**The “X case”**

**(Credit agreements for consumers *-* A.A. 2017/2018)**

**KEYWORDS:**

*Credit agreements for consumers — Early repayment — Right of the consumer to a reduction in the total cost of the credit — Interest and the costs for the remaining duration of the contract — Transparency — Readability of graphic characters.*

**FACTS:**

On 30 November 2017, Mr C executed a salary-backed loan with the bank XY for a total of Euro 28,500.00, for the purpose of purchasing a remainder interest in a parcel of real estate. At the moment the loan agreement was executed, the bank director advised Mr C that the commissions applicable to the transaction would be amortised over the term of the loan, and thus coincide with the 120 installments contemplated under the repayment plan.

On 6 February 2018, Mr C saw Euro 26,703.58 deposited rather than the Euro 28,505.18 as approved, representing a shortfall of Euro 1,801.60, inexplicably withheld by Unicredit as a commission. At that same time, Mr C realised he had not been given a copy of the loan agreement at signing. He then contacted the bank director and requested a copy of the signed version of the agreement, and the specifications on the loan charges to be applied.

Other requests followed. Finally, on 3 April 2018, the bank replied for the first time to Mr C’s requests, noting that the commissions charged included Euro 400.00 as a “file-opening fee” and Euro 1,401.60 for “broker commissions”, a line item which was not more clearly specified. Yet, once again, the Bank failed to provide Mr C a copy of the signed agreement.

Thereafter, in email correspondence of 19 April 2018, following a further request, the bank finally sent plaintiff a copy, albeit an illegible one, of the agreement.

*Mr. C then contacted our legal clinic to determine whether the fees charged, and the stance taken, by the bank, complied with the law, and thus whether he had standing to sue for damages.*

**LEGAL ANALYSIS:**

The Arbitro Bancario e Finanziario (ABF), according to the timeline of events created at the time (2018, ante Lexitor, CGUE Case C‑383/18) highlighted that intermediaries must set forth clear contract terms, which distinguish between costs relating to the signing of the contract or to other preliminary activities ( ‘upfront’ costs, that are not reimbursed in case of early termination of the contract) and costs referring to the duration of the contract (‘recurring’ costs, that shall be refunded in case of early repayment of the debt).

The Bank's conduct in failing to abide by Art. 117, paragraphs 1 and 119, and paragraph 4, of the Consolidated Banking Law was actionable in that Mr C was never given a (comprehensible and/or legible) copy of the contract he signed.

Furthermore, that omission made it impossible for Mr C to evaluate what kind of fees he would be charged, and thus whether these prepaid fees were legitimate, whether they were up-front or recurring. A banking customer needs this information to decide whether to pay his loan off early, thereby reducing his expenses over the remaining life of the loan (interests and charges) as contemplated under Art. 125 sexies, paragraph 1, subpart 1 of the Consolidated Banking Law.

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

Article 16(1) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers; Artt. 117, par 1 and 3; 119, par 4; 125-*sexies* TUB [Testo Unico Bancario, Consolidated Banking Law, D.lgs. 1 September 1993, n. 385]; art. 1337 Italian Civil Code.

**LEGAL SOLUTION:**

Under the Italian Law, banking contracts must be generated in writing, and a copy must always be given to the customer. Otherwise, the contract is void (art. 117, parr 1 and 3, TUB [Testo Unico Bancario, Consolidated Banking Law, D.lgs. 1 September 1993, n. 385].

**SUGGESTED SOLUTION:**

The client was not interested in voiding the contract because the loan had not yet been disbursed, and thus he would have had to forego the money. All the same, he wished to have a copy of the contract, for reasons including having access to the exact terms and conditions of the same should he have opted pay off the loan early, as he was in fact wishing to do.

We decided to submit a written claim to the financial intermediary on the issue (attached). Since it did not respond within 30 days from the date of the submission (and its late response turned out to be unsatisfactory, anyway), we filed a complaint with the ABF (attached).

The ABF [Banking and Finance Arbiter] agreed to review our application, and ordered the broker provide a legible copy of the contract to the client (please see attached). In terms of the request to determine the “recurring” nature of the fees, the ABF found that since the loan was still in repayment, any claim to a reduction of the total cost of the loan was unripe.