**The “Mr S case”**

**(Line of credit rescinded due to overdraft – April 2019)**

**KEYWORDS:**

*Opening of a line of credit — Rescission — Notice requirement — Statute of frauds in banking contracts — Credit-line extensions — Acquiescence on the part of the bank.*

**FACTS:**

On 28/09/2018, Mr S secured from Bank X a € 20,000.00 loan in the form of an open line of credit, intended to provide maintenance for his son, a student living out of town, in Milan. S began to use the line of credit, occasionally replenishing the amount granted by making repayments. Sometime around mid-July of 2019, Mr S ask the director at the Bank X branch, Mr J, to raise the limit on the line of credit from € 20,000 to € 27,000.00, receiving assurances from the latter regarding the likely approval of the request. After a few months, but before having received any official notice from Bank X, S began to spend beyond the original limit of the credit line, thereby generating (as of October 2019) an overdraft of nearly Euro 2,000, which he did not pay back. Bank X, on notice of the overdraft, initially alerted S informally, in early November 2019, asking that he immediately resolve the overdraft. Thereafter, as Mr S had not taken action accordingly, on 13/01/2020 they rescinded the line of credit, and demanded immediate repayment of the entire loan, which at that time totalled Euro 22,360. Perturbed by the situation, convinced that the limit had been raised to € 27,000.00, S sent a complaint in correspondence to the bank, arguing that there was no overdraft on the line of credit, retaining counsel to determine whether there were grounds to have the matter heard by the Banking and Finance Arbitrator, and the likelihood of prevailing on the same.

**LEGAL ANALYSIS**

Given that the client is a consumer and that the contract is a credit agreement (artt. 2 and 3, lett a), Dir. 2008/48 of 23 April 2008 on credit agreements for consumers the question presented is the validity of an oral agreement to increase a line of credit. Under both European law, and the Italian legislation implementing the same absent a written contract, any acquiescence on the part of a bank cannot be construed as authorising an initial line of credit nor any increase thereto.

On the other hand, the bank breached its duty to inform the consumer of the termination and the reasons for it on paper or on another durable medium.

* **Legal provisions with specific reference to EU directive when applying:**

Artt. 2; 3, lett a); 13; 18 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers; Artt. 121, comma 1, lett. b) and i); 122; 125-quater, al. 2, lett. b); 125-octies, al. 2 of the TUB [Testo Unico Bancario, Consolidated Banking Law, D.lgs. 1 September 1993, n. 385]; art. 1845, par 3, Italian Civil Code.

**LEGAL SOLUTION:**

Thus, there was fault on both side. The customer’s contributory negligence was greater.

**SUGGESTED SOLUTION:**

The parties were encouraged to find an amicable solution, or to prove the actual damages suffered.

The claim for relief was not entirely without merit, but if an application were made to the Banking and Finance Arbiter, it would likely be rejected.

**SPECIFIC REMARKS:**

No evidence of damages ergo no damages.