



LUXEMBOURG

## Press and Information

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Judgment of the Court of Justice in Case C-509/07

*Luigi Scarpelli v NEOS Banca SpA*

**WHERE A SUPPLIER FAILS TO PERFORM ITS OBLIGATIONS, CONSUMERS HAVE THE RIGHT TO TERMINATION OF THE CREDIT AGREEMENT AND TO REIMBURSEMENT OF SUMS ALREADY PAID TO THE GRANTOR OF CREDIT**

*The existence of an exclusive relationship between a supplier and a grantor of credit is not essential*

The consumer credit directive<sup>1</sup> both entitles a consumer to pursue remedies against a grantor of credit where the supplier of goods or services fails to perform its obligations in whole or in part, and makes that right subject to a number of conditions, such as the existence of an exclusive relationship between the grantor of credit and the supplier.

In 2003, Mr Scarpelli purchased a car and, together with the purchase contract, signed a form – provided by the supplier – applying for a loan from NEOS Banca. After paying the supplier the sum of EUR 10 000, and receiving a loan of EUR 19 130, Mr Scarpelli began to repay the loan by monthly instalments of EUR 402. After making 24 monthly repayments (totalling EUR 9 648, plus EUR 130 commission), the vehicle had still not been delivered to him. For that reason, Mr Scarpelli ceased making the repayments, contested the bank's request for payment of the outstanding balance (approximately EUR 15 000), and sought reimbursement of the sums already paid.

The Tribunale di Bergamo (Bergamo District Court) asked the Court of Justice 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 and seek the termination of the credit agreement and reimbursement of the sums already paid, where the supplier is in breach of its obligations under the contract.

First, the Court of Justice points out that the directive was adopted with the dual aim of creating a common market in consumer credit and of protecting consumers taking out such credit.

<sup>1</sup> 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), in particular Article 11 thereof.

Second, the directive prescribes minimal harmonisation in matters of consumer credit. **Member States are therefore free to lay down rules which are more favourable to consumers**, who should have more extensive rights than standard contractual rights vis-à-vis the grantor of credit.

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 the directive, which is primarily to protect the consumer as the weaker contracting party.

Where the national legislation entitles the consumer to pursue remedies against the grantor of credit in order to obtain the termination of a credit agreement and the reimbursement of sums already paid, **the directive does not impose the additional requirement that there must be an exclusive relationship between the supplier and the grantor of credit.**

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.

The Court therefore concludes that **the existence of 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.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS, DE, EL, EN, ES, FR, IT, HU, PL, SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-509/07>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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