

Anonymised version

Translation

C-337/20 — 1

Case C-337/20

Request for a preliminary ruling

Date lodged:

23 July 2020

Referring court:

Cour de cassation (France)

Date of the decision to refer:

16 July 2020

Appellants:

DM

LR

Respondent:

Caisse régionale de Crédit agricole mutuel (CRCAM)

[...]

JUDGMENT OF THE COUR DE CASSATION (Court of Cassation),
COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER, OF 16 JULY
2020

On the appeal in cassation brought by:

1. DM, resident in [...] La Ciotat,
2. LR, resident in [...] Cassis,

against the judgment delivered on 6 April 2017 by the Cour d'Appel d'Aix-en-Provence (Court of Appeal, Aix-en-Provence) [...], in the dispute between the

appellants and the Caisse régionale de Crédit agricole mutuel (CRCAM) Alpes Provence, which has its registered office in [...] Aix-en-Provence [...],

respondent in cassation;

The appellants raise, in support of their appeal, the two grounds annexed to the present judgment.

[...] [**Or. 2**]

[...] [procedural details]

[T]he Commercial, Financial and Economic Chamber of the Cour de Cassation (Court of Cassation, France), [...] after deliberation in accordance with the law, has delivered the present judgment.

Background to the dispute

1. According to the judgment under appeal (Aix-en-Provence, 6 April 2017), by a document of 22 December 2008, the Société Régionale de Crédit agricole mutuel Alpes Provence (the bank) granted the company Groupe centrale automobile (GCA), of which DM was the manageress, a current account credit facility guaranteed by a joint and several security undertaken by LR. After terminating this credit facility, the bank ordered the guarantor to pay. The guarantor contended that, by making transfers to third parties without authorisation, the bank had breached its duties and the amount of those transfers should be deducted from its claim.
2. The Cour d'appel declared the challenges made by LR to be inadmissible. It held that, in accordance with Article L.133-24 of the French monetary and financial Code, the company GCA had a 13-month period within which to contest the disputed transactions and, although this period may have been interrupted by an exchange of emails on 3 March 2011 in which the manageress of GCA requested information on those transactions, a new 13-month period had started to run from that date. The Cour d'appel concluded that, since the disputed transfers had not been contested until the submissions of 15 May 2013, the objection was time-barred.
3. In support of their appeal in cassation against that judgment, DM and LR claim that Article L.133-18 of the French monetary and financial Code, which offers entitlement to an immediate refund of unauthorised payment transactions reported by the user to the bank, does not prevent the bank from being held contractually liable under ordinary law in the event of a breach of its duty to exercise due care if proof is provided of any resulting loss. By [**Or. 3**] ruling to the contrary, they submit, the Cour d'appel breached Article 1147 of the Civil Code, in its version prior to that as amended by order of 10 February 2016, and Article 1937 of that Code.

4. Since LR has raised this plea as guarantor, it should be indicated that an ancillary debtor is ‘a person who guarantees an obligation and binds himself towards the creditor to perform that obligation if the debtor does not perform it himself.’ (Article 2288 of the Civil Code). The first paragraph of Article 2313 of the Civil Code provides that ‘a guarantor may assert against the creditor any objection pertaining to the principal debtor which is inherent in the debt’ and ‘in particular any set-off that the creditor may owe to the principal debtor’ [...] [references to national case-law]. This rule may apply where the creditor has breached the duty that he owes towards the principal debtor, engaging his civil liability and consequently obliging him to pay damages to the principal debtor as compensation for his loss.
5. It follows from Article 1147 of the Civil Code that any breach of a contractual obligation that causes damage to the obligation creditor obliges the obligation debtor to cover the loss. The case-law applies the principle of full compensation by which a court must ‘restore the victim to the situation in which he would have been had the harmful act not occurred’ [...] [references to national case-law].
6. Article L.133-18 of the French monetary and financial Code, as amended by Order No 2009-866 of 15 July 2009, which transposed Article 58 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (PSD1) or Article 71 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2), which replaced it without substantive amendments, provides: ‘In the case of an unauthorised payment transaction reported by the user under the conditions prescribed in Article L.133-24, the payment service provider shall refund to the payment service user forthwith the amount of the unauthorised payment transaction and, where applicable, shall restore the payment account that had been debited with that amount to the situation that would have existed if the unauthorised payment transaction had not taken place.

