

EXTRACTS OF THE JUDGMENT OF THE SUPREME COURT

The United States of America v. A.F.W. Delsman

Delsman concluded two contracts with the 'contracting officer' of the air force base of the United States of America – 'USAFE' – at Soesterberg (near Amersfoort). The contracts were terminated prematurely by USAFE and when protests were of no avail Delsman sued the USA before the Sub-District Court of Amersfoort. A few days later the writ of summons was served a second time at the embassy of the USA in The Hague. However, the USA (USAFE) did not enter an appearance and the Sub-District Court gave judgment by default on 20 May 1992. The judgment was served on the USA by bailiff's notification of 8 July 1992 at the address of USAFE in Soesterberg, where it was left in a sealed envelope.

The USA objected to the default judgment, arguing inter alia that the service of the default judgment at the address of USAFE in Soesterberg had been void.

The Supreme Court held:

[...] The second complaint challenges the view of the District Court that the USA has an office in Soesterberg within the meaning of Article 1:14 of the Civil Code and is therefore domiciled there.

This complaint is well-founded. Article 1:14 of the Civil Code is not applicable to States, and the District Court was therefore wrong to assume on the basis of this provision that the United States was domiciled in Soesterberg too for the purpose of the present matter.

The established facts do not show that the US has a domicile elsewhere than the place where it has its seat. It follows that the service [of the default judgment] should have been effected in accordance with Article 4, point 8, of the Code of Civil Procedure [at the seat of the US] [...].