

CASE NOTE: FRANCE

Case citation:

CA Douai, 8e ch., 1re sect., 2 mai 2013, n° 12/05299: JurisData n° 2013-008597

Name and level of the court:

Cour d'appel – Douai (Court of Appeal Douai)

Date of decision:

2 May 2013

France; electronic signature; revolving credit; foreclosure

An action for debt of a bank on the basis of an amendment signed electronically regarding a revolving credit was admitted into evidence by an appellate court reversing a decision of the district court of Maubeuge, which had retained foreclosure action.

(...)

Whereas the company Monabanq appealed from a judgment of the District Court of Maubeuge of 16 March 2012, which declared it foreclosed from pursuing recovery of the balance of a credit that was available in portions and repayable by monthly instalments. Mme Marie-Françoise D. had subscribed with the bank Covefi following an offer from 17 January 2006;

Whereas society Monabanq, reiterating court claims it had initially submitted to the trial judge, requests that Mme Marie-Françoise D. be ordered to pay the sums of 7,852.95 euro with interest at the contractual rate of 17.35% as of 25 November 2011, 425.43 euro under statutory compensation of 8% with interest at the statutory rate of 25 November 2011, in addition to 1,500 euro under article 700 of the Code of Civil Procedure; it seeks further capitalization of accrued interest by full year in the manner prescribed by article 1154 of the Civil Code interests; (...)

Whereas the public policy provisions of article L. 311-37 of the former Code of consumption that should be applied by default and to which the contract in question is subject, provides that the District Court hear disputes arising from the application of the chapter on credit transactions referred to in article L. 311-2 of the Consumer Code and that the claims for

payment presented to it (the court) in connection with the failure of the borrower must be made within two years of the event that gave birth to them under penalty of foreclosure;

It is acquired in terms of an appropriation of an amount determined and restorable as in this case, together with the repayment the obligation to agreed deadlines, the foreclosure period runs either from the failure to pay a monthly payment, or from the time when the amount of useful overdraft agreed between the parties is consistently exceeded without further adjustment;

The signature required for the completion of a legal document identifies the person who affixes it; it manifests the consent of the parties to the obligations resulting from this act; when it is electronic, it involves the use of a reliable identification process guaranteeing its link with the act to which it is attached; the reliability of this method is presumed, until proved otherwise, if the electronic signature is created, the signer's identity ensured and the integrity of the act warranted in accordance with the provisions of Decree No. 2001-272 of 30 March 2011 [sic];

Whereas in this case it is clear from the evidence that the credit granted to Mme Marie-Françoise D. by Banque Covefi following the preliminary offer of 17 January 2006 was a credit renewable in portions 'Complicio' of an initial amount (credit available) of 1,500 euro;

The company Monabanq brings to the debate an amendment entitled 'electronic endorsement to your Complicio contract' dated 10 March 2009 bringing this amount to the sum of 6,500 euro;

That appears on this document the signature BOPRCC-Monabanq-AUG16468889933-2009.3.10-13.25.26-159;

Mme Marie-Françoise D., who has not appointed a lawyer, did not deny this electronic signature;

It follows that the evidence is thus reported that Mme Marie-Françoise D. signed the amendment increasing the amount of credit available to the sum of 6,500 euro on 10 March 2009 in electronic form;

Whereas the examination of the account history relates that the threshold of the permitted overdraft in the sum of 6,500 euro was exceeded as of 13 August 2010, without having been subsequently restored, and the first unpaid instalment was not regularized on 12 August 2010, the starting point of the biennial period of foreclosure enacted by article L. 311-37 of the Consumer Code;

In these conditions, by issuing a summons for payment to Mme Marie-Françoise D. on 14 December 2011, the credit institution has usefully brought its action for payment within a period of two years, so that no foreclosure is enforceable;

It follows that the judgment should be set aside in that in that the action by the company Monabanq is admissible on this ground;

Whereas, from the evidence produced by the credit institution, namely the prior offer of credit of 17 January 2006, the amendment of 10 March 2009, the history of the account, the formal notice addressed to Mme Marie-Françoise D. worth acceleration, and debt settlement dated 2 December 2011, the debt of the company stood Monabanq as follows: (...)

As a result, Mme Marie-Françoise D. will, by reversal of the judgment referred, be required to pay to the company Monabanq, in accordance with its request, the sums of 7,852.95 with interest at the contractual rate of 17.35% a year commencing on 25 November 2011, and 425.53 euro with interest at the legal rate from the same date, the capitalization of interest being of right as soon as interest will be accrued for at least one year rate;

Finally, whereas it appears inequitable to leave the burden to Monabanq the costs incurred and not included in costs; it will be consequently allocated 500 euro under article 700 of the Code of Civil Procedure;

For these reasons;

Acting publicly and by default;

Reversed the judgment in its entirety (...).

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

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