

Case Details

Case Details

National ID	link
Lidstaat	België
Common Name	Diana-Impelizzeri and Pierquin / S.A. Neckerman Reizen
Decision type	Overige
Decision date	06/06/2000
Gerecht	Hof van Beroep (NL)/Cour d'appel (FR)
Onderwerp	
Eiser	
Verweerder	
Trefwoorden	

Directive Articles

Package Travel Directive, [Article 1](#)

Headnote

1. The clause in which the traveller, the travel organiser and the travel intermediary agree that the decisions of the "Travel Arbitration Board" ("Geschillencommissie Reizen"), set up by the consumer's association "Test Aankoop" in 1983, will be binding to their specific situation cannot be considered as abusive.

Facts

By writ of 22 March 1995, Mr. and Mrs. Diana-Impelizzeri, the appellants, demanded damages to the amount of 281.040 francs from travel intermediary S.A. Neckerman Reizen, the defendant, for the inconveniences suffered in the course of their holiday.

The first judge concluded that the arbitration clause went beyond the jurisdiction of the Court.

The current appellants lodged an appeal against the judgement.

Legal issue

Uitspraak

The appellants argue that the present case falls within the scope of the provisions on unfair contract terms contained in the Act of 14 July 1991 on trade practices and consumer information and protection ("TPA") and that the arbitration clause is abusive within the meaning of these provisions.

The arbitration clause is formulated as follows: "When a complaint cannot be settled or has not been resolved within four months from the end of the performances or, when the performances did not take place from the date of the planned departure, a dispute arises. At the request of one of the parties and in accordance with the regulations to be applied this dispute must be brought before the Travel Arbitration Board ... The traveller, the travel organiser and the travel intermediary agree that the decisions of the representative Travel Arbitration Board will be binding to their specific situation ...".

The starting point here is Article 1134 of the Civil Code, which indicates that agreements between parties have the same binding force as legislation. However, according to the provisions of the TPA on unfair contract terms, abusive clauses cannot be binding.

In the present case, the arbitration clause represents a model clause which results from a model contract drafted by the consumer's association "Test Aankoop", who is also the founder of the Travel Arbitration Board. This Board has been recognised by the Minister of Economic Affairs and warmly welcomed in consumerism literature. Therefore, the arbitration clause which assigns the Travel Arbitration Board as the competent authority cannot be considered as abusive within the meaning of Article 31 of the TPA, as this provision requires a manifest imbalance between the parties rights and obligations.

Furthermore, Article 32 of the TPA contains a limitative list of provisions and conditions which are to be considered as abusive. This article, which is of strict interpretation, cannot be applied by analogy. Consequently, the appellants claim on grounds of Article 32 No 20 of the TPA, according to which a clause or condition, on itself or in combination with one or more other clauses or conditions, is abusive if it allows the claimant to file his claim before another judge than indicated in the Articles 624, No 1, No 2 and No 4 of the Judicial Code, must be rejected. The aim of Article 32 No 20 of the TPA is to forestall the insertion of a clause in the contract which creates a manifest imbalance between the rights and obligations of the parties. Such a manifest imbalance is absent as the Travel Arbitration Board is appointed to deal with the dispute. There, the rights and obligations of the parties are equal and, as a consequence, there is no procedural advantage benefiting only one party.

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