

pt_Case Details

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pt_National ID	0326242
Estado-Membro	Portugal
pt_Common Name	link
pt_Decision type	Outro
pt_Decision date	20/01/2004
Tribunal	Tribunal da Relação
Assunto	
Requerente	
Requerido	
Palavras-chave	

pt_Directive Articles

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

pt_Headnote

1. In a financing contract agreed between a consumer and a banking institution, the latter carries the burden of proof for demonstrating that it has complied with the duty of communication for standard terms and conditions
2. Any terms authorising the banking institution, irrespective of whether there is a new agreement, to fill in and complete the credit bonds that the borrower has delivered without completing them in full are excluded from the contract.

pt_Facts

A claim was brought to enforce a debt arising from a credit agreement for the purchase of consumer goods (in this instance, a car). The consumer wished to purchase a car and, in order to pay for the item, concluded a credit agreement (a "financing contract for the acquisition of consumer durables"). There was no preliminary negotiation of the agreement. For this reason, it was regulated by Decree 446/85 of 25 August.

Under the agreement, the consumer was loaned 1,560,000 Portuguese Escudos (PTE) to be repaid in 48 instalments over 48 months. Under article 14 no. 3 of the standard terms and conditions of the contract: a) the consumer was obliged to deliver the credit bond to the other party that had already been signed, but which still required a date, payment location and value; b) in the case of non-compliance, the consumer authorised the other party to complete the credit bond with the value and to enforce this; and c) the value of the bond would be equivalent to the value of the debt (including expenses and interest).

pt_Legal issue

Decisão

The legal action was designed to enforce the aforementioned credit bond against the consumer on the basis of failure to comply with his obligations. The question to be answered was whether article 14 no. 3 of the standard terms and conditions of the contract was properly communicated to the consumer in accordance with article 5 of Decree 446/85.

In this case, the lender was unable to prove that this contract term had been communicated as per article 5 of

Decree 446/85. This provision imposes a duty of communication to guarantee that the consumer is properly informed of the contract's contents. Failure to comply with this duty means that the terms are not included in the contract (cf article 8 indent a) of Decree 446/85). As such, the lender acted unfairly in filling out the credit bond and therefore there were no grounds for enforcing the bond against the consumer.

[Abstract drafted by Ana Raquel Moniz]

pt_Full text: [pt_Full text](#)

pt_Related Cases

pt_No results available

pt_Legal Literature

pt_No results available

pt_Result
