

Case Details

Case Details

National ID	e3K-3-438-415/2016
Valstybė narė	Lietuva
Common Name	link
Decision type	Supreme court decision
Decision date	12/10/2016
Teismas	Lietuvos Aukščiausiasis Teismas
Tema	
Ieškovas	G.S.
Atsakovas	“Danske Bank A/S”
Raktažodžiai	contract law, credit agreement, disproportionate remedy, unfair terms

Directive Articles

Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 5](#)

Headnote

A national court is under obligation to evaluate ex officio any provisions of the consumer agreement, including those which provide for actions to be regarded as a material breach of the consumer agreement on the part of the consumer, in the light of the rules against unfair terms in the consumer contracts.

Facts

The plaintiff and the defendant concluded a consumer mortgage agreement, under which the plaintiff was granted the credit in the amount of EUR 202 734 for the purchase of an apartment. The consumer mortgage agreement established that the delay in payment of even a minor instalment was considered to be a material breach of the agreement, entitling the defendant to unilaterally terminate the agreement and claim the return of the received credit, as well as interests and other payments under the agreement.

After six years following the conclusion of the consumer mortgage agreement and proper execution thereof, the plaintiff faced financial difficulties and became indebted to the defendant in the amount of EUR 6000. The defendant therefore requested the plaintiff to immediately make a payment of EUR 6000. The plaintiff requested to extend the term for paying the overdue instalments. The defendant covered almost all the debt within the extended term; however some minor non-returned amount was left unpaid. Thus, the defendant terminated the consumer mortgage agreement based on the argument that the consumer mortgage agreement provided that the delay of payment of even a minor instalment is a material breach on the part of the consumer.

The plaintiff sued the defendant for illegally terminating the consumer mortgage agreement.

Legal issue

Does a national court have a duty to evaluate ex officio provisions providing for actions to be regarded as a material breach of consumer agreements on the part of the consumer in the light of rules against unfair terms in the consumer contracts?

Sprendimas

The court stated that a national court is always under an obligation to consider ex officio every single standard provision of the consumer contract with regard to rules against unfair terms of the consumer contracts. This duty exists and therefore the consideration must be applied even to provisions providing for actions that are considered to be a material breach of the consumer agreement on the part of the consumer.

URL: <http://eteismai.lt/byla/73735486329416/e3K-3-438-415/2016>

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Related Cases

No results available

Legal Literature

No results available

Result

The case was referred back to the appellate court in order to analyse and consider if the provision on material breach of the agreement on the part of the consumer was in compliance with rules against unfair terms in the consumer agreements.