

Case law

Case Details

National ID: No. of Decision 35/2015

Member State: Greece

Common Name: link

Decision type: Court decision, first degree

Decision date: 31/03/2015

Court: Court of First Instance of Larissa

Subject:

Plaintiff: Unknown

Defendant: 1. Unknown, 2. Unknown

Keywords: consumer, good faith, jurisdiction, standard contract, unfair terms

Directive Articles

Unfair Contract Terms Directive, [Article 2, \(b\)](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 2.](#) Unfair Contract Terms Directive, [Article 8](#)

Headnote

(1) The definition of the consumer adopted in the greek law broadens the definition laid down in Directive 93/13/EEC; it includes any natural or legal person who acquires the product or services as the intended final recipient of that product or services (namely without to purpose to resell that good or service for profit). However, given that in the standard jurisprudence of the European Court of Justice as a consumer transaction is regarded only a transaction that aims to cover the person's own consumption needs at a private level outside the scope of his/her professional or business practices, this principle should apply when interpreting the notion of "consumer".

(2) The consumer protection provisions of article 2 of the law 2251/1994 apply to bank loan agreements too, if these agreements are concluded with a consumer. In this context, based on the above interpretation of the notion "consumer", all general loan products of a bank (such as deposit accounts, funds etc) are considered to address in principle consumers in the meaning of the law (even if that person aims at achieving a financial benefit from the transaction). However, if the end user of the bank loan agreement uses the loan in order to cover its professional (and not private) needs, that person cannot be considered as a consumer within the meaning of the law. Any connection of a product or service with the professional activity of a person (irrespective of whether it aims at achieving a financial benefit or not) deprives that person from the status of the "consumer" within the meaning of the law.

(3) Pre-defined contractual terms (General Terms of Transactions) that result in a substantial imbalance of the rights and obligations of the contracting parties at the detriment of the consumer are forbidden and void. The same principle applies also to any other contractual term which has not been individually negotiated. As a significant imbalance is considered any deviation from any element that is essential in order to achieve the purpose and to preserve the nature of a contract or any deviation from the rights and obligations of the parties that does not reflect to the justified expectations of the customer in the specific transaction. To assess the above it is necessary to conduct an evaluation of the balance of the interests of all parties and an estimation of the specific circumstances of the transaction.

Facts

The plaintiff brought before the Greek court a claim regarding the cancelation of a sale of convertible securities due to fraud. The defendant raised an objection that the Greek courts are not the competent courts since the contract executed between the parties (that according to the defendant was not a consumer contract but a business contract) included a pre-formulated standard clause of prorogation of jurisdiction that set as competent jurisdiction the courts of Cyprus (and the laws of that country).

Legal issue

The Court held that the plaintiff was a consumer under the meaning of the law, namely a natural person who is acting in the specific contract for purposes which are outside his trade, business or profession (93/13/EEC art.2, b), even if he was expecting to achieve a financial benefit from the sale of the convertible securities agreement (however he was acting under his private and not his business capacity). Hence, the pre-formulated standard contractual term (General Term of Transaction) in the loan agreement that laid down a prorogation of jurisdiction (appointing as competent courts the courts of Cyprus - although the residence of the plaintiff is in Greece) was regarded as abusive; it was held that contrary to the requirement of good faith, that term caused a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (93/13/EEC art.3, par.1). So, it was ruled that the plaintiff - who lives in Greece- should not be obliged to file the claim to the courts of Cyprus, which are not easily accessible, without any justified reason presented by the supplier. In addition, this prorogation of jurisprudence cannot be excused given also the fact that the defendant has a branch office in the plaintiff's residence (Greece) and that the contract too was signed in the plaintiff's country of residence (Greece).

Decision

(1) Who falls under the definition of a consumer under the greek laws?

(2) When do consumer protection provisions apply to bank loan agreements? Does the criterion of achieving a financial benefit from a transaction deprives a person from being considered a consumer?

(3) In which cases is a pre-formulated standard contractual term for future contracts (General Term of Transaction) prohibited and void? How shall the abusiveness of a term that is not individually negotiated be assessed?

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Result

The court rejected the defendant's objection regarding the Court incompetence (due to lack of jurisdiction). The court decided instead that the applicable law is the Greek law and that the competent courts are the Greek courts, since the plaintiff- consumer has his residence in Greece, therefore the plaintiff's application is admissible (the case was admissibly brought before the Greek courts).