

CASE TRANSLATION: FRANCE

Case citation:

Arrêt No 442/12 of 14 February 2013 (not published)

Name and level of the court:

Cour D'Appel De Nancy, Deuxième Chambre Civile (Nancy Court of Appeal, Second Civil Chamber)

Date of decision:

14 February 2013

Members of the Court:

Madame Sylvette Claude-Mizrahi, President; M. Francis Martin, Counsellor; Madam Sandrine Guiot-Mlynarczyk, Counsellor

Lawyers for the claimant:

SCP Dugravot Kold Benoit Olszowaik

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

THE FRENCH REPUBLIC

IN THE NAME OF THE PEOPLE OF FRANCE

Nancy Court of Appeal, Second Civil Chamber

Arrêt No 442/12 of 14 February 2013

Registration number to the general inventory:

12/01383

Decision referred to the Court: judgment of the District Court of Epinal, RG no 11/000080, dated 12 December 2011,

APPELLANT:

The company Carrefour Bank representing the rights of the company Société des Paiements Pass (Sigle S2P), in the person of its legal representatives for this domiciled at the registered office,

sis1 Place Copernic – 91080 COURCOURONNES

represented by the law firm Dugravot Kolb, Benoît and Olszowiak, advocats of the Bar of Nancy

RESPONDENT:

M. William M.

[address]

regularly served on the person by an act of 25 July 2012

COMPOSITION OF THE COURT:

Pursuant to the provisions of articles 786 and 905 of the Code of Civil Procedure, the case was argued on 7 January 2013, at a public hearing, the lawyers having not objected, before M. Francis Martin, Counsellor, in charge of the report,

This magistrate has reported the arguments in the deliberations of the court composed of:

Madame Sylvette Claude-Mizrahi, President

M. Francis Martin, Counsellor

Madam Sandrine Guiot-Mlynarczyk, Counsellor

Registrar during the debates: Madame Emilie Aubry;

Following the debate, the President announced that the decision would be made by making it publicly available at the Registry on 14 February 2013, pursuant to the second paragraph of Article 450 of the Code of Civil Procedure;

A counter argument, delivered by public availability at the Registry on 14 February 2013 by M. Ali Adjal, Registrar, pursuant to paragraph 2 of the 450 Code of Civil Procedure;

signed by Madame Sylvette Claude-Mizrahi, President of the Chamber, and M. Adjal, Clerk;

STATEMENT OF THE CASE

Following the prior offer accepted 23 September 1996, the Société des Paiements Pass, the rights of which are now with Carrefour Bank, granted to M. William M. usable credit in the form of an overdraft, the authorized overdraft that was requested being 2,000 francs, or 304.90 euros.

The amount of the overdraft was increased to 3,000 euros by an amendment dated 30 January 2003, then 7,000 by a further amendment dated 1 March 2006, and finally to 9,000 per a further amendment on 4 September 2008.

Several monthly repayments of credit having remained unpaid, Carrefour Bank ordered the forfeiture of the term by registered letter of 14 October 2009 (acknowledgment signed on the 17 October 2009 by M. William M.).

By bailiff on 21 January 2011, Carrefour Bank took legal action against M. William M. before the district court of Epinal requesting an order for him to pay them the sum of 9,921.64 euro in principal, with interest at the agreed rate of 19.88% as of 17 October 2009, in addition to the 500 euros on the basis of article 700 of the Code of Civil Procedure.

M. William M. did not appear and was not represented.

By judgment of 12 December 2011, the district court of Epinal declared foreclosed the action of the Carrefour Bank.

The court justified its decision by noting that the amendment increasing the authorized overdraft to 9,000 euros had not been signed by M. William M., so that the overdraft actually authorized remained at 7,000 euro, and that this amount was exceeded without appropriate action taken by the borrower more than two years before the assignment of 21 January 2011.

Carrefour Bank has regularly appealed this judgment by declaration dated 4 June 2012. It asks the court to set aside the referred judgment, and to order M. William M. to pay the sum of 9,921.64 euro in principal, with interest at 18.14% per annum from 14 October 2009 and that of 800 euros on the basis of article 700 of the Code of Civil Procedure.

