

Case C-453/99

Courage Ltd
v
Bernard Crehan
and
Bernard Crehan
v
Courage Ltd and Others

(Reference for a preliminary ruling
from the Court of Appeal (England and Wales) (Civil Division))

(Article 85 of the EC Treaty (now Article 81 EC) — Beer tie — Leasing of
public houses — Agreement — Right to damages of a party to the contract)

Opinion of Advocate General Mischo delivered on 22 March 2001 I-6300

Judgment of the Court, 20 September 2001 I-6314

Summary of the Judgment

1. *Competition — Agreements — Contract liable to restrict or distort competition — Right of a party to the contract to rely on the breach of Article 85 of the Treaty (now Article 81 EC) to obtain relief*
(EC Treaty, Art. 85 (now Art. 81 EC))
2. *Competition — Agreements — Contract liable to restrict or distort competition — Right of a party to the contract to claim damages for loss caused by performance of that contract — Limits*
(EC Treaty, Art. 85 (now Art. 81 EC))

1. A party to a contract liable to restrict or distort competition within the meaning of Article 85 of the Treaty (now Article 81 EC) can rely on the breach of that provision to obtain relief from the other contracting party.

are liable to restrict or distort competition.

(see para. 36 and operative part 1)

Article 85 of the Treaty therefore precludes a rule of national law under which a party to a contract liable to restrict or distort competition within the meaning of that provision is barred from claiming damages for loss caused by performance of that contract on the sole ground that the claimant is a party to that contract.

2. The full effectiveness of Article 85 of the Treaty (now Article 81 EC) and, in particular, the practical effect of the prohibition laid down in Article 85(1) would be put at risk if it were not open to any individual to claim damages for loss caused to him by a contract or by conduct liable to restrict or distort competition. Indeed, the existence of such a right strengthens the working of the Community competition rules and discourages agreements or practices, which are frequently covert, which

However, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive directly from Community law, provided that such rules are not less favourable than those governing similar domestic

actions (principle of equivalence) and that they do not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness).

Under those conditions, Community law does not preclude national law from denying a party who is found to bear significant responsibility for the distortion of competition the right to obtain damages from the other contracting party. Under a principle which is recognised in most of the legal systems of the Member States and which the Court has applied in the past, a litigant should not profit from his own unlawful conduct, where this is proven.

In particular, it is for the national court to ascertain whether the party who claims to have suffered loss through concluding a contract that is liable to restrict or distort competition found himself in a markedly weaker position than the other party, such as seriously to compromise or even eliminate his freedom to negotiate the terms of the contract and his capacity to avoid the loss or reduce its extent, in particular by availing himself in good time of all the legal remedies available to him.

(see paras 26-27, 29, 31, 33, 36 and operative part 2-3)