

Case law

Case Details

National ID: N° de pourvoi : 02-13285

Member State: France

Common Name: Syndicat départemental de contrôle laitier de la Mayenne

Decision type: Other

Decision date: 15/03/2005

Court: Cour de Cassation (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 2](#)

Headnote

1. The term “non-professional” as used in French legislation differs from the term “consumer”.
2. The ECJ interpretation of the term “consumer” from 22 November 2001 does not apply to the term “non-professional” as laid down in French law.
3. The term “non-professional” does not exclude legal entities from enjoying protection against unfair contract terms.
4. However, this protection, as provided for in article L.132-1 of the Consumer Protection Act (Code de la consommation, CC) is not afforded to a union of dairy farming inspection as this could only have concluded the disputed contract in a professional capacity.

Facts

The Mayenne Union of Dairy Farming Inspection (the “Union”) is a professional association of dairy farmers. Under its memorandum of association, it carries out operations to inspect the performance, status and identification of livestock. The Union concluded, with Europe Computer Systems (ECS), a rental agreement for IT equipment with an option to buy. This was tacitly extended from February 1997.

Under the terms of the contract, when the initial rental period had expired and provided that the lessee had met all its obligations, there were three options open to the lessee:

- 1) Purchase the equipment in whatever condition it may be. Ownership would only be transferred once the outstanding value had been paid in full. Until this point, the lessee would still be bound by the obligations in the existing contract.
- 2) Return the equipment to the leaser.
- 3) Renew the rental agreement by signing a new contract, in which case the new rental conditions would have to be set by joint agreement. If the lessee fails to notify the leaser of his decision by the means and within the timeframe laid down, the rental agreement remains in place by tacit extension and both parties are entitled to terminate the contract at any time by giving nine months' notice. This does not apply if the leaser formally opposes the tacit extension by notifying the lessee in writing (sent by recorded delivery) at least one month before the rental agreement is scheduled to expire. Rental charges for a period of tacit extension are the same as the most recent charges.

In this particular case, the Union did not notify ECS of its choice before the end of the initial period. ECS therefore lodged a claim for outstanding rental charges, as it regarded the rental contract to have been tacitly extended.

Legal issue

The Supreme Court upheld the Court of Appeal ruling, which ordered the Union to pay the rental charges owing under the extension period. The ruling was made on the following grounds:

Under article L. 132-1 CC, in the version stemming from Act 95-96 of 1 February 1995 transposing Directive 93/13/EEC of 5 April 1993, protection against unfair contract terms is afforded both to consumer and to non-professionals.

The Supreme Court noted that the term “consumer” as defined by the ECJ ruling of 22 November 2001 can only apply to natural persons. This interpretation is binding for French judges. The Union could thus not be regarded as a consumer because it was a legal entity.

Nonetheless, the Supreme Court also referred to the fact that French legislators had extended the protection afforded under article L. 132-1 CC to non-professionals. Hence, since a non-professional – who is distinct from a consumer – can be a legal entity, this protection could be afforded to the Union. The Union argued that the tacit extension clause should be regarded as not being a written clause as it was an unfair term. However, the Union was not entitled to the protection afforded by the legislation governing unfair terms because the Union had acted in a professional capacity.

Decision

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