

Case law

Case Details

National ID: no. 18290/2003

Member State: Italy

Common Name: Gianmarco Achille v. Autoberardi s.r.l.

Decision type: Other

Decision date: 28/11/2003

Court: Corte di cassazione (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

The Corte di cassazione interpreted the article 1469-bis, paragraph 3, no. 19, of the Italian Civil Code concerning the jurisdiction in consumers' contracts. The judges of the Italian Supreme Court clarified that such article gives a presumption of unfairness for the clauses providing a jurisdiction different from those of the judge where the consumer is resident or domiciled.

Facts

With a petition ("ricorso") filed on 27 June 2002, the plaintiff, Mr. Gianmarco Achille, asked the Corte di cassazione to determine the jurisdiction over the case ("regolamento di giurisdizione").

The plaintiff appealed the decision rendered by the Tribunale di Sulmona on 15 June 2002 by which the court has declined its jurisdiction.

The judge of Sulmona agreed with the choice of jurisdiction provided by the general conditions of sale agreed between Mr. Gianmarco Achille and Autoberardi s.r.l.

The controversy concerned the invalidity of the general conditions of sale, because, as to the plaintiff, the company had not duly fulfilled to its obligations. In particular, the plaintiff claimed that he had not received the relevant documentation concerning the purchase of its car within the contractual date.

The Corte di cassazione agreed with the arguments of the plaintiff.

Legal issue

The judges of the Corte di cassazione confirmed the precedent of the Corte di cassazione, Sezioni Unite, 01.10.2003, no. 14669, Abrescia v. Consultur S.r.l. (in Foro Italiano, 2003, I, 3298). The precedent has also been reported.

The Italian Supreme Court affirmed that the article 1469-bis, paragraph 3, no. 19, of the Italian Civil Code provides for a presumption of unfairness of the clause establishing a jurisdiction different from those of the judge where the consumer is resident or domiciled.

On such basis, the Court concluded that this provision introduced in the Italian legal system a case of exclusive jurisdiction for the consumers.

Decision

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