

Case law

Case Details

National ID: link

Member State: France

Common Name: link

Decision type: Other

Decision date: 25/02/2010

Court: Cour de Cassation (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

Consumer Protection – Unfair Terms – Scope of application – Term in a contract concluded between a business and a non-business or consumer - Exclusion - Case - Arbitration agreement between an insurer and the insured with inserting an arbitration clause in the insurance policy agreement

The arbitration agreement concluded between an insurer and the insured after the commencing of litigation without inserting any arbitration clause in the insurance policy agreement is not a contract concluded between a business and a non-business or consumer and therefore not capable of being unfair for the purposes of article L. 132-1 of the Code de la consommation.

Facts

The victim of a stroke which occurred on 11 February 2000, having brought about severe implications, Mr x concluded a "Protocol of arbitral expertise" with the Association générale de prévoyance militaire vie (the insurer) of which the purpose was to establish the date from which the insured could be considered in a state of complete and definitive invalidity. The parties had indicated that they would leave the decision to a medical arbitrator and waive all subsequent claims.

The medical arbitrator having concluded that Mr x was completely and definitively disabled from the date at which his medical and legal condition stabilised on 31 December 2001, the insurer transferred to him the sums which had accrued from that date as agreed.

Mr x then took the insurer to court for payment as calculated from the date of the accident. Mr x argued that that waiver was an unlawful arbitration clause and thus an unfair term within the meaning article L. 132-1 of the Code de la consommation.

The Court of Appeal rejected the claim as without basis (irrecevable).

Legal issue

The arbitration agreement concluded between an insurer and the insured after the commencing of litigation without inserting any arbitration clause in the insurance policy agreement is not a contract concluded between a business and a non-business or consumer and therefore not capable of being unfair for the purposes of article L. 132-1 of the Code de la consommation.

The protocol in question was certainly an arbitration agreement. An arbitration agreement is valid in litigation concerning consumers (art. 2059 Code civil), the question before the court being whether it could be declared unfair. The answer is no because the agreement is not a contractual term. This analysis is justified under the classical approach which on the basis of articles 1442 and 1147 of the Code civil considers that an arbitration clause is a contract in its own right inserted into another contract.

Decision

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