
CASE LAW REVIEW

The Loan Agreement

Decision of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi Circuit Court, delivered on 21 November 2003 with respect to case No. 2/b-03

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I. Circumstances of the Case

On 5 September 2001, E.B. and T.K. (hereinafter the "plaintiffs") filed an action against N.B. (hereinafter the "defendant") concerning the repayment of a loan. According to the explanations of the plaintiffs, on 23 August 2000, the defendant borrowed 8,000 USD from E.B. at 5% interest and on 7 September 2002 an additional 6,000 USD from T.K. at 5% interest. On 15 October of the same year, the defendant borrowed a further 2,000 USD from E.B. at 10% interest. During the first month, E.B. received 400 USD as the interest from the borrowed 8,000 USD but, from that point on, the defendant has never repaid any sum to the plaintiff. On 22 August 2001, the defendant made a bill of debt, under which he promised to return the due amount to the plaintiffs, totalling 20,500 USD.

The defendant did not admit the claim and explained that the plaintiffs invested the aforementioned sums in a joint activity, which failed, whilst the bill of debt, submitted to the court, was no proof of the existence of a loan agreement to which he was a party. The defendant filed a counterclaim and demanded the eviction of the plaintiffs from the apartment, which was owned by him, where they had been living without his permission. With respect to the counterclaim, the plaintiffs explained that the defendant personally let them into the disputed apartment as they had sold their apartments to lend money to the defendant and had no other place to live.

Under the decision of the Tbilisi Vake-Saburtalo district court, dated 18 March 2002, both initial action and counterclaim were met. The court guided itself by Articles 624 and 625 of the Civil Code of Georgia and considered the existence of a loan agreement between the parties as established on the grounds of the bill of debt which was drawn up by the defendant.

The court also guided itself by Article 172 of the Civil Code of Georgia and considered the counterclaim of the defendant on the eviction of the plaintiffs from his apartment as legitimate. The district court provided for the procedure of enforcement of the aforementioned decision; namely, for the simultaneous payment of the equivalent of 20,500 USD in GEL and eviction of the plaintiffs from 22, G-dze Street, Tbilisi.

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The defendant appealed against the part of the aforementioned court decision which concerned the imposition of the payment of 20,500 USD on the former. The plaintiffs did not admit the appeal and demanded to leave the contested decision unchanged.

II. Motivation

After the examination and analysis of the appeal, a study of the case file and hearing the explanations of the parties, the Appellate Chamber considers that the contested part of the decision must be overruled due to following reasons:

According to Article 623 of the Civil Code of Georgia, by virtue of a loan agreement a lender transfers money or some other generic item into the ownership of the borrower and the borrower undertakes the obligation to return the item in the same kind, quality and amount. Pursuant to Article 624 of the Civil Code, a loan agreement is made verbally but the parties may also agree on its written form. In the case of an oral agreement, its validity may not be proved only on the grounds of the collective evidence of the witnesses.

The Appellate Chamber considers that the bill of loan annexed to the case file is not evidence to certify the existence of the loan agreement between the parties as it does not mention such an agreement. The Chamber considers that the submitted bill of debt proves the existence of a dealing between the parties on a joint activity to which E.B. contributed 8,000 USD and T.K. a further 6,000 USD with March 2001 being named as the period of joint activity. The Appellate Chamber considers that, according to Article 934 of the Civil Code, the right to pursue the joint activity was granted to the defendant. The Chamber considers it established that the joint activity under the management of the defendant failed and terminated pre-term, in January 2001, and, by that time, the sum amounted to 20,500 USD.

III. Resolution

Based on Articles 277 I and II, 384, 385 II, 389 of the Code of Civil Procedure of Georgia and Articles 931, 932, 934, 715 I of the Civil Code of Georgia the Chamber for Civil, Entrepreneurial and Bankruptcy cases decided:

1. To meet the appeal of the defendant. The contested part of the decision of Vake-Saburtalo district court shall be hereby cancelled.
2. The plaintiff shall hereby be obliged to pay the equivalent of 8,000 USD in GEL to E.B. and the equivalent of 8,000 USD in GEL to T.K.

IV. Comments

The decision of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi Circuit Court with respect to the case No 2/b-03, dated 21 November 2003, was made in breach of the statutory requirements. According to Article 393 II (a) and (b) of the Code of Civil Procedure, the rules of law are considered violated when the court fails to apply the law it should have applied but applies another law in its stead.

Upon settlement of the dispute, the Appellate Chamber of the Circuit Court considered the decision final and the parties did not contest this decision: in August-September 2000 the plaintiffs lent 8,000 USD and a further 6,000 USD to the defendant at 5% interest which was to be paid before March 2001. In the course of establishment of the aforementioned situation, the Appellate Chamber of the Circuit Court based its assumptions on the bill of loan made by the parties and considered it as an agreement on a joint action which is, in fact, an unreasonable conclusion. The bill definitely contains a reference to a joint action, however the mere use of this term cannot be considered as an actual joint action per se. The main feature of a joint action is that the agreement of the parties and the declaration of common will aims to attain a common goal which is ultimately manifested in the subject matter of the agreement. According to Article 930 of the Civil Code, under an agreement on a joint action (partnership) two or more persons undertake to act jointly for the attainment of common economic or other goals, in a manner envisaged by the agreement, without creating a legal person. The bill of debt made by the parties and the case file do not contain any reference to the existence of a common goal. Freedom of agreement of the subjects of Civil Law does not mean the neglect of the requirements of the imperative provisions of the law. Furthermore, the plaintiffs deny the agreement was based on a joint action and so, consequently, it may be asserted that the legal relationship between the parties is not based on the declaration of will of the parties on the setting up of a partnership and interest to attain a common goal. The Appellate Court, therefore, was incorrect in its legal assessment of the dispute and wrongly applied Articles 930, 931 and 934 of the Civil Code of Georgia.

The judgment of the Appellate Chamber is not substantiated when it states that the bill of debt signed by the parties and annexed to the case file is not the acknowledgement of the obligation originating from a verbally made loan agreement insofar as there is no reference to a loan therein. The case file shows that the content of the bill of debt definitely proves the existence of a legal relationship between the parties with respect to a verbal loan agreement as follows. On 22 August, the parties admitted the following circumstances to be real: the receipt of 8,000 and 6,000 GEL by the defendant from the plaintiffs during the period of August-September 2000 to be repaid by March 2001 with the obligation of interest bearing and the repayment of the sum to the issuer thereof, which is proved by the phrase: "... subject to repayment by instalments as it may deem convenient." It should be mentioned that the appellee did not contest the validity of the bill of debt. The circumstances of the case establish undeniably the existence of a loan relationship which is supported by the bill of debt, annexed to the case file, on the existence of a period. According to Article 341 of the Civil Code, a written form is required for the validity of an

agreement which acknowledged the existence of the relationship with respect to some obligations (acknowledgement of debt).

The Appellate Chamber applied Article 715 I of the Civil Code incorrectly under which a mandatory is bound to return the mandator everything he received for the performance of the mandated task, but never used for that purpose, as well as everything he acquired in connection with the performance of the mandated task. The dispute derives from a loan agreement and the provisions on a mandate agreement may not be applied for the settlement thereof.

The decision of the Appellate Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi Circuit Court, therefore, delivered with respect to case No.2/b-03 is made in breach of Article 393 II (a) and (b) of the Code of Civil Procedure, namely:

- The Appellate Chamber applied the law it should not have applied, namely, Articles 930, 931, 934 and 715 I of the Civil Code; and
- did not apply the law it should have applied, namely, Articles 623, 624, 625, 341 of the Civil Code.