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WORKING GROUP 1

What are protective measures?

I. Read the case below, and provide the words missing.

CASE STUDY

Mr JPR, who resides in Germany, is the owner of (1) property in Perpignan, France, ownership of which he donated to his son, Mario Reichert, by a notarial instrument executed at Marseille, France. That donation was (2) by Dresdner Bank AG, a creditor of Mr JPR, in the Tribunal de Grande Instance (Regional Court), Grasse, in whose judicial district the property (3) issue lies, on the basis of Article 1167 of the French Civil Code, under which creditors may 'challenge in their own name transactions entered into by their debtors in fraud of their rights' by a procedure known as the 'action panlienné.

Mr JPR challenged the jurisdiction of French courts to deal with the case.

Dresdner Bank (4) that the *action paulienne* seeks to give the creditor a (5) security and so constitutes a 'protective measure' , so French courts have jurisdiction according to art.35 of Regulation 1215/2012:
„Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available (6) the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.”



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LEGAL ASSESSMENT

II. Answer the following questions.

1. In order to apply art.35 of Regulation 1215/2012 in this case the following conditions are required:
 - a) Dresdner Bank filed the application after 10 January 2015.
 - b) The defendant has to enter into appearance or at least to be summoned.
 - c) The action should not be related to “immovable property”.
 - d) The action should seek to preserve a factual or legal situation so as to safeguard rights the recognition of which is, moreover, sought from the court having jurisdiction as to the substance of the matter.
 2. Art.35 of Regulation 1215/2012:
 - a) is applicable in the case, but only if Dresdner Bank filed the application after 10 January 2015;
 - b) is not applicable to the case, because the French courts have exclusive jurisdiction regarding the actions related to “immovable property”, such in the current case;
 - c) is not applicable to the case, because the action is not in the scope of the application of this article.
 3. Protective measure includes:
 - a) actions seeking to preserve a factual or legal situation so as to safeguard rights the recognition of which is, moreover, sought from the court having jurisdiction as to the substance of the matter;



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- b) an interim payment of a contractual consideration, but only if repayment to the defendant of the sum awarded is guaranteed if the plaintiff is unsuccessful as regards the substance of his claim and, secondly, the measure sought relates only to specific assets of the defendant located or to be located within the confines of the territorial jurisdiction of the court to which application is made;
- c) an interim relief sought by the defendant against the claimant after the commencement of the legal proceedings, but only if there was a connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the State of the court before which those measures are sought.

III. Explain the following words and phrases or provide synonyms or near-synonyms for them.

- (1) to enter into appearance;
- (2) to be summoned
- (3) to safeguard rights
- (4) defendant
- (5) plaintiff
- (6) sum awarded

IV. Rephrase the following sentences using your own words.

- (1) actions seeking to preserve a factual or legal situation
- (2) an interim payment of a contractual consideration
- (3) an interim relief sought by the defendant against the claimant after the commencement of the legal proceedings