

Amsterdam Court of Appeal

Date of decision 26-11-2024

Case number 200. 312.819/01

Areas of law Civil law and tax law department

AMSTERDAM COURT OF APPEAL

civil and tax law department, Team I

case number : 200.312.819/01

Case and role number District Court of Amsterdam : C/13/688861/ HA ZA 20-881

judgment of the plural civil chamber of 26 November 2024

regarding

STICHTING DIESEL EMISSIONS JUSTICE.

Based in Amsterdam,

Appellant, also incidental respondent lawyer Mr. Q.L.C.M. Bongaerts, Amsterdam,

At,

1. STELLANTIS N.V. (formerly FIAT CHRYSLER AUTOMOBILES N.V.) based in Amsterdam

the legal person under foreign law (2-4)

2. STELLANTIS EUROPE S.P.A. (formerly FCA ITALY S.P.A.) based in Turin, Italy
3. ALFA ROMEO S.P.A. based in Turin, Italy
4. FCA US LLC, based in Auburn Hills, Michigan, United States of America
5. FCA NETHERLANDS B.V., based in Amsterdam

Defendants, also incidental appellants
lawyer: mr. A Knigge, Amsterdam.

6. ABSWOUDE B.V., based in Noordwijk,
7. **AMERICAN CARS SCHIMMERT** B.V., Based in Schiinemert,
8. AUTO AALTINK B.V., based in Nijverdal,
9. AUTO BIERMANS B.V. (now dissolved), established in Berg en Terblijt,
10. AUTO **KUIJER** B.V., established in Veenendaal, interested parties, Advocate Mr M.J. van Joolingeh of 's-Hertogenbosch,
11. BROEKHUIS ZWOLLE B.V., formerly AUTOPALACE Z WOLLE B.V., based in Zwolle, Advocate Mr J.S. de Jong of Nijmegen,
12. AUTO 'T HOOFT B.V., Based in Doetinchem,
13. AUTO TALSMA B.V., Based in St.-Annaparachie, municipality of Waadhoeke,
14. AUTO ZWEEUW B.V., based in Hendrik Ido Ambacht,
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32. AUTOMOBILE COMPANY REUSINK ZUTPHEN B.V, based in Zutphen,
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- 70. **VAN MOSSEL FJAM B.V.**, based in Waalwijk,
- 71. VAN VLIET AUTOGROEP B.V., based in Woerden,
- 72. WEIJERS AUTO B.V., established in Ridderkerk, respondents, Advocate M.J. van Joolingen of 's-Hertogenbosch.

Appellant is referred to as “SDEJ”. Respondents one to five will collectively be referred to as Stellantis c.s. Respondents two to four will be referred to as “Car manufacturers”. Respondents six to ten and 12 to 72 will be referred to as the “Dealers”. Respondent 11 will be referred to as AutoPalace.

1. The procedure

In this procedure a final judgment has been given on October 22, 2024. Therein the disputed judgement has been give between the parties that are mentioned above.

With the H-16 form and an attached letter of October 22, 2024, SDEJ has requested to correct the judgement. By letter of October 28, 2024, Stellantis c.s. made known that they refer to the judgement of the court of appeal. By letter of October 29 and 30, 2024, the Dealers and Autopalace have followed the position of Stellantis c.s.

2. The assessment

2.1 In recital 2.1. of the judgement the court considered that the interlocutory judgement ruled that the Dutch court holds international jurisdiction, except for the claims of claimants that have bought or leased a vehicle outside of the Netherlands (i.e. elsewhere in the European Union). In the operative part of the judgement (recital 3.2) the Dutch court is declared incompetent (declaration of no jurisdiction) to rule on the claims insofar SDEJ represents claimants that have bought or leased a vehicle outside of the Netherlands, within the European Union.

2.2 Rightly so, SDEJ points out that the interlocutory judgement (recital 4.13) ruled that jurisdiction was wrongly assumed in the case *against the Car manufacturers* [italics Court of Appeal] insofar as SDEJ represents claimants who have bought or leased their vehicles outside of the Netherlands, within the European Union and has rightfully claimed jurisdiction of the claims of SDEJ insofar SDEJ represents Claimants that have bought or leased a vehicle in the Netherlands. Recital 2.1 and the operative part 3.2 of the final judgement contain a manifest error that holds for correction on the basis of art. 31 of the Code of Civil Procedure. The Court of Appeal corrects the judgement as follows.

