

Case law

Case Details

National ID: N 4/95

Member State: Denmark

Common Name: The Consumer Ombudsman versus Den Danske Bank A/S and The Danish Bankers' Association

Decision type: Other

Decision date: 26/01/1999

Court: Sø- og Handelsretten (Others, Copenhagen)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 7](#)

Headnote

1. The case concerned an injunction according to the Marketing Practices Act § 1 (implementing art. 7 of the Unfair Contract Terms Directive 93/13/EEC) against a bank's terms giving the bank an unlimited right to alter the interest rate and charges etc. unilaterally and against the bankers' association's recommendation to its members to apply such terms in their contracts

Facts

The case was brought before the court by the Consumer Ombudsman claiming injunctions under the Marketing Practices Act against Den Danske Bank (the biggest Danish bank) and the Danish Bankers' Association prohibiting the bank to apply and the Association to recommend its members to apply contract clauses giving the bank an unlimited right to alter unilaterally the interest rate or charges concerning consumers' deposits and loans.

The Maritime and Commercial Court of Copenhagen decided the case in favour of the Consumer Ombudsman.

Legal issue

Transaction costs reduce the mobility of consumers who are not content with alterations of the interest rate etc.

for want of competition between banks concerning alteration clauses a consumer looking for another bank is not likely to find one without a contract clause to the same effect;

therefore, consumers' formal legal right to repay the entire loan prematurely and go to another bank is often no alternative in the real world ;

according to the practice of the Banking Complaints Board and of the courts in individual civil suits the banks do not have an unlimited right to alter the interest rate etc;

thus, the wording of the contract clause does not reflect a position which is tenable under contract law;

furthermore, the contested contract clauses violate the disclosure rules of the Consumer Credit Act (398/1990) according to which the contract shall include a statement of the conditions under which the credit costs may be altered, cf. art. 4, 2, b) of the Consumer Credit Directive (87/102/EEC);

the fact that the banks are exempted from i.a the Consumer Credit Act's general prohibition of clauses making variations of credit costs following an index influenced by the lender, does not mean that the banks have an unlimited right to make alterations.

Decision

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