JUDGMENT OF THE COURT (First Chamber)

23 April 2009 *

In Case C-509/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Bergamo (Italy), made by decision of 4 October 2007, received at the Court on 21 November 2007, in the proceedings

Luigi Scarpelli

v

NEOS Banca SpA,

THE COURT (First Chamber),

composed of P. Jann (Rapporteur), President of the Chamber, M. Ilešič, A. Tizzano, A. Borg Barthet and E. Levits, Judges,

* Language of the case: Italian.

Advocate General: J. Mazák,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2008,

after considering the observations submitted on behalf of:

— Mr Scarpelli, by F. Maffettini and G. Pozzi, avvocati,

— NEOS Banca SpA, by S. Beccari, avvocato,

— the Italian Government, by R. Adam, acting as Agent, assisted by W. Ferrante, avvocato dello Stato,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Hungarian Government, by J. Fazekas, R. Somssich and K. Borvölgyi, acting as Agents,

— the Commission of the European Communities, by L. Pignataro-Nolin and W. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48).

2 The reference was made in the course of proceedings between Mr Scarpelli and NEOS Banca SpA ('NEOS Banca') concerning the performance of a credit agreement entered into for the purchase of a motor vehicle which was never delivered.

Legal context

Community law

3 The 21st recital in the preamble to Directive 87/102 provides:

'Whereas, as regards goods or services which the consumer has contracted to acquire on credit, the consumer should, at least in the circumstances defined below, have rights vis-à-vis the grantor of credit which are in addition to his normal contractual rights against him and against the supplier of the goods or services; whereas the circumstances referred to above are those where the grantor of credit and the supplier of goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the purpose of enabling the consumer to acquire goods or services from the latter.'

4 The 25th recital in the preamble to that directive states:

'Whereas, since this Directive provides for a certain degree of approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit and for a certain level of consumer protection, Member States should not be prevented from retaining or adopting more stringent measures to protect the consumer, with due regard for their obligations under the Treaty.'

5 Article 11(1) and (2) of that directive provides:

'1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply.

2. Where:

(a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them; and

(b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

(c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and

(d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them; and

(e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled,

the consumer shall have the right to pursue remedies against the grantor of credit. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.'

National legislation

6 Article 42 of Legislative Decree No 206 of 6 September 2005 (Ordinary Supplement to GURI No 235 of 8 October 2005) provides:

'In the event of a breach of contract by the supplier of goods or services, a consumer who has failed to achieve satisfaction despite serving a notice of default shall be entitled to pursue remedies against the grantor of credit within the limits of the credit granted, provided that there is an agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier. Third parties to whom the grantor of credit has assigned its rights under the credit agreement shall also be liable.'

7 However, the national court explains that, according to Italian case-law, the rights claimed by the consumer are not dependent on whether the grantor of credit and the supplier have entered into an exclusive agreement.

The dispute in the main proceedings and the question referred

8 On 20 June 2003, Mr Scarpelli, the purchaser, having approached the supplier, the Autobrembate company owned by Mr Brioli Duilio, with a view to purchasing an Audi A41900 TD motor vehicle, signed a purchase contract and at the same time a form — provided by the supplier — applying for a loan from Finemiro SpA, the grantor of credit, whose rights were acquired by NEOS Banca.

9 Mr Scarpelli paid the sum of EUR 10 000 by cheques made payable to Mr Brioli Duilio, and received a loan in the amount of EUR 19 130 in addition to the EUR 10 000 already paid. Mr Scarpelli started to repay the grantor of credit by monthly instalments of EUR 402 the loan that he had received.

10 After making 24 monthly repayments, for a total of EUR 9 648, in addition to a fee of EUR 130, Mr Scarpelli ceased making the monthly repayments on the ground that the vehicle had still not been delivered to him.

11 Finemiro SpA served on Mr Scarpelli a court order requiring payment of the outstanding balance, calculated in the sum of EUR 15 678.38, with interest.

12 Subsequently, Autobrembate was declared insolvent, and the vehicle purchased by Mr Scarpelli was never delivered to him.

13 Mr Scarpelli contested the order for payment, arguing that he was not required to make the outstanding monthly repayments. In addition, he claimed reimbursement from NEOS Banca of the EUR 9 778 already paid by way of monthly instalments, with statutory interest and monetary revaluation.

14 NEOS Banca entered an appearance and contested Mr Scarpelli's claims, on the ground that Article 11 of Directive 87/102 exempts the grantor of credit from liability in all cases where there is no exclusive relationship between the grantor of credit and the supplier.

15 In that connection, NEOS Banca relied on Italian and Community provisions, in particular Article 42 of Legislative Decree No 206 of 6 September 2005, maintaining that, where finance is provided on a non-exclusive basis, the consumer's right to pursue remedies against the grantor of finance is precluded, since that option is restricted to cases where finance is provided on an exclusive basis.

16 It is common ground that there is no exclusive relationship between NEOS Banca and the Autobrembate company.

17 The Tribunale di Bergamo (Bergamo District Court) (Italy) considers that, having regard to the terms of the 21st recital in the preamble to Directive 87/102, it is not certain that an exclusive relationship is a necessary condition for granting the consumer greater rights.

