

Case law

Case Details

National ID: link

Member State: Italy

Common Name: Taglienti v. Mediofactoring S.p.A.

Decision type: Other

Decision date: 18/12/2001

Court: Corte di Appello (Appellate court, Milano)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1](#).

Headnote

1. The discipline on the unfair terms in consumer contracts (article 1469-bis and followings of the Italian Civil Code) does not apply to the contracts agreed before its enforcement in the Italian legal system.

Anyway, the Directive 93/13/CEE is sufficiently detailed and self-executing and thus it applies to the contracts agreed after its adoption.

2. The article 1469-bis of the Italian Civil Code does not apply to the personal guarantee given by the quota holder for the benefit of the company (article 1936 of the Italian Civil Code).

Facts

Mr. Taglienti, in his quality of quota holder, has given to the factor a personal guarantee (i.e. "fideiussione") for the fulfilment of the obligations of a company. The guarantee covers the fulfilment of the obligations undertaken by the company in a contract of factoring.

Following the fact that the company has not duly fulfilled its contractual obligations, the factor asked the guarantor to cover the debts of the company.

Mr. Taglienti asked the judge to declare that certain clauses of the guarantee were unfair and consequently null and void.

The Tribunale di Milano stated that the discipline of the article 1469-bis of the Italian Civil Code is not applicable to this case.

Legal issue

In this decision, the Corte di appello di Milano has followed the previous jurisprudence upon which the article 1469-bis and followings of the Italian Civil Code are not applicable to the consumers' contracts entered into force before the adoption of such articles.

On the contrary, the judges have clarified that the Directive 93/13/CEE is self-executing and that it directly applies to the consumers' contracts agreed after its adoption.

With specific reference to the present case, the Corte di appello di Milano observes that the personal guarantee (i.e. fideiussione) of the quota holder for the benefit of the company does not fall within the scope of the article 1469-bis and followings of the Italian Civil Code.

The fideiussione is a typical instrument, well known in most law systems to provide personal securities for the fulfilment of an obligation by a third person's promise to carry out the obligation of the principal debtor.

According to the article 1936 of the Italian Civil Code, the fideiussore (from the latin fideiubeo = to make oneself guarantor) 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 article 2740 of the Italian Civil Code.

Accordingly with the case-law of the Corte di cassazione, the discipline on unfair terms in consumer contracts applies to the fideiussione (a) when the guarantee is ancillary to an agreement for the selling of goods and services and (b) the principal debtor is a consumer.

Decision

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