

Case law

Case Details

National ID: гр. д. № 1899/2015 г., IV г. о., ГК

Member State: Bulgaria

Common Name: link

Decision type: Supreme court decision

Decision date: 02/12/2015

Court: Supreme Court of Cassations

Subject:

Plaintiff: Piraeus Bank Bulgaria AD

Defendant: M.T.N. (natural person, personal data deleted due to privacy protection rules)

Keywords: financial services, nullity, unfair terms

Directive Articles

Unfair Contract Terms Directive, [ANNEX I, 1., \(j\)](#) Unfair Contract Terms Directive, [ANNEX I, 1., \(l\)](#) Unfair Contract Terms Directive, [ANNEX I, 2., -](#)

Headnote

The exception under ANNEX I, paragraph 2, subparagraph c), first indent of Directive 93/13/EEC (implemented into Bulgarian law by Article 144, Alinea 3, point 1 of the Consumer Protection Act) is applicable to bank loan clauses which provide for increase of the interest rate only if the following cumulative conditions are met: (i) the circumstances which lead to change in the interest rate must be described in the loan contract; (ii) those circumstances must be out of the bank's control; (iii) the methodology for the change of the interest must be clearly and fully described in the loan contract; and (iv) the methodology must allow the increase as well as the decrease of the interest as a result of the occurrence of the relevant circumstances.

Facts

The defendant filed a claim with the Sofia Regional Court against the plaintiff asking the court to sentence the plaintiff to pay the defendant the amount of overpaid interest under a loan agreement for the period 30 October 2007 to 30 September 2012. The claim is based on the statement that Art. 12(4) of the loan contract that provides for the right of the plaintiff to increase the interest rate is unfair pursuant to ANNEX I, paragraph 1, subparagraphs (j) and (l) of Directive 93/13/EEC (implemented into Bulgarian law by Article 143, points 10 and 12 of the Consumer Protection Act) and it is not negotiated individually. Therefore, said contract clause is null and void and the plaintiff must return the interest it received as a result of the application of the unfair Art. 12(4) of the loan contract.

Sofia Regional Court rejected the claim and the defendant appealed to the Sofia City Court. The second instance court partially repealed the Sofia Regional Court decision and sentenced the plaintiff to pay to the defendant EUR 3,406.40 for overpaid interest under the loan contract.

Therefore, the plaintiff submitted an appeal to the Supreme Court Cassations as the last resort court instance.

Legal issue

Pursuant to Art. 12(4) of the loan contract the minimum acceptable value for the plaintiff 3-month EURIBOR is 2.5%, the plaintiff has the right during the contract to unilaterally change the amount of the interest, if the 3-month EURIBOR rate reach 0.25% higher than those specified in the loan contract within one month. That change enters into force on the day of its adoption by the plaintiff for which the plaintiff notifies the defendant through announcements at the bank offices and its website. That clause was not individually negotiated. At the same time that clause is unfair pursuant to ANNEX I, paragraph 1, subparagraphs (j) and (l) of Directive 93/13/EEC (implemented into Bulgarian law by Article 143, points 10 and 12 of the Consumer Protection Act) because the change does not occur automatically but it is intermediated by an act of the plaintiff. The same clause does not clarify the methodology and mathematical algorithm, i. e. the manner of formation of unilaterally change the interest and the individual components in this formula. The interest is not raised proportionally to the increase in the index EURIBOR, i. e. there is no commitment on the exact amount of the increase in interest rates by the amount of increase in the index EURIBOR. Regardless of the amount of change in the index EURIBOR the bank may decide on its own discretion on the amount of the interest rate increase it is not obliged to comply with the specific change in the market index EURIBOR. Therefore, the exception under ANNEX I, paragraph 2, subparagraph c), first indent of Directive 93/13/EEC (implemented into Bulgarian law by Article 144, Alinea 3, point 1 of the Consumer Protection Act) in regard with Art. 12(4) of the loan contract.

Decision

What are the conditions for the application of the exception under ANNEX I, paragraph 2, subparagraph c), first indent of Directive 93/13/EEC (implemented into Bulgarian law by Article 144, Alinea 3, point 1 of the Consumer Protection Act) in regard with the bank loan clauses which provide for increase of the interest rate?

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Legal Literature

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Result

The court rejected the plaintiff's appeal and upheld the second instance court's judgment.