18 Accordingly, the Tribunale di Bergamo decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 11(2) of Council Directive 87/102 to be interpreted as meaning that an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is a necessary condition for the consumer's right to pursue remedies against the grantor of credit —

where the supplier is in breach of contract — even where that right is (a) only to termination of the credit agreement; or (b) to termination of the agreement and consequently to reimbursement of the sums paid to the grantor of credit?'

The question referred for a preliminary ruling

19 By its question, the national court asks in essence whether there must be an exclusivity clause between the grantor of credit and the supplier in order for the consumer to be able to pursue remedies against the grantor of credit where the supplier is in breach of its obligations under the contract. In particular, the Tribunale di Bergamo asks whether such a condition is necessary for an action to terminate the credit agreement and an action for reimbursement of the sums already paid to the grantor of credit.

20 As regards the aims of Directive 87/102, it is clear from the recitals in the preamble thereto that it was adopted with the dual aim of ensuring both the creation of a common consumer credit market (recitals three to five) and the protection of consumers who avail themselves of such credit (recitals six, seven and nine) (Case C-208/98 *Berliner Kindl Brauerei* [2000] ECR I-1741, paragraph 20, and Case C-264/02 *Cofinoga* [2004] ECR I-2157, paragraph 25).

21 In that connection, Article 11 of that directive provides that a consumer is to be entitled to pursue remedies against the grantor of credit in the event that the supplier of the goods or services in question fails to perform its obligations in whole or in part, and makes that right subject to a number of conditions, inter alia the existence of an exclusive relationship between the grantor of credit and the supplier.

22 That provision must be read in the light of the 21st recital in the preamble to Directive 87/102 which, in reference to the system laid down in Article 11 of the directive, expressly provides that 'the consumer should, at least in the circumstances defined below, have rights vis-à-vis the grantor of credit which are in addition to his normal contractual rights against him'. The same recital also states that 'the circumstances referred to above are those where the grantor of credit and the supplier of goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the purpose of enabling the consumer to acquire goods or services from the latter'.

23 It follows that the remedy laid down in Article 11(2) of Directive 87/102 provides further protection, under that directive, for the consumer vis-à-vis the grantor of credit, in addition to the remedies that the consumer is already entitled to pursue on the basis of the national provisions applicable to all contractual relationships. Consequently, the various conditions under that article need be satisfied only for proceedings brought on the basis of that additional protection.

24 Next it should be recalled that such a reading of Article 11 of Directive 87/102 is consistent with the nature of the harmonisation brought about by that directive. Thus, under the 25th recital in the preamble to that directive, Member States should not be prevented by that directive from retaining or adopting more stringent measures to protect the consumer, and therefore prescribes minimal harmonisation in matters of consumer credit. Member States are therefore free to lay down rules which are more favourable to consumers.

25 In the context of Article 11(2) of Directive 87/102, the Court has held that the aim of that directive consists in ensuring that a minimum standard of consumer protection in matters of consumer credit is complied with (Case C-429/05 *Rampion and Godard* [2007] ECR I-8017, paragraph 47).

26 That interpretation is also supported by Article 14(1) of the directive, which requires Member States to ensure that credit agreements do not derogate, to the detriment of the consumer, from the provisions of national law implementing the directive (see, to that effect, *Rampion and Godard*, paragraph 48).

27 In addition, the consumer is unable to exert any influence on the relationship between the supplier and the grantor of credit, with the result that the consumer is at the mercy of the contractual terms and conditions as negotiated between those two traders.

28 In addition, grantors of credit often supply consumers with pre-printed forms for entering into the credit agreement. Consequently, the consumer, that is to say the weaker contracting party, is not generally able to amend the agreement.

29 Therefore, making the consumer's pursuit of remedies against the grantor of credit subject to the condition that there be a pre-existing exclusivity clause between the grantor of credit and the supplier would be at variance with the aim of Directive 87/102, which is primarily to protect the consumer as the weaker contracting party.

30 It follows from the foregoing considerations that, in a situation such as that set out by the national court in its order for reference, where the national legislation applicable to contractual relations provides that the consumer is entitled to pursue remedies against the grantor of credit in order to obtain the termination of the credit agreement and the reimbursement of the sums already paid, Directive 87/102 does not make the exercise of such remedies subject to the requirement of exclusivity that has been referred to. By contrast, such a condition may need to be satisfied in order to assert other rights, not

covered by national measures on contractual relations, such as the right to damages for loss caused by a breach of obligations by the supplier of goods or services in question.

31 Accordingly, the reply to the question referred is that Article 11(2) of Directive 87/102 must be interpreted as meaning that, in a situation such as that in the main proceedings, an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is not a necessary condition for the right of those customers to pursue remedies against the grantor of credit — where the supplier is in breach of contract — in order to obtain the termination of the credit agreement and the subsequent reimbursement of the sums paid to the grantor of credit.

Costs

32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit is to be interpreted as meaning that, in a situation such as that in the main proceedings, an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is not a necessary condition for the right of those customers to pursue remedies against the grantor of credit —

where the supplier is in breach of contract — in order to obtain the termination of the credit agreement and the subsequent reimbursement of the sums already paid to the grantor of credit.

[Signatures]