

THE BOILER - OTP CASE (2020)

KEYWORDS:

B2C sale contract; credit agreement for consumer; contract negotiated away from business premises; digital signature; right to terminate a loan contract

FACTS:

The case concerns a contract negotiated away from business premises. The consumer was interested in buying a boiler. On 16 September 2019 the consumer contacted an intermediary of the seller company in order to receive information for the purchase, installation and maintenance of a boiler. The intermediary went to the consumer's home and in that context the consumer concluded two contracts: the first one was a sale contract to buy the boiler and the second one was a related credit agreement for consumer (credit amount: 915,00 euro). The consumer didn't realize it because she was at home, she used an OTP to sign and she didn't know what an OTP was and worked. She thought that it was a kind of simulation until she received the copy of the credit agreement at home (23 December 2019). The consumer never received the boiler, but in the meanwhile she started to pay the amount for credit (since February 2020). Due the Covid-19 emergency and the difficulty of the seller company to install the boiler, the seller and the consumer agreed to withdraw the sale contract (23 March 2020). *The consumer would like to withdraw also the credit agreement for consumer and to obtain the repayment of the loan's instalments already charged by the finance company.*

LEGAL ANALYSIS:

The client is a consumer according to Art. 3 Italian Consumer Code.

The contracts were negotiated away from business premises (Art. 45, lett. h, Cons. Code).

The financial agreement was a credit agreement for consumer (Art. 43 Cons. Code + Artt. 121-126 T.U.B).

The client signed the contracts using a Digital signature (OTP) that is a valid mean in order to enter into a contract (Artt. 1, 20 e 21 D.lgs. 82/2005).

The sale contract was concluded on September 16, 2019, when the consumer signed it with the digital signature – OTP code. The financing contract was concluded on 30 January 2020, when the consumer was informed that finance company had accepted the financing proposal. According to these dates, the consumer's right to withdraw from both the contracts was expired; nevertheless, the sale contract was terminated for 'mutuo consenso' (mutual agreement) - Art. 1372 Civil Code (i.e. the seller and the buyer agreed to cancel the sale contract).

The consumer has the right to terminate a loan whether she wishes to withdraw from the purchase to which it is linked (125-*quinquies* T.U.B; Tribunale Treviso sez. I, 25 aprile 2019).

LEGAL SOLUTION:

The consumer has the right to terminate a loan if she has withdrawn from the purchase to which it is linked (125-*quinquies* T.U.B); this is the case even if the sale contract was terminated as a consequence of a mutual agreement between the seller and the buyer (Tribunale Treviso sez. I, 25 aprile 2019).

SOLUTION SUGGESTED AND ACTIVITY PERFORMED BY THE CLINIC

1. The clinic contacted the consumer's bank in order to stop immediately the direct payment of the loan's instalments.
2. The clinic sent a letter to the finance society, notifying the finance society that the main sale contract was terminated and - considering the link between the two contracts- also the credit agreement should be considered cancelled. The finance society agreed to cancel the contract and the client got the repayment of the loan's instalments already charged.