3. Judgement

The Court of Appeal:

Corrects the judgement of Ocotber 22, 2024 case number 200.312.819/01 as such that it will be read as the judgement attached.

This judgment was delivered by mrs. L. Alwin, J.W.M. Tromp and M.C. Bosch and pronounced in public by the presiding judge on October, 26th 2024.

Amsterdam Court of Appeal

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Areas of law Civil law and tax law department

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The appellant shall be referred to as SDEJ. Respondents 1 to 5 are collectively referred to as Stellantis c.s. and each individually as Stellantis, Stellantis Europe, Alfa Romeo, FCA US and (respondent 5) the Importer. Respondents 2 to 4 are collectively referred to as the Car Manufacturers. Defendants 6 to 10 and 12 to law 72 together are referred to as the Dealers. Respondent 1.1 is referred to as AutoPalace.

1. The case on appeal

An interlocutory judgment was delivered in this case on 13 August 2024. Therein, the trial progression up to that judgment was accelerated. In the interlocutory judgment, a pre-trial hearing was ordered on 4 October 2024. Prior to this hearing, all parties sent a short note to the court with their views on let further proceedings.

At the pre-trial hearing of 4 October 2024, the parties had their views on the matter explained, SDEJ by the aforementioned Mr Boligaerts, Stellantis c.s. by the aforementioned Mr Knigge, and Mr P. Sliijter, of the Rotterdam Bar, and Mr D. van der Linden and Mr J. Ltiitwieler, of the Amsterdam Bar, the Dealers by the aforementioned Mr Van Joolingen and AutoPalace by the aforementioned Mr De Jong.

Finally, the case was referred to the roll for judgment.

2. Further assessment

2.1 In the interlocutory judgment, it was held that the Dutch court has jurisdiction, except with respect to the claims against the Car Manufacturers insofar as SDEJ thereby acts on behalf of claimants who bought or leased a Vehicle outside the Netherlands, elsewhere in the European Union, and that Art. 3:305a (old) of the Dutch Civil Code applies to the claims relating to the Euro-5 engines and the Act on Settlement of Mass Damage in a Collective Action (WAMCA) applies to the claims relating to the Euro-6 engines. In view of this foregoing assessment, the judgment under appeal cannot be upheld in its entirety. For practical reasons, the judgment under appeal will be set aside and a new operative part will be formulated.

2.2 The court of appeal sees no reason to stay the case pursuant to art. 356 paragraph 1 Rv in order to decide on the main case on appeal, nor, as SDEJ requests - after further debate on this issue - to decide on the admissibility of SDEJ in the collective action, alternatively on the question whether the possibility that different legal systems apply precludes similarity. Referral back for further adjudication is also in keeping with the procedural order established by the court in these collective action proceedings, according to which the case is heard in phases and party debate is always conducted on a phase-by-phase basis. The Automobile Manufacturers and the Dealers have not yet concluded for reply on the issues in phase 2 nor on the assignability of the claims raised in phase 3.

2.3 The fact that an objection leads to longer proceedings than if the Court keeps the case to itself and the substantive dispute is decided in a single court of fact or if SDEJ's admissibility in the collective action is decided does not lead to a different opinion. This does not detract from the efficiency and effectiveness intended by the legislature with the collective action, which envisages the bundled settlement of claims in one collective action in two factual bodies. The handling and adjudication of the remaining litigation in

this collective action in two factual bodies enhances (the depth of) the debate and gives all parties the opportunity to make use of the possibilities for redress in appeal. The delay and additional costs for the parties associated with referral back do not carry sufficient weight.

2.4 Finally, the court sees reason to grant SDEJ leave to file a supreme court appeal.

2.5 As the parties were mutually unsuccessful on points, the court will compensate the costs of the appeal. The court will have to decide on the costs of the proceedings at first instance in the final judgment to be delivered in due course.

3. Decision

The court:

3.1 Sets aside the contested judgment;

3.2 declares the Dutch court incompetent to take cognisance of the claims against the Car Manufacturers in so far as SDEJ thereby acts on behalf of claimants who bought or leased a Vehicle outside the Netherlands, elsewhere in the European Union;

3.3 refers the case back to the District Court for further adjudication taking into account what has been considered and decided in this judgment and the interlocutory judgment;

3.4 grants leave to appeal in cassation;

3.5 orders the parties to bear their own costs on appeal.

This judgment was delivered by Messrs L. Alwin, J.W.M. Tromp and M.C. Bosch and pronounced in public by the presiding judge on 22 October 2024.