

CASE TRANSLATION: FRANCE

Case citation:
15-10732

Name and level of the court:
**Cour de cassation, chambre civile 1
(French Supreme Court – 1st civil division)**

Case reference:
ECLI:FR:CCASS:2016:C100378

Date of decision:
6 April 2016

Member of the court:
Mrs. Batut, Presiding Judge

Lawyers:
**SCP Potier de La Varde et Buk-Lament
Mr. El Jilali, Alptis Individuelles Santé**

Dispute

France; electronic signature; validation of signature; formation of contract

French Republic

In the Name of the French people

THE FIRST CIVIL DIVISION OF THE COUR DE CASSATION rendered the following decision:

Regarding the single plea:

Whereas, according to the contested judgment (delivered by the local court of Montpellier on 11 February 2014), Mr. X lodged an appeal against an order dated 21 May 2013, requested by Alptis Individuelles Santé (the company), ordering him to pay a certain sum in respect of an online application for complementary health insurance, which he denies having signed;

Whereas Mr. X ... complains that the judgment rejected his application, whereas, according to the plea, when a party denies being the author of an electronic document, the judge is required to verify the validity of the signature, that is to say that such signature constitutes a reliable method of identification guaranteeing its link with the document to which it is attached, and therefore verifying that such method guarantees a secure electronic signature, obtained thanks to a secure electronic signature creation device, and that the signature verification is based on the use of a qualified electronic certificate; by simply stating, in order to dismiss the appeal lodged by Mr. X, who denied having signed in electronic form an application for complementary health insurance with the company, that the signature had been identified by means of a reliable method guaranteeing the signature's link with the document to which it was attached from the moment the application mentioned the issuance of

such document by Contraleo, an online contractualisation platform enabling the identification and authentication of signatories, the local court did not verify, as it was required to do so, whether the disputed electronic signature originated from a secure electronic signature creation device, or whether the verification of such signature was based on the use of a qualified electronic certificate, thus depriving its decision of legal basis in view of Articles 287 of the French Code of Civil Procedure, 1316-1 and 1316-4 of the French Civil Code and Article 2 of Decree no. 2001-272 of 30 March 2001;

Whereas, however, the judgment notes that the application in electronic form was issued and kept under conditions that ensure its integrity, the signature was identified by means of a reliable method guaranteeing the electronic signature's link with the document to which it is attached, and the application for complementary health insurance produced at the hearing mentions the issuance of such document by Contraleo, the online contractualisation platform enabling precise identification and authentication of the signatories as of 25 May 2011; and having therefore carried out the research that was allegedly omitted, the local court legally justified its decision;

ON THESE GROUNDS:

DISMISSES the appeal;

Orders Mr. X to pay the fees of the proceedings;

In view of Article 700 of the French Code of Civil Procedure, rejects the application;

Thus done and tried by the first civil division of the Cour de Cassation, and delivered by the Presiding Judge in his public hearing of 6 April two thousand and sixteen.

ADDITIONAL PLEA ATTACHED to this decision.

Plea produced by the lawyers of SCP Potier La Varde et Buk-Lament on behalf of Mr. Abderrahmane X ...

Mr. X ... complains that the contested judgment ordered him to pay Alptis Individuelles Santé the principal sum of €1,925.60, plus interest at the legal rate as of 6 May 2013;

ON THE GROUNDS THAT, in the present case, Alptis Individuelles Santé justifies its principal claim by means of the documents introduced into evidence in court, namely the application for complementary health insurance DIVINEA 3, made online under number 5887042, effective as of 1st January 2012, the insurance company and the beneficiary's certificate of signature, in electronic form, issued by CONTRALEO NPAI on 25 May 2011, the letter of formal notice of 15 April 2012, under the terms of which it is specified, pursuant to Article L. 113-3 of the French Insurance Code, that failure to pay within 30 days following dispatch of the letter, will result in the complementary health insurance being suspended and then terminated 10 days thereafter, without the beneficiary being exempt from paying all amounts due for the ongoing civil year, the duplicate notice of payment as at 31 December 2012 amounting to a total of € 1,925.60; Mr. X lodged an appeal against the order to pay, issued on 21 May 2013, and denies having signed an application for complementary health insurance with Alptis Individuelles Santé; under the provisions of Article 287 of the French Code of Civil Procedure: 'If either party denies having signed a document attributed to him/her or fails to acknowledge a document attributed to its author, the judge shall verify the disputed document unless such judge can rule without having to take the document into account. If the denial or lack of acknowledgement concerns an electronic document or signature, the judge shall verify whether the conditions laid down by Articles 1316-1 and 1316-4 of the French Civil Code regarding the validity of the electronic document or signature have been met; under Article 1316-1 of the French Civil Code "A document in electronic form is admitted into evidence in the same way as a document in paper form, provided that the person from whom it emanates can be duly identified and that it is issued and kept under conditions that guarantee its integrity"; pursuant to Article 1316-4 of the same Code, 'A signature that is necessary for the perfection of a legal document identifies the person

who affixes it. It expresses the parties' consent to the obligations under such document ... When a signature is in electronic form, a reliable method of identification is used guaranteeing the signature's link with the document to which it is attached.

The reliability of this method is alleged, until proven otherwise, when an electronic signature is created, the identity of the signatory is ensured and the integrity of the document is guaranteed, under the conditions laid down in a decree enacted by the French Council of State;

In the case at hand, the application for complementary health insurance in electronic form was issued and kept under conditions that ensured their integrity and the signature was identified by means of a reliable method guaranteeing the electronic signature's link with the document to which it is attached; indeed, the application produced at the hearing states that the document was issued by CONTRALEO, the online contractualisation platform enabling precise identification and authentication of the signatories on 25 May 2011; therefore, in view of these elements, the judge should rule in favour of Alptis Individuelles Santé and sentence Mr. X ... to pay € 1,925.60 euros, requested with interest at the legal rate as of 6 May 2013, the date on which the payment order request was filed;

WHEN a party denies being the author of a written electronic document, the judge is required to verify the validity of the signature, that is to say that the signature is a reliable method of identification guaranteeing its link with the document to which it is attached, and, therefore, that such method ensures a secure electronic signature, established thanks to a secure electronic signature creation device and that the verification of such signature is carried out by means of a qualified electronic certificate; by simply stating, in order to dismiss the opposition filed by Mr. X, who denied having signed, in electronic form, an application for complementary health insurance with Alptis Individuelles Santé, that the signature had been identified by means of a reliable method guaranteeing the signature's link with the document to which it is attached from the moment the application for complementary health insurance mentions the issuance of the document by Contrôleo, the online contractualisation platform enabling the identification

and authentication of the signatories, the local court did not verify, as it was required to do so, whether the disputed electronic signature verification method was based on a secure electronic signature creation device, or whether the verification of such signature was based on the use of a qualified electronic certificate, thus depriving the court's decision of legal basis in view of Articles 287 of the French Code of Civil Procedure, 1316-1 and 1316-4 of the French Civil Code, and Article 2 of Decree No. 2001-272 of 30 March 2001.

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