

J. P. v. E. (The Credit Card Case)

KEYWORDS:

credit – credit card – credit agreement – credit company – consumer – unsolicited supply

FACTS:

The client, J. P., concluded a consumer credit agreement with the credit company E. for 11 200 CZK (approximately 450 EUR). The loan had been duly and timely repaid in ten installments. The credit company E. then sent the client an unsolicited credit card with a line of credit of 35 000 CZK (approximately 1 400 EUR). The client never activated the credit card as he does not wish to use it and, thus, cut it in half. He is, nevertheless, listed as “debtor” in the credit company’s register which prevents the client from obtaining a loan from another credit company.

The consumer visited the Students Legal Aid Office requesting an advice on how to proceed in order to return the credit card and in order to be deleted from the register of debtors.

LEGAL ANALYSIS:

The present case raises two separate issues: 1) whether the client is legally bound by the mere fact that he is in hold of the inactivated card and 2) how he should proceed in order to be deleted from the register of debtors.

Legal provisions with specific reference to EU directive when applying:

National provisions (Law No. 89/2012 Coll., Civil Code; Law No. 257/2016 Coll., on the Consumer Credit Loan; Law No. 634/1992 Coll., on the Protection of the Consumer) implementing:

- Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts
- Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**no longer in force**; repealed by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance))

LEGAL SOLUTION:

The client has been informed about possible remedies under the cited directives, as transposed in the Czech Republic.

1) Unsolicited supply

The client has received an unsolicited supply, an inactivated credit card with a line of credit of approximately 1 400 EUR. He has been informed by the students as he never requested the credit card to be issued and never activated it, the supply of it represents an offer. A consent has a form of the activation of the card which the client had never done. Thus,

a unilateral offer has been made by the credit company which has no legal consequences for the client as he never consented to it. Moreover, the client has been informed that he is under no legal obligation to return the card to the credit company.

2) Register of debtors

The client has been informed that he should inquire with the companies that maintains the register of debtors whether the information about him are recorded in co called *positive register* or *negative register*. Any information recorded in the *positive register* must be deleted upon written request of the consumer. If there are any information recorded in the *negative register*, he should inquire who informed the company maintaining the register about it and then contact directly the credit company with the request to correct the information.

SUGGESTED SOLUTION:

It has been suggested that the client does not take any steps regarding the inactivated card. He is under no obligation to return it to the credit company; he should not activate it if he does not wish to use it and that he is in no way legally bound by the mere fact that such card has been sent to him.

With regard to the deletion of the records in the register of debtors, the client has been advised to, first, contact the company maintaining the register and then

SPECIFIC REMARKS: