

Case name (date):
The “RPL” case (10-11/2019)

KEYWORDS:

competence of the legal clinic; unfair commercial practices (Directive 2005/29/EC); code of conduct

FACTS:

In this case, a non French-speaking user, signed a contract in 2017 with a private landlord, through the services of a real estate agent. The rental contract was signed for a fixed duration of three years.

As the tenant knew that he could have to move out of the country before the fixed term because of his job, he specifically asked the real estate agent to make sure that ending the contract before the initial term was possible. The agent ensured his client that the contract could be cancelled anytime if the termination notice was sent three months before, without additional obligations.

During the rental contract, the tenant had to move out of the country and called the agency to ask whether an early cancellation was possible. The agency answered that it was possible to do so.

The tenant sent the termination notice to the landlord and the latter responded there was no provision in the contract allowing an early termination of the contract, adding that if the tenant really needed to leave, he should find another tenant and introduce him to the landlord.

Eventually, both the tenant and the agent found another tenant who was willing to move in. The landlord refused both of them.

The tenant, which had already moved out of Luxembourg, asked whether he could legally terminate the contract.

LEGAL ANALYSIS:

Competence of the Clinic

The Clinic is only competent in 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 (LCC). The problem here was that the landlord was not a professional landlord, while the agency could be considered a trader. Thus, the Luxembourgish Consumer Code could only be applied to the relationship between the tenant and the agency. The Clinic was incompetent as to the relationship between the tenant and his landlord.

Unfair commercial practices

According to article L. 122-1 of the Luxembourgish Consumer Code, a commercial practice may be qualified as unfair when it leads or is likely to lead the consumer to take a decision he or she would not have taken otherwise, regarding the product at stake and if the practice is against professional diligence.

As a non French speaker, the tenant was not able to read the contract by himself. The first problem was that unlike French and German, English is not an official language of Luxembourg, and there is no obligation for parties to write the contract in English. Thus, no direct argument could be brought up on the tenant’s inability to understand French, in a way suggesting that consent may have lacked.

However, the tenant specifically told the agent twice that he needed a contract allowing early termination because of his professional duties. Had he known that the contract he was signing did not allow an early termination of the contract, he certainly would not have signed it.

While the contract is valid from a legal standpoint, the real estate agent had an obligation to warn the tenant about the lack of possibility of early termination. Not warning the consumer, even though the consumer clearly stated that such a possibility was crucial for him, might be considered as going against the trader's duty of diligence.

Furthermore, there is a Luxembourgish Code of conduct for real estate agents. Even though it requires the signature of the real estate agent to be fully enforceable, it may also serve as a standard in determining what is a breach of the duty of diligence mentioned in article L. 122-1.

It appeared that the agent's behaviour was meeting all criteria in order to be qualified as an unfair commercial practice under the provisions of the Luxembourgish Consumer Code.

LEGAL SOLUTION:

The Luxembourgish Consumer Code sanctions unfair commercial practices in accordance with article L. 122-8 states, with the possibility of fining the trader from 251 to 120,000 EUR along with the cancellation of the contract that may have been formed as a consequence.

SOLUTION SUGGESTED BY THE CLINIC:

The rental contract was not binding for the consumer and the real estate agent, if it was it could have been cancelled. The agent could have been declared guilty of an unfair commercial practice and the fine could have put pressure on him. The Clinic suggested the tenant to write a registered letter to the agent explaining the legal arguments and ask him to either find another tenant that the landlord would accept or pay for the remaining duration of the contract.