owner of these companies was the first defendant, Mr Grovit. The claimant resigned because he felt that he was being asked to undertake activities that were unethical. He brought unfair dismissal and wrongful dismissal claims before the Employment Tribunal in London. Shortly thereafter he was sent a letter on CSA paper purporting to terminate his contract. A month after the Employment Tribunal had determined that it had jurisdiction to hear the case, CSA brought proceedings in Spain claiming that it was the claimant's employer and seeking damages for breach of contract. There was evidence that the defendants had not provided full information to the Spanish court about the English proceedings.

The plaintiff did not take any steps in the Spanish proceedings. Instead he sought an anti-suit injunction from the High Court to restrain the defendants from pursuing the Spanish action. An anti-suit injunction was originally granted *ex parte*, but was discharged at an *inter partes*, hearing on the basis that such an injunction was incompatible with the 1968 Brussels Convention. The discharge was stayed pending an appeal to the Court of Appeal. The Court of Appeal held that where the English court concluded that proceedings had been launched in another Brussels Convention jurisdiction solely for the purpose of harassing and oppressing a litigant in English proceedings, the court had power to protect its own process by restraining the plaintiff in the other jurisdiction from continuing the foreign process.

That power was not limited, in the context of the Convention, to situations where the English court had exclusive jurisdiction or where the English court was first seised for the purposes of Article 21. The power was "inherent and at large" and could only be restricted by statute. There was nothing in the Convention to impose such a restriction.

In the course of argument the Court considered whether Article 21 of the Brussels Convention had any application to the set of facts before it. The defendants argued that the Spanish action was brought by CSA, while the English action was against a different company in the Group. The actions were not therefore between the same parties. They further argued that the issues raised by the two actions were different. The Court concluded that if there are some claims in the proceedings before the second court seised which are discrete from the subject-matter of the proceedings in the first court seised, but which could be raised in that court by way of counterclaim, there is sufficient identity of cause of action for the purposes of Article 21 of the Brussels Convention. Drawing on the recent decision of the European Court in Case C–351/96 *Drouot Assurances SA* v. *Consolidated Metallurgical Industries (CMI Industrial Sites)*[14] it found Article 21 to be applicable even where there is not a strict identity of parties, if on a pragmatic view the parties must be regarded as the same because of their identity of interests.

III. PROVISIONAL MEASURES UNDER THE BRUSSELS CONVENTION

The definition of provisional and protective measures and the scope of Article 24 of the 1968 Brussels Convention were matters addressed by the European Court

14. [1998] I.L.Pr. 485.

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in Case C-391/95, *Van Uden Maritime BV* v. *KG in Firma-Decoline*.[15] The plaintiff was seeking interim payment under a contract even though the dispute over payment had been referred to arbitration. As an initial issue the European Court noted that the existence of arbitral proceedings on the merits did not take the dispute over provisional measures out of the scope of the Convention. The subject-matter of the dispute, which was determinative in establishing the applicability of the Convention, was payment under a contract for the provision of services. The existence of an arbitration agreement was, nevertheless, found relevant by the Court. The Court noted that normally a national court with jurisdiction to hear the merits of a case would also have jurisdiction to hear any application for provisional or protective measures. Where the proceedings had validly been referred to arbitration, however, no national court would have jurisdiction to hear the merits of the case under the Convention. Article 24 was then the only basis on which a court might assume jurisdiction to grant provisional measures.

Article 24 of the Convention enables a court of a contracting State to grant "such provisional, including protective, measures as may be available under the law of that state" even when the proceedings on the merits must be brought elsewhere. This provision has been interpreted as meaning that States can rely on traditional exorbitant rules of jurisdiction (such as the residence or nationality of the claimant) in order to furnish provisional relief. One of the issues in *Van Uden* was whether Community law imposed any additional limitations on the competence of a court to grant such measures. The European Court recognised that the prohibition on the use of exorbitant rules contained in Article 3 of the Convention did not apply to the special regime in Article 24. It nevertheless concluded that the nature of the jurisdiction in Article 24 was such that there must be "a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the contracting State of the court before which those measures are sought. It further follows that a court ordering measures on the basis of Article 24 must take into consideration the need to impose conditions or stipulations such as to guarantee their provisional or protective character."

The Court went on to give more specific guidance in relation to a claim for interim payment "of a contractual consideration". Although many such claims in practice settled the dispute between the parties without any hearing on the merits, the Court noted that it was not possible to rule out the possibility that an interim payment might indeed be a provisional measure, but its provisional character must be guaranteed. "Interim payment of a contractual consideration does not constitute a provisional measure within the meaning of Article 24 unless, first, 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."

This ruling leaves open a number of questions about the scope of Article 24. What is meant, for example by specific assets "to be located" within the confines

15. [1999] I.L.Pr. 73.

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of a court's territorial jurisdiction? More generally, how should the requirement that there should be a "real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the contracting State of the court before which those measures are sought" be applied in cases other than claims for interim payment? Does it, for example, mean that an application for an asset freezing measure must be addressed to the court for the place where the assets to be frozen are situated? Or is it enough if the defendant is subject to the jurisdiction of that court such that coercive measures can be adopted to ensure his compliance with the order?

IV. RECOGNITION OF JUDGMENTS AND AUTHENTIC INSTRUMENTS UNDER THE BRUSSELS CONVENTION

That question remains open following Case C–99/96 *Mietz* v. *Intership Yachting Sneek BV*[16] a more recent decision that raises some similar issues but continues to confine its attention to interim payments. The applicant was appealing against a German order for enforcement of a Dutch judgment ordering interim payment in *kort geding* proceedings. The applicant argued that the underlying contract was covered by the special provisions on consumer contracts in Articles 13 *et seq.* of the Brussels Convention. Therefore failure to observe the rules of jurisdiction in Articles 13 *et seq.* was a ground for non-recognition of the Dutch judgment. The contract was for the sale of a luxury yacht, to be paid for in five instalments during its period of construction and trial. A written contract was signed in the Netherlands, but the applicant alleged for the first time in the German proceedings that the contract was negotiated at a boat show in Germany and an oral contract was made there.

Part of the judgment is concerned with the definition of the contract—which was found to be a contract of sale, but not sale on instalment terms (because there was no extension of credit). This part is not very illuminating since the Court emphasised that it was responding narrowly to the questions posed by the referring German court and indicated that it was not giving a fully rounded view of whether the contract in question 2as covered by Articles 13 *et seq.*

The Court went on to consider the way that the court in the State addressed should approach a judgment of a contracting State with a view to possibly refusing it recognition on the basis that the court in the State of origin failed to observe one of the mandatory heads of jurisdiction in the Convention, such as the protective provisions concerning consumers. The court in the State of origin had made no statement about the basis on which it assumed jurisdiction. The applicant had appeared and contested the case in *kort geding* proceedings. The European Court noted that, even if the applicant was a consumer, the court in the State of origin might still have had jurisdiction to grant provisional measures. The Court then went on to differentiate between provisional measures within the scope of Article 24 and those that went "beyond the limits provided for in that provision".

If the court in the State of origin expressly based its jurisdiction to order interim payment on a head of jurisdiction giving it competence to hear the merits (or if such a basis of jurisdiction was evident from the terms of the judgment) then the

16. [1999] I.L.Pr. 541.

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