering its services or its goods in one or more Member State designated by name. The same is true of the disbursement of expenditure on an internet referencing service to the operator of a search engine in order to facilitate access to the trader's site by consumers domiciled in various Member States, which likewise demonstrates the existence of such an intention.
>
> [82] However a finding that an activity is 'directed to' other Member States does not depend solely on the existence of such patent evidence. In this connection, it should be noted that, by its legislative resolution on the proposal for a regulation that is referred to in paragraph 43 of the present judgment (OJ 2001 C 146, p.101), the European Parliament rejected wording stating that the trader had to have 'purposefully directed his activity in a substantial way' to other Member States or to several countries, including the Member State of the consumer's domicile. Such wording would have resulted in a weakening of consumer protection by requiring proof of an intention on the part of the trader to develop activity of a certain scale with those other Member States."

36. The Court of Justice then enumerated a non-exhaustive list of criteria from which it could be inferred that the trader's activity was directed to the Member State of the consumer:

> "[93] ….the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or of a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of

> expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.
>
> [94] On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address or other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established."

37. The Court of Justice thus concluded:-

> "In order to determine whether a trader whose activity is presented on its website or that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them."

38. Having set out these principles as enunciated by the Court of Justice in *Hotel Alpenhof*, Kearns P. concluded in turn ([2014] 1 I.L.R.M. 51, 61):

> "Taking the facts of the present case into consideration, and assuming for the moment that this is a contractual claim rather than one which predominantly sounds in tort, it is difficult to conclude that the proceedings should be brought in this jurisdiction. There is no evidence before the court to indicate that the defendants directed their activities in any specific way to the Irish market. The defendants' website has a United Kingdom domain name, and the contact telephone number provided to the plaintiff by the third named defendant is an English telephone number. It is not preceded with an international dialling code. The currency dealt with was not Euro, but Sterling.
>
> Furthermore, the plaintiff only met the first named defendant for the first time in Poland and was only examined for the first time in Poland, where she also underwent pre-operative tests for the first time. Significantly, it was in Poland that the breast reduction procedure was performed. Although she may have transferred monies constituting a deposit from her bank account in Ireland, this was only a nominal sum in relation to the total cost of the procedure, and the remaining cost of the surgery was paid in Poland. In addition, the plaintiff had signed a consent form while in Poland. All of these matters suggest that the defendants' activities were not directed to consumers within this jurisdiction."

39. While the facts of *Harkin* are not dissimilar in many respects from the present case, there are nonetheless important if subtle differences. It is true that just as in *Harkin* the plaintiff travelled abroad (i.e., in his case to Belgium) for this procedure and there met the consultants for the first time. Just as in *Harkin*, the operation was also performed abroad and the plaintiff discharged the bill when he arrived at the Hospital. But it is equally clear that in contrast to the position in *Harkin* the website in question in the present was also unequivocally directed to customers in Ireland. Thus, the prices for the procedures were advertised in Euro (and not merely in sterling); an Irish telephone number was provided for Irish patients; the testimonials included one from an Irish patient and reference was made to the possibility of pre-travel consultations in Dublin and Cork.

40. In this respect, therefore, the plaintiff in the present case comes within the *Hotel Alpenhof* test in that the Hospital clearly envisaged doing business with patients domiciled in Ireland. This was in contrast to the position in *Harkin* where the relevant website was *exclusively* directed at patients domiciled in the United Kingdom. Moreover, as Kearns P. noted in his judgment, the plaintiff in that case had simply happened to come across the website following an internet search.

Conclusions

41. For all of the above reasons, I must conclude that although the Court has no jurisdiction in respect of the claim in negligence against Dr. Van Der Sypt, the plaintiff is nonetheless entitled to pursue the claim in contract as against the Hospital by virtue of the provisions of Article 15(1)(c).

42. In this regard, it suffices to say that the plaintiff is a "consumer" for this purpose, that the claim in question is a contractual claim (even if it would more naturally be characterised by Irish law as principally a claim in tort) and the Hospital "directed" its services at Ireland and Irish consumers in the manner envisaged by the Court of Justice in *Hotel Alpenhof*.

43. It follows, therefore, that this Court has jurisdiction only in respect of the claim in contract as against the Hospital by virtue of Article 15(1)(c) of the Brussels Regulation, but the claims in tort brought against Dr. Van Der Sypt must stand dismissed for want of jurisdiction.