

Case law**Case Details****National ID:** link**Member State:** Italy**Common Name:** Alessandro Barnabò v. Banco Napoli e altro**Decision type:** Other**Decision date:** 23/10/1997**Court:** Corte di Appello (Appellate court, Venice)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Unfair Contract Terms Directive, [Article 1, 1.](#)**Headnote**

1. The discipline concerning the unfair terms in the consumer contracts is applicable only to the agreement undertaken after the 31st December 1994 (please note that all the Member States were required to implement the Directive into their national law by 31 December 1994).

This provision, that has been expressly stated by the Council Directive 93/13/EEC of 5th April 1993, follows the general principle “pacta sunt servanda”.

2. As a consequence of the above, in our case, the discipline of the Directive 93/13/EEC is not applicable because the unfair clauses have had their effects before that date.

Facts

Mr. Alessandro Barnabò has opposed to the injunction of payment issued by the Tribunale di Venezia in favour of the Banco di Napoli.

The Banco di Napoli claimed that Mr. Barnabò was in debt because he has agreed to act as guarantor (“fideiussore”) on behalf of the company Metalplastica Alluminio S.p.A.

In the proceedings before the Corte di Appello di Venezia, Mr. Barnabò argued that the contract of fideiussione he has agreed with the bank pursuant to the article 1936 of the Italian Civil Code contained some unfair terms. Consequently, Mr. Barnabò assumed that these clauses were in contrast with the provisions of the Law of 6 February 1996 no. 52 (the Law has implemented in the Italian Legal System the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts).

Thus, Mr. Alessandro Barnabò asked to the Corte di Appello di Venezia to declare that the unfair terms of the contract of fideiussione are not binding for him.

Legal issue

The Italian legislation on unfair terms in consumer contracts is based on the Council Directive 93/13/EEC of 5th April 1993.

The discipline concerning the unfair terms in consumer contracts has been implemented in Italy by the Law of 6 February 1996 no. 52 “Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee” (Legge Comunitaria 1994).

The Law has introduced the articles from 1469-bis to 1469-sexies in the Italian Civil Code. In particular, the definition of consumer pursuant to Council Directive n. 93/13/EC concerning unfair terms in consumer contracts (art.2 lett.b), has been literally reproduced in art. 1469-bis of the Italian Civil Code.

In the article 1469-bis, the term consumer means “any natural person who is acting for purposes which are outside his trade, business or profession which he possibly carries out”.

Moreover, these provisions provide for the ineffectiveness of terms considered as vexatious (art.1469-quinquies of the Italian Civil Code) as well as for the action for an injunction for the protection of consumers (art. 1469-sexies of the Italian Civil Code).

In this decision, the Corte di Appello di Venezia has concluded that the discipline on unfair terms in consumer contracts only apply to the contracts concluded after the 31st December 1994.

The ratio of this statement evidently stays in the respect for the general principle that “pacta sunt servanda”. In our case, the contract of fideiussione has been stipulated before that date and thus the discipline is not applicable. The fideiussore is one who personally binds himself before the creditor, guaranteeing the fulfilment of another person's obligation (not necessarily a monetary debt) and so making himself liable with all his goods according to the general rule of the article 2740 of the Italian Civil Code.

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