The payer and his payment service provider may decide on additional compensation on a contractual basis.’
7. Paragraph 1 of Article L.133-24 of the French monetary and financial Code, as amended by those provisions, provides: ‘The payment [**Or. 4**] service user shall notify his payment service provider without undue delay of any unauthorised or incorrectly executed payment transactions and no later than 13 months after the debit date, failing which he will be time-barred, unless the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Book III, Title I, Chapter IV.’
8. According to the aforementioned Article 58 [of PSD1], entitled ‘Notification of unauthorised or incorrectly executed payment transactions’, ‘The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any

unauthorised or incorrectly executed payment transactions giving rise to a claim, including that under Article 75, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with Title III.’

9. According to Article 60 of PSD1, entitled ‘Payment service provider’s liability for unauthorised payment transactions’,

‘1. Member States shall ensure that, without prejudice to Article 58, in the case of an unauthorised payment transaction, the payer’s payment service provider refunds to the payer immediately the amount of the unauthorised payment transaction and, where applicable, restores the debited payment account to the state in which it would have been had the unauthorised payment transaction not taken place.

2. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.’

10. The appeal concerns the relationship between the liability regime established by the abovementioned directives, as transposed by Articles L.133-18 and L.133-24 of the French monetary and financial Code, and that of contractual civil liability under ordinary law. In particular, the question arises as to the exclusivity of the liability regime set out by the directives, which do not provide any clarification in this respect.
11. Since the Court of Justice of the European Union does not appear to have ruled on this point, it is appropriate to refer the matter to it.

ON THOSE GROUNDS, the Cour de Cassation:

Having regard to Article 267 of the Treaty on the Functioning of the European Union: **[Or. 5]**

Refers the following questions to the Court of Justice of the European Union for a preliminary ruling:

1. Is Article 58 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, to be interpreted as establishing a liability regime for unauthorised or incorrectly executed payment transactions made by payment service providers, precluding any action under the ordinary rules of civil liability in respect of the same acts for breach by that provider of the obligations imposed on him or her by national law, in particular where the payment service user fails to inform the payment service provider of the unauthorised or incorrectly executed payment transaction within 13 months of the date of debit?

2. If the answer to the first question is in the affirmative, does that same article preclude the payment service user's guarantor from invoking the ordinary rules of civil liability in respect of the same facts against the payment service provider, beneficiary of the guarantee, in order to challenge the amount of the secured debt?

[...] [procedural details] **[Or. 6]**

FOUNDATIONS ANNEXED to the present judgment

Grounds raised [...] on behalf of DM and LR

FIRST GROUND OF APPEAL IN CASSATION

[...] **[Or. 7]** [...] [...] **[Or. 8]** [...] [summary of the first ground of appeal, based on consumer law, with no bearing on the questions referred]

SECOND GROUND OF APPEAL IN CASSATION (alternative)

The confirmatory judgment under appeal is contested on the ground that it upheld the decision of the lower court to reject, as being inadmissible, the challenges brought by LR against the sums transferred from the bank account held by Groupe Central Automobiles to various companies on the grounds that those challenges were time-barred and on the ground that it ordered payment by LR of the sum of EUR 96 019.36 plus interest accrued after 26 March 2012 at the contractually imposed rate, in accordance with the joint and several guarantee covering operations of the [...] current account opened in the name of Groupe Central Automobiles;

[Grounds of the judgment under appeal] LR argues that the bank breached its duties by making transfers to third parties without authorisation and contends that the amount of those direct debits must be deducted from its claim; against this, Crédit Agricole contends that this objection is a strictly personal right pertaining to the principal debtor that the guarantor is not entitled **[Or. 9]** to raise, and that the amount of the debt owed to it was definitively established by judgment of the Tribunal de Commerce, Toulon, of 23 October 2012, and that, in any event, GCA Sàrl consented to these direct debits; the court of first instance rightly held that a guarantor is entitled to raise any objections inherent in the debt itself against the creditor, but not those personal to the debtor; in accordance with Article L.133-24 of the French monetary and financial code, GCA Sàrl had a 13-month period within which to contest the disputed transactions; if this period may have been interrupted by an exchange of correspondence on 3 March 2011 in which the manageress of GCA Sàrl requested information on those transactions, a new 13-month period started on that date; however, since the disputed transfers were not contested until the submissions notified on 15 May 2013, the objection was time-barred;

