EN

Case law

Case Details

National ID: link

Member State: Belgium

Common Name:R. Mertens en P. Adriaensen / n.v. Compass

Decision type: Other

Decision date: 23/11/2004

Court: Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Antwerpen)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Package Travel Directive, Article 4, 2. Package Travel Directive, Article 5, 1. Package Travel Directive, ANNEX

Headnote

1. According to article 21 of the Act of 16 February 1994 (“Travel Act”), the travel intermediary is mandated by the traveller. This mandate is however limited. The travel intermediary can only book the journey; he cannot advance the consumer’s travel costs.
2. If the travel intermediary does not draw up the travel contract in accordance with Article 23, § 1 of the Travel Act, he violates a provision which is criminally sanctioned. Moreover, the contract is null.
3. Neither the travel organiser nor the travel intermediary can claim any payment from the consumer on the basis of a null contract.

Facts

On 8 January 2001 N.V. Compass, a travel intermediary, booked a journey for Mr R. Mertens and his wife P. Adriaensen with Sunsnacks, a travel organiser. A confirmation of the booked journey for a total amount of EUR 3.241,95 was sent to N.V. Compass on the same day. On 24 January N.V. Compass sent an invoice to Mr. Mertens and his wife to the amount of EUR 3.093,22 (an advance of EUR 148,74 had already been paid). By letter of 31 January 2001 R. Mertens and his wife requested to cancel their journey because of medical reasons. On 1 February 2001 Sunsnacks sent a confirmation of the cancellation and a bill to the amount of EUR 3.241,95 to N.V. Compass. By writ of 18 June 2001 N.V. Compass demanded payment of EUR 3.241,95 from Mr. Mertens and his wife. On 25 July 2001 N.V. Compass received an amount of EUR 991,57 from cancellation insurer Elvia-Mondial Assistance. The first judge ordered Mr. Mertens and his wife to pay EUR 2250,38 to N.V. Compass (EUR 3.241,95 minus EUR 991,57). The judge argued that although there was no agreement in writing on hand, the proof of the booking of the journey could be inferred from a.o. the letter of 31 January 2001 from Mr. Mertens and his wife. Mr. Mertens and his wife appealed to this verdict.

Legal issue

The Court of Appeal of Antwerp notices that both the first judge and the parties lost sight of the fact that the dispute comes under the provisions of the Travel Act and that in this case N.V. Compass therefore is to be regarded as the travel intermediary.

According to article 21 of the Travel Act any contract concluded between a travel intermediary and a travel organiser is supposed to be concluded between the consumer and the travel organiser. The travel intermediary merely acts as an agent and is not a party to the contract. The travel intermediary has a mandate from the consumer to book the journey and a mandate from the organiser (e.g. to collect the travel costs). The travel intermediary’s mandate from the consumer encompasses solely the booking of a journey; the travel intermediary is not entitled to advance the travel costs and re-claim them later from the consumer. If need be, solely the travel organiser has the right to claim payment from the consumer.

Article 23 §1 of the Travel Act indicates that a travel contract must be concluded (in writing) for any sale of a journey by a travel intermediary. An infringement of this provision can be criminally sanctioned with a fine and with the nullity of the contract.
As a result, the Court concludes that the travel agreement is null because N.V. Compass cannot prove that a travel contract in writing exists. Since no payment can be claimed on the basis of a null contract, neither the travel intermediary nor the travel organiser is entitled to (re-)claim any payment from Mr. Mertens and his wife.

Decision

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