In support of its appeal, Carrefour Bank states:

- It is not for the court to raise on its own motion that the prior offer had not been delivered in duplicate to the borrower; whereas, moreover, the offer of 4 September 2008 was purchased electronically, which allowed M. William M. to have as many hard copies as he wished,
- The offer of 4 September was signed by M. William M., using an electronic signature; in addition, this point could not have been raised by the court on its own motion,
- The reliability of an electronic signature procedure is presumed when a secure device is used, as in this case,

- The last instalment that was not paid is dated 5 April 2009, and the summons was served on 21 January 2011, which excludes any foreclosure.

By bailiff on 25 July 2012, the Carrefour Bank has assigned M. William M. before the court and was served with its conclusions, but he has not appointed a lawyer.

REASONS FOR THE DECISION

Given the recent filings submitted 30 July 2012 by the Carrefour Bank,

Given the summons served 25 July 2012 to the person of M. William M.,

Given the Closing Order dated 7 November 2012.

On the admissibility of the action of the credit company

The signature required for the perfection of a legal document identifies who affixes it. It manifests the consent of the obligations of the parties that arise from this act. When it is in electronic format, it consists of the use of a reliable identification procedure that ensures its link with the act to which it is attached. The reliability of this method is presumed, until the contrary is proved, when the electronic signature is created, the signer's identity ensured and the integrity of the act ensured in accordance with the provisions of Decree No. 2001-272 of 30 March 2001.

In this case, M. William M. electronically signed the amendment of 4 September 2008 that raised his authorized overdraft to 9,000€.

Carrefour Bank produces as evidence the file proving the transaction issued by the certification authority Keynectis. The reference number of the document on the evidence file enables one to verify that it is in fact this amendment that was signed electronically by M. William M..

Therefore, the proof of the signature of M. William M. to the amendment of 4 September 2008 is reported, contrary to the finding of the lower court.

The analysis of the historical entries on the account shows that the authorized overdraft was exceeded without reinstatement starting on 19 June 2009, and the last unregulated instalment goes back to April 2009. Therefore, Carrefour Bank having issued a summons to M. William M. by a bailiff on 21 January 2011, its action is not foreclosed, it will be declared admissible and the judgment will be reversed.

On the amount of the debt to the credit company

If the borrower defaults, the lender can demand immediate repayment of the outstanding principal plus accrued but unpaid interest. These amounts themselves generate interests on late payments to a rate equal to the one of the loan, until effective payment.

In this case, it follows from the accounts produced that the debt of Carrefour Bank is established as follows on the day of forfeiture, 14 October 2009:

- Outstanding capital: 8,797.55 euro,
- Interest and accrued unfunded insurance fee: 412.49 euro,

or a total of 9,210.04 euro, which will bear interest at the contractual rate of 18.14% as of 14 October 2009.

On the costs and article 700 of the Code of Civil Procedure

M. William M., who is the losing party, is to pay the costs, but given the very high conventional interest rate, equity does not require that he be ordered to pay legal costs of Carrefour Bank, which will be dismissed on the basis of article 700 of the Code of Civil Procedure.

FOR THESE REASONS

THE COURT reverses the judgment pronounced publicly by making available to the Registry, in accordance with article 450 paragraph 2 of the Code of Civil Procedure,

DECLARES the appeal admissible,

SETS ASIDE the judgment of first instance in its entirety and, acting again

DECLARES admissible the action for payment of Carrefour Bank against M. William M.,

ORDERS M. William M. to pay Carrefour Bank the sum of nine thousand two hundred and ten euros and four cents (9,210.04 euro), which will bear interests at the contractual rate of 18.14% per annum from 14 October 2009,

DISMISSES Carrefour Bank from its request on the basis of article 700 of the Code of Civil Procedure,

ORDERS M. William M. to pay the costs, and authorizes SCP Dugravot Kolb, Benoît and Olszowiak, lawyers, to apply article 699 of the Code of Civil Procedure.

This decision was signed by Madame Sylvette Claude-Mizrahi, President of Chamber at the Court of Appeal of Nancy, and M. Adjal, Registrar which the minute the decision was given by the magistrate signatory.

Minute of five pages.

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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