LR further maintains, in the alternative, that sums are owed to GCA, the principal debtor, since direct debits were made from its account without its authorisation;

until 2011, FW was entrusted with verifying the accounting records; Crédit Agricole breached its contractual duties by making transfers without any signed order or authorisation; LR instructed the bank to submit all of the accounts and calculate the [bank] account balance [...] taking account of the reversed direct debits; LR calculates that these direct debits total EUR 94 123.26; the bank contends that this objection is a personal right pertaining to the principal debtor and cannot be raised by the guarantor as a valid plea; this argument is irrelevant: LR gave the security to allow the bank account to operate in overdraft; consequently, this objection is not a personal right pertaining to GCA Sàrl, but one which directly pertains to the guarantor; however, the bank Crédit Agricole rightly comments that the principal debtor did not dispute the amount of the sums owed to the bank before the Tribunal de Commerce, Toulon, which ordered it to pay the overdraft amounts being challenged by LR [...]; furthermore, although LR relies on the application of provisions of the Civil Code to support its plea, bank account operations are governed by provisions of the French monetary and financial Code, and more specifically Article L.133-25 and Article L.133-6-1; the aforementioned code does not require any written authorisation to be given before direct debits can be taken from the account; these direct debits appear on bank statements and have been made to the companies ETRA FI, FLEX CALL, RF SOLUTION and AZUR CONSEIL since 2008; Crédit Agricole produced the cheques drawn up by DM, manageress of the company GCA, and made out to the company RF SOLUTION for the same amounts as the direct debits being disputed by LR; after the last cheque was issued on 1 April 2009, direct debits were executed for the same amount and at the [Or. 10] same monthly frequency; DM began to consult the bank via email in March 2011; a professional would not have let these direct debits continue without posing any questions; in any event, the company was required to dispute the transactions within the 13-month period provided for in Article L.133-25 of the French monetary and financial Code; the challenges being raised by LR are inadmissible because they are time-barred; Furthermore, Crédit Agricole was not provided with GCA's balance sheets, which could have made it possible to check whether payments made to the companies that were alleged to have belonged to their accountant were intended to cover staffing costs, which would have been deducted from the company's expenses, thereby reducing its turnover by the same amount, doubts that are corroborated by the fact that, although those direct debits were made to companies belonging to the accountant FW, he was not taken to court for having received those sums unduly; In view of these facts, it is recognised that the company GCA consented to the direct debits being challenged by LR, and as such his request for set-off is refused and the guarantee remains; LR is therefore ordered to pay to the Caisse Régionale Agricole Mutuel Alpes-Provence the sum of EUR 96 019.36 plus interest accrued after 26 March 2012 at the contractually imposed rate, in accordance with the joint and several guarantee covering operations of the [...] current account held by Groupe Central Automobiles Sàrl;

1. [Grounds of the appeal in cassation] Article L.133-18 of the French monetary and financial Code, which offers entitlement to an immediate refund of unauthorised payment transactions reported by the user to the bank, does not

prevent the bank from being held contractually liable under ordinary law in the event of a breach of its duty to exercise due care if proof is provided of any resulting loss; in order to reject the challenges brought by LR against the sums transferred from the bank account held by Groupe Central Automobiles to various companies on the grounds that those challenges were time-barred, the lower court ruled that ‘although LR relies on the application of provisions of the Civil Code to support his plea, bank account operations are governed by provisions of the French monetary and financial Code’ when, notwithstanding Article L.133-18 of the French monetary and financial Code on non-authorized payment transactions, LR could invoke the bank’s contractual liability, the appellate court breached Article 1147 of the Civil Code, applicable to the case before it became 1231-1 thereof, and Article 1937 of the Civil Code;

[...] **[Or. 11]** [...] [summary of the second and third parts of the second ground of appeal, based on the breach of procedural rules, of no relevance to the questions referred]

WORKING DOCUMENT