

Case law

Case Details

National ID: link

Member State: Belgium

Common Name: Algemeen Ziekenhuis St-Lucas VZW / R. Jonckheere

Decision type: Other

Decision date: 04/03/2003

Court: Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Gent)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 6, 1](#). Unfair Contract Terms Directive, [Article 7](#) Unfair Contract Terms Directive, [ANNEX I, 1](#).

Headnote

1. The court has the competence to assess on its own motion the conformity of a contract with the provisions on unfair contract terms.
2. When a consumer signs an acknowledgement of debt, which includes sums which are the result of the application of unfair contract terms, the acknowledgement is to be interpreted as a renunciation of his rights, done expertly.

Facts

On 28/11/1999 and 9/3/2000, R.J. signs a contract with the hospital AZ St-Lucas, covering hospitalisation costs. This contract contains a clause stating that, in case of non-payment within fourteen days after receiving the invoice, a sum corresponding to the interest rate of 10% will be added for each outstanding month. Additionally, the invoice is increased with 15% as a compensation for damages.

At first, R.J. leaves the invoices unpaid, which leads to the aforementioned increase of the money due. In the end, R.J. signs an acknowledgement of debt. This acknowledgement of debt clearly specifies that the debt consists of the amount of the initial invoice, the interest and the damages, in accordance with the contract clauses.

The question now is whether the court can on its own motion declare the contract clauses null and void.

Legal issue

Article 32, no 15 of the Act of 14 July 1991 on trade practices and consumer information and protection prohibits unilateral damage clauses. It considers as unfair any clause that aims to determine the amount of the compensation for damages payable by the consumer if he does not fulfil his obligations, without providing for a similar clause to the account of the seller who fails to perform his side of the contract.

The court is of the opinion that the provisions on unfair clauses aim at protecting the consumer adequately, consumers being considered weaker parties to contracts. Therefore sellers are discouraged to insert unfair clauses in contracts with consumers.

This goal can best be achieved by allowing the judge to declare an unfair contract term null and void on his/her own motion. The court draws strengths for this viewpoint from a recent judgement of the European Court of Justice (Océano Gruppo), in which the possibility for the judge to declare the nullity on his own motion found its justification in the unequal relationship between the consumer and the seller. The Court of Justice ruled that the goal of article 6 Directive 93/13, ensuring that unfair contract terms shall not be binding for the consumer, could possibly not be reached if the consumer has to invoke the nullity himself.

Based on the opinion that the provisions on unfair contract terms have to be interpreted in conformity with Directive 93/13, the court concludes that it is entitled to declare the nullity of an unfair contract term on its own motion. Furthermore, the court finds the clause in R.J.'s contract contrary to Article 32 No 15, because no similar clause to the account of the seller who fails to perform his side of the contract is provided for in the contract.

However, the court rules that by acknowledging the debt, amounting to a sum which includes interests and damages, R.J. renounced the right to request the nullification of the clause. Although unfair contract clauses are null, the nullity is not absolute, as a consequence of which the consumer may reject the protection offered by Law.

Decision

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