

Court of Appeal: Examples of null and void recognition statements of debts

According to the decision of the Court of Appeal of Budapest, the debtor cannot make a recognition statement of debts prior to the payment of the sum of the loan.

The reason that this case is remarkable is that the credit banks often require one-sided statement of commitment throughout the lending. The question arises, in which are the cases when the aforesaid statements are null and void.

The term of payment of the sum of the loan is the recognition statement of debt

The factual ground of the case is the following:

A loan agreement by private contract was concluded between a credit bank and its client. The term of the payment of the sum of the loan was a one-sided statement of commitment to repay the sum to the creditor made by the client in front of a notary. The statement contained the clause of law enforcement as well. However, as a matter of fact, the address and the content of the notarial act did not align, latter was considered **as acknowledgement of the date and terms and fact of concluding the loan agreement, in addition the client admitted that the sum of the loan was identical with sum concreted in the records of the credit bank.**

The debt is non-existent before the date on which the sum of the loan is paid

Firstly, the Court of Appeal examined whether the payment of the loan was the term and condition of the recognition of the debt. Pursuant to the Hungarian Act on the Civil Code, making a one-sided, addressed statement presumes the being of a debt on some ground. In present case **the debtor acknowledges the exact sum of the debt (which is equivalent to the recorded in the register of the credit bank) prior to the payment of sum of the loan.** The term of the agreement mentioned above cannot be considered as a recognition statement of debt, because at the time the parties concluded the agreement, such debt did not exist. The Court of Appeal emphasized as well, that the term and condition of the agreement lack the features of recognition statement of debts, because it is basically a term and condition of an agreement not discussed individually between the consumer and the credit bank.

The burden of proof is reversed

Despite the opinion of the Court of Appeal, which declares that the statement of the client cannot be considered as recognition, it is the client or consumer's burden to prove that the sum of debt is not equivalent to the sum recorded in the register of the credit bank. The unfairness of the terms and conditions is testified by their legal effect.

An enforcement clause cannot be issued

Furthermore, the Court of Appeal declared, that the notarial act containing the recognition statement of the debtor with an unfair term would not be suitable for the notary to enclose to the act an enforcement clause, simply because it could not comply with the provisions about the characteristics of enforcement clause included in the Hungarian Act on Enforcement and the Hungarian Act on Notaries. Therefore, the present statement is not a business document, as the loan agreement itself applied to the services and compensations.