

Case law

Case Details

National ID: 200.053.794-01 and 200.053.088-01

Member State: Netherlands

Common Name: link

Decision type: Other

Decision date: 17/01/2012

Court: Gerechtshof (Appellate court, Leeuwarden)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

Travel agency concludes a package travel contract in its own name if it takes upon itself an obligation to arrange the travel, and therefore it is a party to the contract. A travel agency which reserves the trip with one or more other travel agencies at a consumer's request is not itself responsible for the performance of the trip, since it does not conduct business in its own name.

Facts

Club of 10 was celebrating its anniversary and some of its members wanted to go together in May 2008 on a trip abroad. One of the members of the Club 10 ("traveller") contacted a travel agency to help organize this trip. On the 21st of November the travel agency was notified that the destination would be New York and the trip shall take place 5-9 May 2008. The traveller was planning to go to New York on his own before making the trip for the members of the Club of 10 definite. The offer of the trip was sent by the travel agency on the 4th of January 2008, followed by sending the whole programme of the trip, additional information and photos about Waldorf Astoria Hotel. On the 7th of January 2008 secretary of the traveller confirmed the choice of Waldorf Hotel in combination with the flights by Lufthansa. On the 15th of January 2008 the definite list of participants in the trip was sent to the travel agency. The next day the travel agency confirmed making a reservation for the travellers in Waldorf Hotel. After the planned early trip by the traveller took place on the 6th of March 2008 he let the travel agency know that Waldorf Hotel is not suitable for the Club of 10. On the 28th of March 2008 he sent a letter to the travel agency to cancel the whole reservation. One of the main issues in the proceedings was whether there was a package travel contract concluded between the travel agency and the Club of 10.

Legal issue

Art. 7:500BW implements provision of Articles 2 and 5 of the Directive, defining the package travel as well as the organizer. Since the parties argued as to whether the travel agency could be seen as an organizer and whether a package travel contract was concluded, the court addressed this issues. Firstly, it referred to the CJEU's case law (Club-Tour C-400/00) stating that package should be interpreted as also encompassing trips put together by a travel agency at a traveller's request. The criteria of 'pre-organized package' should be understood as pertaining to combination of touristic services that were put together at the moment of conclusion of the contract. However, also in case of putting different services together into one package in order to assess whether the travel agency could be seen as an organizer one needs to see whether the travel agency concluded the contract in its own name. That would mean that the travel agency obliged itself to perform the contractual obligations, i.e., arrange the trip. A travel agency which reserves the trip with one or more other travel agencies at a consumer's request is not itself responsible for the performance of the trip, since it does not conduct business in its own name. However, in the given case the travel agency could be seen as an organizer pursuant to art. 7:500 BW. Firstly, it did not matter that the package was put together on the traveller's initiative (Club-Tour). Secondly, out of the presented facts it seemed reasonable for the Club of 10 to assume that they had concluded a contract with the travel agency. The travel agency, e.g., indicates the other travel organizations that helped in organizing the trip as its agents in the United States. Moreover, all the communication about the trip was received from the travel agency and they also sent all confirmations of reservations.

Decision

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