

Case law

Case Details

National ID: Case 1Sžr/150/2012

Member State: Slovakia

Common Name:link

Decision type: Supreme court decision

Decision date: 11/06/2013

Court: The Supreme Court of the Slovak Republic

Subject:

Plaintiff: POHOTOVOSŤ, s.r.o.

Defendant: Správa katastra Rimavská Sobota

Keywords: consumer, consumer rights, unfair terms

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Contract Terms Directive, [Article 6, 1.](#)

Headnote

(1) Directive 93/13/EEC is applicable to loan contracts concluded with non-bank financial institutions. This is partially based on the preliminary rulings of the European Court of Justice, namely C-76/10 and C-453/10, where the European Court of Justice stressed the importance of the Recital 21 of the Directive 93/13/EEC.

(2) A consumer is not obliged to request the court for protection of his rights, nor does the consumer need to invoke the protection of these rights stemming from the EU legal system in order for the court to protect those rights. The principle of loyalty requires national courts to provide the protection standard of the European rights, even if the parties to a proceeding did not explicitly ask for it.

(3) A pre-printed Power of Attorney is considered as limiting the freedom of choice, when it does not enable the consumer to affect its content and mainly to allow him to choose his agent.

Facts

The defendant rejected the application for registration of lien to immovable property of the plaintiff into the Land Registry.

According to the defendant, the application was rejected due to its deficiencies. The defendant stated that the Power of Attorney submitted to the application did not observe the legal requirements in order to be valid. The consumer in this case was the principal granting the power of attorney.

The Regional Court of Banská Bystrica decided on the appeal submitted by the plaintiff and confirmed the decision of the defendant and declared its reasoning as correct and justified. The court decided that the Power of Attorney was invalid due to a conflict of interest between the principal and the representative. Thus, the contract on establishment of a lien was invalid as well.

The plaintiff filed an appeal against the judgment to the court.

Legal issue

The court decided to dismiss the appeal for several reasons that created two relevant outcomes.

First, if the principal granting the Power of Attorney who is also a loan borrower does not have his right to choose and select his agent and such agent on multiple occasions appears in the loan contracts of the company which offers these loans, such a fact by itself forces the appropriate cadaster authority to have doubts about the agent's exercise of the rights and obligations vested to him through the Power of Attorney.

Furthermore, the court stated that the exemption on individually negotiated contract terms set forth in Section 53 (2) of the Civil Code (implemented from Article 3 (2) of the Directive 93/13/EEC) does not apply to Powers of Attorney. The Power of Attorney in this case was connected to the application for the registration of lien, therefore it was necessary to apply all applicable European principles on consumer protection to the mentioned Power of Attorney.

Secondly, if the decision of such authority relates to the question of the rights of the consumer, the appellate court shall always assess whether such rights were granted appropriate protection under the European law and national laws. This applies even in situations, where neither of the parties to the proceedings brought up the issue of such protection.

Decision

(1) Is Directive 93/13/EEC applicable to the loan contracts concluded with non-bank financial institutions?

(2) Is a consumer obliged to request the court for protection of his rights or to invoke the protection of his rights stemming from the EU legal system in order for the court to protect those rights?

(3) Is a pre-printed Power of Attorney, which does not enable a consumer to affect its content (primarily to allow him to choose his agent), considered as limiting the freedom of choice?

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Result

The court confirmed the decision of the Regional Court and dismissed the plaintiff's motion.