# **CASE NOTE: GREECE**

CASE CITATION: **5526/1999** 

NAME AND LEVEL OF COURT: Athens Court of First Instance JUDGE: Gavalas Dimitrios

Composed by the judge Gavalas Dimitrios, Judge of First Instance, who is appointed by the President of the Board of Administration consisting of three members and by the secretary Anna Blazaki.

The court held a public meeting on the 7th January 1998 to rule in the case between:

The claimant I. M. resident of Kalamaki who was present with his attorney A.K.

#### The defendants

- 1. The Banking Company with the corporate name A.B sited in Athens and is legally represented
- 2. I. X.
- 3. K. E. who are represented by the attorney L.T.

The claimant asks for his claim, number 4132/1996 for which the day of hearing was determined the 12/2/1997, to be accepted. During the day of hearing, the court procedure was postponed.

During the proceedings the attorneys of the parties developed their allegations and asked for the acceptance of everything that is mentioned in their minutes and claims.

## After considering the pleadings

## Based on the law

The claimant, with the claim in question states that, on the 24/1/1995 he entered into branch number 116 of the Bank situated in Suggrou Avenue and as a response to an advertising campaign of the Bank, opened a savings account, depositing the amount of 1.100.000 drachmas (equivalent of 3.300 €). That after filling in the application form, the CASHCARD-DEBIT "the first banking and debit card" was posted to him by mail while he was made aware of his Personal Secret Code (also known as Personal Identification Number, or PIN). That on the 12/10/1995 unknown persons committed burglary in his car and removed his bag and the above mentioned card. The claimant, in order to suspend his account, informed the first defendant within a few minutes, but as a result of the negligence shown by the two later defendants, the account was not suspended and the thieves removed the amount of 1.200.000 drachmas (equivalent of 3.600 €) from his account. As a

consequence, the claimant seeks the issuance of a copy of the transactions statement of the account which belongs jointly to him and his wife. Additionally, he demands that the defendants pay the amount of 1.200.000 drachmas (equivalent of  $3.600 \in$ ) jointly and completely along with the legal interest from the 12/10/95 or from the 30/11/95 or from the service of the claim. In addition, he asks for the issued decision to be temporarily executed and for the defendants to be ordered to the payment of his legal costs.

The claim, including the above content, is propitiously discussed in this Court of competent regional and objective jurisdiction for the judgment of this case under the normal procedure, and is also legally admitted based on sections 830 of the Greek Civil Code, 907, 908, and 176 of the Greek Code of the Civil Procedure and should be further investigated for its essential acceptance given that the appropriate legal stamp has been already deposited.

From the depositions of the witnesses who were examined during the oral procedure in the Court and from the legal documents that are invoked, the parties admitted the following facts: On the 24/1/1995 the claimant entered into branch number 116 of the Bank sited in Suggrou Avenue and opened a joint savings account in his name and in the name I.G of his wife with the following number [], depositing at the same day the amount of 1.100.000 drachmas. Afterwards the claimant filled in an application form which included general terms and conditions drafted in advance on behalf of the Bank for an unlimited number of future contracts, with which he requested the issuance of a card for the purpose of automatic transactions. Some weeks later, the claimant received by mail the CASHCARD – DEBIT "the first banking and debit card" while he was made aware of his personal security number (PIN). The claimant had neither used the card in any transaction, nor assigned the card to anyone or confided the PIN to any other person. On the 12/10/1995 at 14.10 the claimant parked and locked his car outside 584 Vouliagmenis Avenue and entered into an air conditioning store. When he came out of the store, three minutes later, he noticed the burglary of his car from which his bag with all his personal belongings and his card were removed together with the other credit cards, nevertheless the document that mentioned his personal identification number was not removed.

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Immediately after the burglary, the claimant informed the Bank about the theft of his card, but the Bank did not suspend the account in the proper time and as a result the thieves removed the amount of 1.200.000 drachmas. On the same day the claimant informed the fact to the police and asked the Bank to provide him with a copy of the transactions statement of his account and a notice of the exact time of the transactions that had been committed by the thieves. The Bank refused to provide such a document. The fact that the thieves conducted the withdrawal of money was attributed either to the possibility that they were aware of the claimant's PIN or that they managed to decode it. After all the above, it appears that the system that enables automatic transactions with the use of the card by the Bank is deprived of sufficient security. The issue of the security and secrecy of the PIN burdens the Bank, and the same is valid for the control of the documents that legitimizes the holder of the card. The security of the party transacting with the Bank is attributed to the organization and the professional - banking activity of the Bank, which provides for the relevant means and organization to undertake such a venture.

As far as those terms and conditions of the bank that foresee objective liability of the client in case of unauthorized use of the card by a third person are concerned, these terms are invalid since firstly they are contrary to the fundamental principle of liability which rules our laws (Greek), and secondly because they are opposed to the principle of good faith and to the social and financial purpose of the right, because they transfer the danger from the financially powerful party (the Bank) to the client. Finally, it did not appear that the second and the third defendants acted with negligence, since they had not omitted any act or delayed such that their conduct could result in the loss of money from the claimant's account.

Consequently, the claim in question should be admitted as far as the first defendant is concerned and should be dismissed for the rest of the defendants. The Court considers that the Bank should be ordered to provide a copy of the transactions statement of the joint account with a notice of the actual time of the withdrawal of the money on the 12/10/95. The first defendant should be ordered to pay to the claimant the amount of 1.200.000 drachmas with the legal interest from the 12/10/95.

As far as the request for the provisional execution of the decision is concerned, the Court considers that the delay of the execution is likely to cause important damage to the claimant and for this reason the relevant request should be admitted. Finally the legal costs of the claimant burden the defendant according to the provision of the section 176 of the Greek Code of Civil Procedure.

### For these reasons

The Court rules under the confrontation of the opponents.

The Court admits the claim for the first defendant. The Court dismisses the claim for the second and third defendants.

The Court compels the defendant to grant the claimant (the later undertaking the costs) a copy of the transaction statement of the joint account with a notice of the exact time of the money was withdrawn on the 12/10/95. The Court considers that the part of the decision that refers to the payment of money should be provisionally executed.

The Court imposes the payment of the claimant's legal costs, which reaches the amount of 50.000 drachmas (equivalent of 150 ), on the defendant.

Ruled, decided and published in an exceptional meeting in Athens on the 10th of November of 1999. The judge The secretary

And since he was transferred and left before the engrossment of the decision the judge that was appointed by the President of the Board consisting of three members who directs the Court.

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## Translation reviewed by Michael G. Rachavelias, correspondent for Greece

Anastasia Fylla, LLB (2004, Law School of Athens), LLM (London School of Economics and Political Science, 2006), was awarded a scholarship in Information Technology and Telecommunications Law from the Greek State Scholarship Foundation (2005) and the Rouse Legal Prize in IT Law (2006). Anastasia is currently undertaking her legal training in Greece.

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