

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 9 April 2018 by Massimo Campailla against the order of the General Court (Third Chamber) made on 23 January 2018 in Case T-759/16, Campailla v European Union

(Case C-256/18 P)

(2018/C 381/02)

Language of the case: French

Parties

Appellant: Massimo Campailla (represented by: F. Rollinger, avocat)

Other party to the proceedings: European Union, represented by the Court of Justice of the European Union

By order of 7 August 2018, the Court (Seventh Chamber) dismissed the appeal as being, in part, manifestly unfounded and, in part, manifestly ineffective.

Request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción de Teruel (Spain) lodged on 11 July 2018 — XZ v Ibercaja Banco, S.A.

(Case C-452/18)

(2018/C 381/03)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción de Teruel

Parties to the main proceedings

Applicant: XZ

Defendant: Ibercaja Banco, S.A.

Questions referred

1. Must the principle that void contractual terms are not binding (Article 6 of Council Directive 93/13/EEC of 5 April 1993)⁽¹⁾ also extend to subsequent contracts and legal arrangements concerning such terms, such as a novation contract?

And, given that absolute nullity means that the said term is deemed never to have existed in the legal/financial life of the contract, can it be concluded that subsequent legal transactions and their effect on the term in question — that is, the novation contract — also disappear from legal reality and must be deemed non-existent and without effect?

2. Can documents which amend, or make a settlement in respect of, non-negotiated terms and may not satisfy the fairness and transparency tests be considered to be in the nature of general contractual terms for the purposes of Article 3 of Council Directive 93/13/EEC of 5 April 1993 and be subject to the same grounds for invalidity that apply to the original documents that are the subject of the novation or settlement?
3. Must the waiver of rights of action contained in a novation contract also be void, in so far as the contracts signed by customers did not inform them either of the fact that a contractual term was void or of the money or financial sum they were entitled to receive in repayment of interest paid as a result of the initial imposition of the 'floor clauses'?

It is noted that customers thus sign a waiver agreeing not to sue, without having been told by the bank what rights they are waiving or how much money they are giving up.

4. When the amending novation contract is examined in the light of the case-law of the Court of Justice and Articles 3(1) and 4(2) of Directive [93/13], is the new floor clause included vitiated once again by a lack of transparency, as the bank has again failed to comply with the transparency criteria laid down in the [judgment of the Tribunal Supremo (Supreme Court, Spain)] of 9 May 2013 and failed to inform the customer of the true financial cost of the said term in his mortgage, which would make him aware of the interest rate (and the resulting amount) that he would have to pay if the new floor clause were to be applied, and the interest rate (and the resulting amount) that he would have to pay if no floor clause were applied and the interest rate agreed in the mortgage were applied with no lower limit?

In other words, when the financial institution imposed the document referred to as a novation in respect of 'floor clauses', should it have satisfied the transparency tests described in Articles 3(1) and 4(2) of Directive [93/13] and informed the consumer of the amount of money lost as a result of applying the 'floor clauses', and of the interest rate that would be applicable in the absence of those clauses, and, given that the bank did not do so, are those documents also vitiated by a ground of nullity?

5. In view of their content, can the terms concerning legal action included in the general terms and conditions of the amending novation contract be considered unfair under Article 3(1) [of Directive 93/13] in conjunction with the Annex listing unfair terms, and specifically with paragraph (q) of the Annex (terms shall be regarded as unfair where they exclude or hinder the consumer's right to take legal action or exercise any other legal remedy), given that they restrict the right of consumers to exercise rights that may arise or become evident after the contract has been signed, as was the case with the possibility of claiming full repayment of the interest paid (in accordance with the judgment of the Court of Justice of 21 December 2016)?⁽²⁾

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

⁽²⁾ Judgment of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980.

Request for a preliminary ruling from the Juzgado de Primera Instancia Vigo (Spain) lodged on 11 July 2018 — Bondora AS v Carlos V. C.

(Case C-453/18)

(2018/C 381/04)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia Vigo

Parties to the main proceedings

Applicant: Bondora AS

Defendant: Carlos V. C.