

Case law

Case Details

National ID: 344/2002

Member State: Spain

Common Name: Günter Johann and Gabriele Gertrude P. v “Turventa S. L. U.” and “Nove Ferien Plus Est.”

Decision type: Other

Decision date: 16/09/2002

Court: Audiencia Provincial (Appellate court, Santa Cruz de Tenerife)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Timeshare Directive, [Article 1](#) Timeshare Directive, [Article 2](#)

Headnote

1. The lack of stipulation of the periods of times for the enjoyment of timesharing rights, does not imply necessarily an abuse or obscurity of the contract clause, and therefore is not void, since it can mean a benefit for the consumer, by allowing him more freedom of choice of the times of enjoyment, as long as the booking is done well in advance.

2. Establishing a period of enjoyment under the one set up by law (3 years in the Law, 15 months in this case), does not stop the application of the law when a system of automatic annual extensions is established, which makes the contract to be in fraud of the law.

Facts

A German married couple signed two contracts to do with timesharing rights with two different companies, “Turventa” and “Nova Ferien Plus”. The contract with “Nova Ferien Plus” had two different objects: on the one hand, the membership with “Nova Ferien Plus” (“Turventa” would work for that company by attracting prospective clients) and on the other, the possibility of enjoying timesharing rights. In the contract signed with “Turventa”, this company offers the possibility of week holidays within this regime, establishes the conditions of the contract and receives the payment. The consumers, unhappy with the exercising of their rights, stopped paying and “Nova Ferien Plus” complained to a German court for the money to be paid. On the part of the consumers, they brought a lawsuit against these two companies in the court of first instance of La Laguna (Tenerife) asking for the termination of the contract, in accordance with art. 10 of the Law 42/1998 and also that “Turventa” refunded them with double the amounts anticipated. Both demands were accepted by the judgment of first instance.

Legal issue

The appeal court looks first at whether an ongoing legal process in Germany prevents the Spanish court from pronouncing a judgment. Once the legislation on International Private Law applicable has been studied (Brussels Convention on judicial competence), it concludes that the Spanish court is competent and that the Spanish judgment will bind the German courts. The defendant company had brought a lawsuit in Germany against the clients for them to comply with their obligations set up by a contract which validity is questioned in a Spanish court.

On the second hand, the debate is concerned with establishing the nature and the legislation applicable to these contracts. The court considers that the contracts are ruled by the Law 42/1998, which in any case demands that the length of the contract is longer than three years, the cases that fall into the category of seasonal renting are included as well. In the contract signed with one of the defendants (“Turventa”) the deadline to claim for the enjoyment of the right is of two years, so therefore the aforementioned Law will not be applicable, nor it is possible to declare de contract void since it does not contain any unfair term, because the rights and duties of the parties are balanced and the object, the price the form of payment, the length and the way to exercise the right are clearly stated. Not having a fixed arrangement of the periods in which the rights can be exerted does not imply necessarily that there is abuse or that the clause is not clear, since it can benefit the client that preferred not to commit himself to certain prearranged weeks, choosing each time the ones that suited him better. This freedom can explain the risk of not getting the chosen slot of time if the booking is not done sufficiently in advance, as well as the possibility of passing the rights of use to a third party. It is the same system than the one that involves hotel vouchers which are bought in advance. In any case, the appellants have not even tried to demand the compliance with the obligations by the defendant company, being assumed that it will not be possible. The contract is still valid and if eventually there is non performance, it could bring about the actions in accordance, but it does not allow for the success of this one.

As for the other contract (with the company “Nova Ferien Plus”), the duration of the contract is established on 15 months and a system of automatic extensions makes the contract effectively indefinite, with periodical payments. The automatic extension proves that the mention of 15 months is just a way to avoid the legislation applicable, and therefore it comes under suspicion of fraud. The nature of the contract can perfectly be included in the definition of arts. 1.3 y 1.7 of the Law 42/1998, and therefore the contract can be considered without effectiveness, either because it is understood as correct the exercising of the right of termination, or because it is understood that there were vices of consent that make the agreement to be annulled.

Decision

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