Federal Court of Justice Issues Fundamental Ruling on Agency Requirements in Consumer Credit Cases

Suggested Citation: *Federal Court of Justice Issues Fundamental Ruling on Agency Requirements in Consumer Credit Cases*, 2 German Law Journal (2001), *available at* http://www.germanlawjournal.com/index.php?pageID=11&artID=68

[1] On April 24, 2001, the Federal Court of Justice (Bundesgerichtshof - BGH) - *FCJ* - ended a long standing controversy between the Courts and legal academics concerning the minimum requirements of a consumer credit agreement when signed by a consumer`s agent. Under Section 4 para. 1 Sent. 4 number 1 of the Law governing Consumer Credits (§ 4 Abs. 1 S. 4 Nr. 1 Verbraucherkreditgesetz – VerbrKrG), the consumer credit agreement is only valid if the signed contract contains a series of dispositions relating to content, interest rates and execution of the credit contract. In cases where the consumer credit agreement was not signed directly by the consumer but by his agent, the question regularly arose of whether the contract was valid when the agency agreement itself didn`t cover the detailed provisions mentioned in the VerbrKrG. The *FCJ* now resolved the dispute by drawing a clear line between the law of agency and the law of consumer credits.

[2] The case arose when plaintiffs contracted with a company that was thought to conclude credit agreements in the name of plaintiffs in order to raise capital for the financing of a house. The agency agreement fell short of a number of detailed provisions concerning interest rates that the agency company ultimately contracted with the defendant bank. Affirming the holding of the Higher District Court of Stuttgart (Oberlandesgericht Stuttgart), the *FCJ* found the meaning of named provisions in the Law governing consumer credits to be residing in the protection of the consumer when concluding a credit contract. While the provisions are designed to call the consumer`s attention to crucial aspects of the consumer agreement, they do not, the *FCJ* held, put aside the agency relationship between the consumer and his/her agent when concluding the credit agreement. The law of agency resting on the idea that the agent facilitates and autonomously concludes a contract in the name of the principal and in accord with the principal`s intention, the *FCJ* found the protective requirements set down in the Consumer Credit law to be satisfied when the mandatory contract informations were issued to the agent, even if they were missing from the agency agreement between principal and agent. The Court held that the risks notably involved in an agency contract are not curtailed by the protective law governing consumer credits.

[3] Taking an inside view on the relationship between a consumer principal and an agent, the *FCJ* stressed the point that it was simply not possible for the principal to set down all the credit details when contracting with a agent for the purpose of the agent bargaining and contracting a credit agreement for the principal with a financial institution. In fact, if one were to demand the inclusion of such requirements already into the agency agreement, this would clearly lead to a prevention of agency contracting in the field of consumer credits. The need to separate the agency agreement and the consumer contract becomes evident when looking at the role of the financial institution. The bank is not part of the agency agreement. If the agency agreement already were to include all the specific details of the credit contract as set down in the VerbrKrG, the bank would ultimately incur liabilities for shortcomings on which it simply had no influence.

For more information:
Decision of the Federal Court of Justice (Bundesgerichtshof - BGH)
of April 24, 2001, Reg. No. XI ZR 40/00 – not yet published.
See press release no. 30 at www.bundesgerichtshof.de