

Case law

Case Details

National ID: I ACa 125/13

Member State: Poland

Common Name: link

Decision type: Court decision in appeal

Decision date: 17/07/2013

Court: The Court of Appeal in Warsaw

Subject:

Plaintiff: D. K. i M. K.

Defendant: (...) S.A. with registered office in W.

Keywords: aggressive commercial practices, contract law, unfair commercial practices, unfair terms

Directive Articles

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

Headnote

All provisions aimed at the reduction or exclusion of the developer's liability for non-performance or improper performance of a development agreement are abusive clauses.

Facts

The plaintiffs concluded two agreements with the developer – preliminary and final. In accordance with the preliminary agreement the defendant was obliged to build and sell an apartment to the plaintiffs. The preliminary agreement also provided that the plaintiffs can request contractual penalties if the developer's delay in commissioning the apartment for use is longer than six months. If the delay is less than this period, the plaintiffs would not be entitled to request a penalty.

The second (final) agreement included a term that by signing thereof the parties will waive all claims against each other.

The apartment was released for use 154 days later than it was agreed in the preliminary contract and the plaintiffs holding a mortgage had to incur banking costs resulting from the developer's delay.

Finally, the plaintiffs filed a lawsuit against the developer claiming not only for the repayment of banking costs but also for contractual penalties. The defendant replied that the claim of the plaintiffs was unjustified because the delay was not longer than six months.

The District Court, after analysing the evidence and hearing of the witnesses, approved the plaintiffs' claim and ordered the defendant to pay contractual penalties to the plaintiffs in the amount of PLN32 000 with interest on that amount.

The defendant decided to appeal to the Court of Appeal.

Legal issue

The Court of Appeal (hereinafter referred to as: "the court") analyzed both the formal and material aspects of the case.

The court in its judgment underlined that the limits of the freedom of contract were exceeded in this case, because the development contracts included abusive clauses which could not be negotiated with the plaintiffs.

The court emphasized that in accordance with the Civil Code the provisions of an agreement executed with a consumer which have not been agreed individually are not binding on the consumer if his rights and obligations are set forth in a way that is contrary to good practice, grossly violating his interests. The plaintiffs did not have any opportunity to shape the wording of the questioned provisions and were aware that a modified development agreement would not be concluded with them.

The court had not any doubt that the terms relating to a contractual penalty grossly violate the interest of the plaintiffs. They could not demand penalties even where the apartment was delivered for use after the agreed date. At the same time the defendant could request interest in the case of plaintiff's delay in paying instalments.

The court took into account the existing adjudications and opinions presented in the doctrine and declared that any provisions aimed at the reduction or exclusion of the developer's liability for non-performance or improper performance of a development agreement are abusive clauses.

The judgment also points out that the provisions of law relating to the prohibition of unfair terms in consumer contracts cannot be interpreted contrary to Directive 93/13/EEC on unfair terms in consumer contracts, which is implemented into Polish law.

The court dismissed the defendant's appeal and upheld the judgment of the District Court.

Decision

Which provisions of the development agreement can be recognized as abusive clauses?

URL: [http://orzeczenia.waw.sa.gov.pl/content/\\$N/15450000000503_I_ACa_000125_2013_Uz_2013-07-17_002](http://orzeczenia.waw.sa.gov.pl/content/$N/15450000000503_I_ACa_000125_2013_Uz_2013-07-17_002)

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The Court of Appeal dismissed the defendant's appeal and upheld the judgment of the District Court.