

## Case law

### Case Details

**National ID:** Court of Appeal, Judgement 23/2018

**Member State:** Malta

**Common Name:** Gravino Anthony et vs La Valette Funds SICAL p.l.c. et

**Decision type:** Other

**Decision date:** 16/12/2019

**Court:** Court of Appeal

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:** age, unfair commercial practices, B2C, financial services

### Directive Articles

Unfair Contract Terms Directive, [Article 4](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5](#)

### Headnote

**ECLI:MT:AAMM:2019:119710**

1. Aside from insisting that the terms in the contract are unfair, the plaintiffs also claimed that since the Bank did not take into account that they were of an advanced age, it engaged in an unfair commercial practice that distorted their economic behaviour. However, even though the plaintiffs were clients of the appellant bank, the former sold their shares in the Fund and, for this reason, could not be considered as consumers following the sale.

2. Even though the plaintiffs were clients of the appellant bank, the former sold their shares in the Fund and, for this reason, could not be considered as consumers following the conclusion of the sale. Furthermore, while the plaintiffs are insisting that the terms in the contract are unfair, the Court explains that the unfairness of a contract term cannot relate to the definition of the main subject matter of the contract.

### Facts

The plaintiff consumers, who were of an advanced age, were shareholders in a Fund and brought a claim against the Bank controlling the Fund arguing that the Bank invested in investments negligently which resulted in a loss in the value of their shares. The plaintiffs were then approached by the Bank with a choice to have their shares bought back by the Bank at a lower price. The issue was first raised with the Arbiter for Financial Services, who found for the consumers. The defendant Bank appealed stating that an agreement was entered into between the parties for the sale of their shares.

### Legal issue

1. Given that the plaintiffs could not be considered as consumers, the Court could not assess whether the Bank engaged in an unfair commercial practice.

2. Contractual terms falling within the concept of the main subject-matter of the contract are those terms that lay down the essential obligations of the contract and, as such, characterise it.

### Decision

1. The Court considered that once the plaintiffs accepted that offer, they could no longer be considered consumers. Therefore, they could not base their claim on the defendant engaging in unfair commercial practices which materially distorted their economic behaviour.

2. The Court considered that the terms complained of by the plaintiff constituted an integral part of the transaction between the parties. Once the plaintiffs accepted that offer, they could no longer be considered as consumers and had no juridical interest in the complaint made before the Arbiter for Financial Services.

URL: <https://ecourts.gov.mt/online services/Judgements/Details?JudgementId=0&CaseJudgementId=119710>

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### Related Cases

No results available

### Legal Literature

No results available

### Result

The Court annulled the decision of the Arbiter for Financial Services and found for the defendants.