

Case name (date):
The “ADU” case (October/ November 2017)

KEYWORDS:

Competence of the legal clinic; duty to inform (directive 2011/83/UE); general terms and conditions; termination of the contract

FACTS:

In this case, the user contacted an agency whose business is to put into relationship private tutors and students. The service consist in providing contacts between teachers and students. The students apply directly thought the agency and they are given tickets to the private tutor at the end of each class, so that the latter can get paid.

The user went to the agency premises in order to seek a mathematics teacher for her daughter. The agent drafted a quote for 10 classes and told the user that signing right away was not necessary, since the subscription was made through signing in on their website.

A week after, the user received by email the contacts of the private tutor as well as the invoice and the tickets to give to the tutor after each class. The email mentioned that the first lesson was offered by the agency. The user replied to the email, asking for the details of the tutor so as to ensure that he had the necessary academic qualifications. No response was given by the agency. As a result, the user did not pay for the invoice.

The daughter still went to the first mathematics lesson, and it appeared that the “tutor” was in fact no teacher but a commercial agent with no qualification in mathematics.

Because of this, the user then sent an email to the agency, stating that she would not pay for the rest of the classes and that she would like to terminate the contract with the agency.

The agent replied that she could terminate the contract but would have to pay for the first lesson that was already given and for early termination fees.

The user refuses to pay and asks the Clinic what to do in order terminate the contract without having to pay for anything.

LEGAL ANALYSIS:

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code. A least one of the Luxembourgish Consumer Code’s provisions must be applicable to the case. Lastly, the overall amount at stake should not exceed a 5.000 EUR threshold.

The user is looking for mathematics courses for her daughter and can be considered as a consumer. The agency which links students and tutors can be considered as acting within the framework of its business and can be considered as a trader. The amount at stake was not exceeding the 5,000 EUR threshold.

As per the existence of the contract, it appeared that even though the consumer did not sign the quotation, she had to sign in online in order to receive the tickets for the classes. On top of this, her daughter went to the first class with the teacher, which could be interpreted as a tacit consent to being bound by the contract.

Distance contract

Another question that was raised by the Clinic concerns the qualification of the contract as a distance contract (covered by article L. 221-1 and onwards of the Luxembourgish Consumer Code). According to article L. 222-1 of the LCC, distance contracts must be contracts for which both negotiation and signature of the contract happened without the simultaneous presence of both the consumer and the trader.

Even though the user might have signed in online, she also went to the agency premises in order to request for more information and negotiate with the agent.

As the negotiations were made at the agency premises, the contract may not be considered a distance contract.

Duty to inform

However, article L. 111-1 of the Luxembourgish Consumer Code states that the trader must provide consumers with all essential information that consumers would need in order to fully understand the extent of their obligations.

This article may be read in conjunction with article 1135-1 of the Luxembourgish Civil Code which state that General Terms and Conditions are only binding if the other party had been able to know them before signing the contract.

In this case however, it appeared that the agency never gave the General Terms and Conditions to the consumer, who could not have known about the early termination fees.

LEGAL SOLUTION:

Since the agency did not disclose the General Terms and Conditions to the consumer, the latter could not have known about the fact that extra fees were due in case of early termination of the contract. As a result, and under both article L. 111-1 of the Luxembourgish Consumer Code and 1135-1 of the Civil Code, the consumer may terminate the contract right away without having to pay for the termination fees.

However, she would still have to pay for the first lesson, as she could be considered as having implicitly agreed to be bound by the contract.

SOLUTION SUGGESTED BY THE CLINIC:

The Clinic suggested that the user wrote a registered letter arguing that she would pay for the first class, but not the early termination fees, as the agency did not provide her with the General Terms and Conditions applicable.

SPECIFIC REMARKS:

The information was given to the consumer during a meeting on premises.