

## Case law

### Case Details

**National ID:** 3K-7-297/2012

**Member State:** Lithuania

**Common Name:** link

**Decision type:** Other

**Decision date:** 26/06/2012

**Court:** Supreme Court of the Republic of Lithuania (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 6, 1.](#)

### Headnote

No headnotes available for this decision.

### Facts

The dispute in the case at issue is related to interpretation and application of legal norms, regulating the conclusion, performance and termination of accommodation (apartment) credit contract, which was also qualified as a consumer contract.

Plaintiff asked to declare actions of the defendant by which he refused to delay the credit payments as unlawful, to declare as an unfair and non obligatory the credit contract terms, according to which the defendant had a right to cancel the contract unilaterally, to oblige the defendant to continue the performance of the accommodation credit contract, i. e. to restore the situation that existed before the termination of the contract by extending it.

Plaintiff noted that he was unable to exercise contractual obligations because of the force majeure circumstances – economic crisis. At the moment he is able to fulfill contractual obligations.

### Legal issue

The terms of a credit contract, setting the termination conditions, to the extent that the creditor is given the right to terminate the contract and to require prior to the termination of the contract to pay back all credit sum, interest, fine and other contractual payments in case when the recipient of a credit does not pay back at least one part of the credit are contrary to the general requirements of fairness and cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (Art. 6.188 paras 1, 2 Civil Code), these contract terms must be recognised invalid ab initio (Art. 6.188 para 7 Civil Code).

Together the attention must be drawn to the fact that additional protection is granted to consumers in order to avoid contract terms which are enforced by the stronger party to the contract and in such way to restore the balance of rights and obligations between the parties. However, this additional protection, provided to the consumer, does not make exceptions from one of the most important private law principles – pacta sunt servanda (Art. 6.38, 6.59 Civil Code), that is why it does not mean that consumers can benefit from the statutory consumer protection means in order to dishonestly avoid the performance of obligations, which were assumed voluntarily. If subject from the evidence, provided in the case, it is obvious that the debtor systematically fails to fulfill obligations on time and the debtor, although protected by additional consumer legal protection mechanisms does not face extremely disproportionate burden of fulfillment of obligations, the court has a legal basis to satisfy the creditor's claim despite the fact that a contract is qualified as a consumer contract. Considering the foregoing arguments, the court stated that it is necessary to ascertain whether in the case at issue the bank had an unfair advantage in regard to consumer when concluding a contract or whether the consumer was in breach of the contract and the contract can be terminated.

According to the material of the case on 04. 04. 2008 the parties concluded accommodation credit contract for the sum of 94 126, 51 EUR, which was committed for the purchase of the apartment. The final repayment date – 26. 03. 2043. The parties to the accommodation credit contract agreed that if the plaintiff according to the payment schedule failed to pay the credit and the interest more than 10 calendar days, the defendant had to inform the plaintiff about that and to set an additional 10 calendar days term to cover the debt; in case the plaintiff within the specified period did not cover his debt, the defendant had a right prior to the settled term to demand to pay back all credit sum, interest, other contractual payments and to terminate the contract. 27. 06. 2008 in a way of the supplementary contract the parties agreed to delay the beginning of the credit repayment until 26. 01. 2009, but the plaintiff did not pay the interest, from 26. 01. 2009 – stopped paying parts of credit, which had to be repaid. The defendant with the notices dated 10. 11. 2008; 01. 12. 2008; 06. 01. 2009; 19. 02. 2009; 30. 03. 2009 warned the plaintiff due to the improper performance of the contract and asked to pay the debt incurred. 01. 04. 2009 the plaintiff asked not to terminate the contract, noted that he is able to pay 500 LTL per month and bigger sums in the nearest future. 14. 04. 2009 the defendant stated that he unilaterally terminates the credit contract.

The court concluded that in the case at issue the bank did not exercise its right to unilaterally terminate the contract, on the basis of paragraph 13.1 of the contract (defendant continued contractual relations and urged on performance of the contract), also no reasons, necessary in order the actions of a plaintiff (missing the payment terms) to qualify as a substantial breach of the contract have been established. The actions of the plaintiff (debtor) having in mind the factual circumstances of the case cannot be qualified as precluding the possibility to continue the contractual relations between the parties. Also, there is no reason to assume that the debtor will substantially violate the contract in the future (considering the activity of the debtor in order to retain contractual relations, wish to cooperate, restored solvency). This means that the contract cannot be considered as terminated lawfully and cannot be considered as terminated in general, because, as mentioned above, it can be terminated only on a legal basis. In all other cases, a simple statement of termination does not create any desired legal consequences.

On the basis of the arguments, stated above, the court ruled that the actions of the defendant, when terminating the accommodation (apartment) credit contract with the plaintiff must be considered as unlawful, that is why the parties to the contract must be returned to situation, which was before the termination of the contract, extending the contract respectively.

### Decision

Full text: [Full text](#)



**Related Cases**

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**Legal Literature**

No results available

**Result**