

Case Details

Case Details

National ID	no.18290/2003
Member State	Italy
Common Name	Giammarco v. Soc. Autoberardi
Decision type	Other
Decision date	28/11/2003
Court	Corte di cassazione (Supreme court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

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

Headnote

1. The provision of Art. 1469 bis, paragraph 3 CC must be interpreted as the rule on exclusive jurisdiction of the judge of the place where the consumer is resident or domiciled and, accordingly, the unfairness of the contractual term identifying a different place as competent forum must be presumed.

Facts

Giammarco Achille has brought an action before the Corte di cassazione asking the judges to determine the competence of the Court (i.e. regolamento di competenza”).
Giammarco Achille sued the company Autoberardi S.r.l. before the Tribunale di Sulmona for the cancellation of contract because of the non performance of the company in its obligation to give the ownership certificate of the car purchased by the plaintiff. The Tribunale di Sulmona declared its territorial incompetence in conformity with the general conditions of the contract of sale, undersigned by the plaintiff, in which there was the reference, in event of contract concluded with a consumer, to the forum provided by the law. In consequence of that, the Tribunale di Sulmona interpreted that the provision of law was referring to Art. 19 c.p.c. Therefore, the judge of the place of residence of the defendant (the base of the company) was considered competent.

Legal issue

The reference to the general forum of Art. 19 c.p.c cannot be applied because it is a provision that establishes a competent judge different from the one of the place of residence or domicile of the consumer (Art. 1469 bis, paragraph 3, c.c.) and, consequently, the contractual term with that reference must be presumed as unfair. Moreover, the contractual term cannot be the outcome of an individual negotiation (Art. 1469 ter, paragraph 4, c.c.) because it has not yet been approved in written form as required by the Art. 1341 c.c. The ineffectiveness of the clause can be declared ex officio by the judge on the basis of Art. 1469 quinquies, paragraph 3, c.c.
In consequence of that, the decision of Tribunale di Sulmona has been reversed and the competence of that Court has been declared.

Decision

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