

CASE TRANSLATION: FRANCE

Case citation:

**Extract of the minutes of the Registry
1042/2011; RG No 11-11-00080 (not
published)**

Name and level of the court:

**Tribunal D'Instance D'Epinal, Department
Des Vosges**

Date of decision:

12 December 2011

Members of the Court:

**Cyril Gory, Judge, assisted by Virginie
Planchette, Registrar**

Lawyers for the claimant:

Me Soiro

France; revolving credit; extensions of credit; failure to pay; digital evidence; electronic signature; civil procedure and time limit of application

By making available the Registrar of the Tribunal of
First Instance at Epinal on 12 December 2011

Under the Presidency of Cyril Gory, Judge of First
Instance, assisted by Virginie Planchette, Registrar;

The following judgment was rendered:

BETWEEN:

Plaintiff:

SA S2P 1 Place Copernic, 91051 EVRY CEDEX,
represented by Me Soiro, avocat in Epinal

And

Defendant:

M. William M., [address], not present

The papers were delivered on 12 December 2011

After discussions at the public hearing of 10 October
2011,

before Judge Cyril Gory

assisted by Virginie Planchette, Registrar,

The judgment is delivered today. The present party
has been advised of the date of deliberation.

FACTS, PROCEDURE AND ARGUMENTS OF THE PARTIES

Following a preliminary offer dated the 23 September
1996, and accepted on the 23 September 1996, the
company S2P, which Carrefour Bank subsequently

took over, entered into an agreement with M. William
M. for the provision of a renewable credit in the form
of an opening account in the amount of 304.90 euro,
repayable in monthly instalments at the rate of
14.88%.

By an amendment dated 30 January 2003, the loan
was increased to 3,000.00 euro.

By a further amendment dated 1 March 2006, the loan
amount was increased to 7,000.00 euro.

After several instalments remained unpaid, S2P
declared the forfeiture of the term on 14 October
2009.

By writ of justice dated 21 January 2011, S2P initiated
legal action against M. William M. before the District
Court of Epinal.

After several postponements, the matter was raised
at the hearing on 10 October 2011.

Carrefour Bank, which is the claimant, calls for:

- An order that M. William M. pays the sum of
9,921.64 euro under the credit dated 23 September
1996, in the amount of 304.30 euro and with interest
at the contractual rate of 19.88% with effect from 17
October 2009,
- Order M. William M. to pay 500.00 euro on the basis
of article 700 of the Code of Civil Procedure,
- order the temporary execution,
- Order M. William M. to pay the expense of this
action.

In support of its claim, Carrefour Bank argues

- That the maturities for reimbursement of the credit
dated 23 September 1996, in the amount of 304.90
euro are no longer being paid by M. William M.,
despite the formal notice to pay,

- That its action was not foreclosed in time since the first amount that was not paid occurred on 5 April 2009, the date of the oldest monthly payment that was not paid,
- That the offer complies with the Consumer Code in that it comprises a retraction slip, since the borrower has recognised this by remaining in possession of a copy of the offer accompanied by a retraction slip,
- That it has fulfilled its obligation to provide information on renewal of the contract,
- That it has met its obligations under the Consumer Code relating to consumer credits.

M. William M., has not responded,¹ has not presented himself, and has not been formally represented.

In compliance with the adversarial principle, the parties presented have been invited to offer their views on the foreclosure and the compliance of the preliminary credits dealt with by articles L.311-8 to L.311-13 of the Consumer Code, sanctioned by the deprivation of the right to interest.

REASONS FOR THE DECISION

The Tribunal must meet the statutory purposes when they have a character of public policy in accordance with article 125 of the Code of Civil Procedure, especially if they arise from failing to comply with time limits for remedies that must be exercised and the Tribunal may, under article L.141-4 of the Consumer Code on its own motion apply the provisions regarding the subject matter of the dispute.

1 – On the preliminary offer of credit of 23 September 1996

On foreclosure

In conformance with the public order provisions of article L.311-37 of the Consumer Code, as amended by Law no. 2001-1168 of 11 December 2001, the actions based on the default of the payment by the borrower must be commenced within two years after the event which gave rise to a penalty of foreclosure; the starting point of the period for the legal action is the date of the first unpaid and unresolved instalment.

Concerning an opening of credit in an amount determined and restorable, together with a

reimbursement obligation with an agreed period, the biennial limit laid down in article L.311 -37 of the Consumer Code starts when the amount of overdraft excess that was initially agreed is not paid, this situation constitutes an incident that characterizes the default of the borrower.

In the present case, the amount of the overdraft account initially set at 304.90 euro, was increased to 7,000.00 euro in March 2006.

CARREFOUR BANQUE produces a loan offer setting the credit to 9,000.00 euros, not signed by M. William M., but accompanied by a 'file proving the transaction'.

On the one hand, under article L.311-8 of the Consumer Code, 'the credit transactions referred to in article L. 311-2 are concluded within the terms of a preliminary offer, delivered in duplicate to the borrower', which implies the delivery of a written offer in duplicate.

On the other hand, the document 'file proof of the transaction' is not enough by itself to ensure not only the commitment of M. William M. since no element of the alleged electronic signatures are used to make the link between the unsigned loan offer, and the document as produced, in this case a simple printed file without proof of authenticity, but also to justify the security employed.

The extended credit was thus limited to 7,000.00 euro.

The amount of the overdraft account initially authorized in the sum of 7,000.00 euro was exceeded on 20 September 2008 with a debtor balance of 7,016.14 euro without being formalised thereafter, establishing the non-formalized payment incident.

S2P engaged its action on 21 January 2011, more than two years after the event that gave rise to it, so this action is inadmissible.

2 – Accessories on request

In conformity to article 696 of the Code of Civil Procedure, CARREFOUR BANQUE, the losing party, is ordered to pay the expenses of this claim.

It does not appear inequitable given the economical situations of the parties to let CARREFOUR BANQUE charge of its irrecoverable costs on the basis of article 700 of the Code of Civil Procedure.

¹ In French 'non-cited in person'.

FOR THESE REASONS

The Tribunal, after debates in open court, by contradictory decision,² appealable, made available to the public at the Registry:

- Declare CARREFOUR BANQUE foreclosed,
- Dismisses the applications of CARREFOUR BANQUE,
- Say it is not appropriate for the allocation of some costs on the basis of Article 700 of the Code of Civil Procedure.
- Orders CARREFOUR BANQUE to pay the costs of the case.

A minute of the Secretariat – Registry

With thanks to **Thibaut Le Guilly** for his help with this translation.

Thibaut Le Guilly is a PhD student at the department of computer science at Aalborg University, currently a visiting researcher at Hosei University. His main area of research is in the dependability of intelligent environments. Other interests include formal methods and software engineering.

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² The original reads 'par décision réputé contradictoire', which means that the person knows about the process but did not appear, and was not represented by a lawyer.