

## Case Details

### Case Details

National ID	link
Member State	Belgium
Common Name	D. / C. en J.
Decision type	Other
Decision date	12/11/2003
Court	Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Gent)
Subject	
Plaintiff	
Defendant	
Keywords	

### Directive Articles

Package Travel Directive, [Article 4, 2](#). Package Travel Directive, [Article 5, 1](#). Package Travel Directive, [Article 5, 2](#).

### Headnote

1. In the absence of any proof of the traveller's acceptance of the general conditions of a travel intermediary, these conditions do not form a part of the agreement between them. All the more so if the arbitration clause contained in the general conditions cannot be enforced against the traveller.
2. If there were never any problems of overbooking with regard to a hotel, there is no reason for the travel intermediary to be specifically alarmed. Hence, the travel intermediary does not commit a fault if he does not warn or inform the traveller about the risk of overbooking.

### Facts

The first and the second defendant claimed damages to the amount of EUR 4164,61 from the appellant and the third defendant because of the irregularities they experienced during the trip booked with the appellant. The third defendant, acting as travel organiser, argued that the claim for his part was inadmissible, because the dispute had to be settled through arbitration. The appellant applied a similar reasoning and therefore did not appear before the first judge and failed to send a representative.

The first judge concluded (a.o.) 1) that he lacked the competence to decide on the claims brought by on the one hand the first and the second defendant and on the other hand the third defendant, and 2) that the first and the second defendant's claim against the appellant was admissible, as a consequence of which he ordered the latter to pay damages to the amount of EUR 3472,20.

The appellant appealed against the decision stating that the claim should have been handled by the Travel Arbitration Board ("Geschillencommissie Reizen"). She further submitted that that she, as a travel intermediary, did not commit a fault.

### Legal issue

Concerning the competence of the first judge to handle the original complaint lodged by the first and second defendant against the appellant:

There is no proof of the fact that the first and the second defendant have signed the “order form” for the ordered trip. It is also uncertain whether or not the appellant’s sales conditions, which contained an arbitration clause, were printed on the backside of the “order form” and whether or not the front side referred to these conditions. Hence, the sales conditions do not form a part of the agreement between the first and second defendant on the one hand and the appellant on the other hand.

Furthermore, the appellant pleaded the connexity (“samenhang”) of the claims brought by the first and the second defendant on the one hand and the third defendant on the other hand. As it would imply a referral whereby the first and the second defendant would not, although they are entitled to, have had access to the court, the first judge was right to declare the case within the jurisdiction of the Court.

Concerning the first judges’ reasons:

The issue between the appellant on the one hand and the first and second defendant on the other hand falls within the scope of the Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts (“Travel Act”). In the application of the latter Act, a travel intermediary can solely be held liable either if he fails to perform his duty of mediation, advising or information (contained in the Articles 17, 4 till 8 and 22 of the Travel Act), or if he does not provide sufficient aid and assistance to the traveller who encounters difficulties.

With regard to a reservation on the basis of a brochure edited by the travel organiser, the travel intermediary can solely communicate to the traveller the information which he himself receives from the travel organiser. In the absence of a specific indication thereto, it cannot be expected from a normal, prudent and diligent travel intermediary to start investigations in person if all performances booked through the travel organiser in the past were correctly and timely booked. On the contrary, it is up to the travel organiser to request for the confirmation of the reservations and, if he does not receive this confirmation, to inform the travellers thereof through the travel intermediary and, when the occasion arises, to provide for the opportunity to annul the booked trip.

On 27 March 1998 the third defendant confirmed to the appellant that he, as a travel organiser, had communicated the booking to the hotel correctly and timely. Since never ever any problems of overbooking were communicated with regard to the hotel in question, there was no reason for the appellant to be particularly alarmed in the present case. Moreover, the facts prove that the first and second defendant are well known with the existence of the phenomenon “overbooking” in the travel sector. In these circumstances the fact that the travel intermediary did not specifically warn or inform the first and the second defendant about the existence of overbooking and the fact that she did not negatively advise about the planned booking, does not constitute a fault.

To conclude, the first and the second defendant do not prove that the appellant has failed to perform her duty of aid and assistance.

Hence, the appellant, as a travel intermediary, cannot be held liable by the first and the second defendant.

#### Decision

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