
Over the past three decades, the consumer credit market has experienced a significant development which led to the approval of the Act 16/2011 of July 24th of consumer credit contracts. As consumers, we usually find the ability to finance a product or service through a bank loan offered by the same service provider who is directly responsible for processing and formalizing the loan with a bank entity, usually, of its choice.

In these cases, each contract, the lease contract (for example, a dental treatment) and the financing contract (bank loan) are two legally different, but linked contracts since the financing agreement is mostly used to pay in instalments the full amount of the service rendered. Traditionally, in the event that the service lender fails to comply with his obligations (for instance, ceasing to provide the contracted service) causing then the contract termination or ineffectiveness of the main contract or even its radical or relative nullity, the consumer was obliged to continue with the payment of the instalments of the bank loan as agreed, since it was considered as two separate legal contracts.

A historical background on this type of legal dispute is the case that happened years ago in relation with a popular franchise of language schools which caused that a large number of enrolled students were affected by not receiving the services contracted because of an unexpected close of these schools and having due a bank loan which the center itself offered to the students in order to pay the courses. This case served to adjust the concept of linked contract that basically involves that the cancellation of the original contract (in this case, the course of English) automatically supposes the ineffectiveness of the financing contract. According to the Consumer Credit Act, which regulates these types of loans, a contract is qualified as linked to another main contract if it fulfills three conditions. Firstly, the consumer, in order to purchase goods or services, has entered into a loan with an employer different than the supplier. Secondly, between the financial entity granting the credit and the supplier must be a previous agreement on an exclusivity basis under which the supplier shall offer loans to customers for purchasing the suppliers goods or services and, finally, that the credit granted to the consumer has been precisely based on that above-mentioned agreement.
Later, as a result of the problems arisen from contracts for timeshare property by which the owner is given the opportunity to enjoy a holiday property for a determined and exclusive period of time each year, the Supreme Court in its recent judgment 436/2015 of July 1st 2015 (in relation to the judgment of April 28th 2015) extended the doctrine on linked contracts, particularly, (1) on the interpretation of articles 10 and 12 of the Act 42/1998 declaring the ineffectiveness of the financing contracts not only in response to cases of withdrawal and termination of the main contract but also in any case of invalidity thereof, and (2) the scope of the concept of exclusivity required by the Consumer Credit Act. According to such judgment, the Supreme Court interprets the concept of exclusivity rather than on the possible existence of a genuine exclusive agreement between the lender and the supplier but in assessing the inferiority of the contractual position of the consumer, which may be reflected in his lack of real freedom to contact with a financial entity of their choice outside the frame, even exclusive and plural, imposed or induced by the service provider.

The recent case of FUNNYDENT
Last January, the odonatological clinics chain, Funnydent closed without announce the doors of its nine dental clinics in the communities of Catalonia and Madrid leaving unfinished the treatments of thousands of patients who, the large majority, were financed through banks loans proposed by the clinic itself.

The treatments of these more than 2,000 people affected by the closure of these clinics were financed, in some cases, for an amount of 20,000 euros what has caused a serious damage not only to their health, as they have not received the treatment, but also an economic damage because they must continue paying the loan while the main contract is not being terminated.

Notwithstanding the above, and thanks to the already established doctrine of the Supreme Court, when it comes to a case of linked financing (i.e. the consumer has not searched the funding by their own but has accepted the proposal by the seller in partnership with a financial entity) the consumer could raise against the financial entity the same exceptions that had before the service provider which meant not only that he can stop paying deferred financed installments but can also recover the full amount paid and request the termination of the main contract and compensation for losses and damages, if it is appropriate.

The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.
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