

Giurisprudenza

Dettagli del caso

ID nazionale: No. 389/2007

Stato membro: Italia

Nome comune: M.M. v. Banca (omissis) S.p.A.

Tipo di decisione: Altro

Data della decisione: 18/10/2006

Organo giurisdizionale: Tribunale

Oggetto:

Attore:

Convenuto:

Parole chiave:

Articoli della direttiva

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

Nota introduttiva

The article 1469-bis, paragraph 3, no. 19, of the Italian Civil Code (now: Art.33, paragraph 2, letter u, of the Consumer 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. In providing investment and non-core services and activities, the intermediaries must acquire the necessary information from the consumers and operate in such a way that they are always adequately informed.

Fatti

The case arose from the Republic of Argentina's financial default in the aftermath of what has been called the largest financial crisis in world history. The default caused patrimonial damages to a number of Italian investors. Here, an investor sued the Bank assuming the breach of the duties indicated by the Consolidated Law on Financial Intermediation.

Questione giuridica

Decisione

The Tribunal of Milan confirmed the interpretation of the article 1469-bis, paragraph 3, no. 19, of the Italian Civil Code (now, Art.33, paragraph 2, letter u, of the Consumer Code) on the jurisdiction in consumers' contracts rendered by the Sezioni Unite of the Corte di cassazione in the judgment no. 14669/2003 (the decision is also available in the database).

At to the Tribunal of Milan, 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.

The judgment is also interesting because it concerns the application of the provisions about investors' protection of the Legislative Decree no. 58 of 24 February 1998 - Consolidated Law on Financial Intermediation, pursuant to Articles 8 and 21 of Law 52 of 6 February 1996.

In particular, the claimant assumed the breach by the Bank of the duties imposed by the said law and, particularly, of the Art.21, upon which, in providing investment and non-core services and activities, authorized intermediaries must:

- act diligently, fairly and transparently in the interests of customers and the integrity of the market;
- acquire the necessary information from customers and operate in such a way that they are always adequately informed;
- use publicity and promotional communications which are correct, clear and not misleading,
- have resources and procedures, including internal control mechanisms, suitable for ensuring the efficient provision of services and activities.

In the case at issue the judges considered that the claimant has not offered a sufficient evidence to support his claim.

Testo integrale: [Testo integrale](#)

Casi correlati

Nessun risultato disponibile

Dottrina

Nessun risultato disponibile

Risultato