

Jurisprudence

Informations concernant l'affaire

ID national: Court of Appeal, Judgment 92/2018

État membre: Luxembourg

Nom commun: Société anonyme SOC1) v X

Type de décision: Décision de justice faisant l'objet d'un recours

Date de la décision: 25/10/2018

Jurisdiction: Court of Appeal

Objet:

Demandeur:

Défendeur:

Mots clés: insurance contract, unfair terms, public policy, consumer protection

Articles de la directive

Unfair Commercial Practices Directive, [Whereas, \(3\)](#) Unfair Commercial Practices Directive, [Whereas, \(4\)](#) Unfair Commercial Practices Directive, [Whereas, \(5\)](#)

Note introductive

Invalidity of an unfair contractual term inserted in an insurance contract under the Unfair Terms Directive.

Faits

Plaintiff X had asked the Luxembourg District Court to order 'SOC1' for the amount he declared having paid to 'A' on the basis of a document titled "insurance application" in the erroneous belief that 'A' acted as an agent of 'SOC1'.

In the first instance, the Luxembourg District Court sentenced 'A' on the charge of fraud of which X had been a victim and dismissed the claim brought by 'X' against 'SOC1'.

In the second instance, the Court of Appeal annulled, on the basis of Articles L. 211-2 (1) and L. 211-3 (24) of the Consumer Code, the contractual clause of the insurance application, signed by 'X', since the contract proposal was signed between a consumer and a professional. It concluded that 'SOC1' was related to 'X' on the basis of the apparent mandate.

'SOC1' mentions, however, that the provisions of the Consumer Code concerning unfair terms do not apply to contractual clauses that are directly or indirectly fixed by the legal or regulatory provisions contained in the insurance proposal under the terms of Article 211-5 of the Consumer Code in the section titled "Unfair terms".

In this respect, it requests the application of Article 9 (1) of the amended law of 27 July 1997 on insurance contracts, which provides that: "The insurance proposal does not bind either the candidate policyholder or the insurer to conclude the contract."

Question juridique

In the context of an insurance contract between a consumer and a professional, on what legal basis can an unfair contractual term be annulled?

Décision

The Court of Appeal considered that the application of Article 211-5 of the Consumer Code is a matter of public policy and, as a result, it dismissed the application of Articles L. 211-2(1) and L. 211-3(24) of the Consumer Code, to the detriment of the application of the special law on insurance contracts.

Texte intégral: [Texte intégral](#)

Affaires liées

Aucun résultat disponible

Doctrine

Aucun résultat disponible

Résultat

The request by company 'SCO1' must be reviewed by the Court of Appeal regarding the application of the special law on insurance contracts.