

Contract Law Case

Background

Article 242 Civil Code: Performance in Good Faith (1900–2002)¹

The debtor is obligated to perform in a manner consistent with good faith (*Treu und Glauben*) with regard to the common usage.

Article 626 Civil Code: Summary Dismissal for a Compelling Reason (1900–69)¹

A service relationship may be terminated by any party to the contract without notice if there is compelling reason to do so.

Article 627 Civil Code: Specific Provisions for Special Services of a Higher Nature (1900–69)¹

1. Termination of a contractual relationship is permitted even without cause as required under Article 626 of the Civil Code, if the service provider is not permanently employed with a fixed salary and if the service provider performs duties of a higher nature which tend to be assigned on the basis of special trust.
2. (1) The party providing a service may only terminate the contract in such a way as it permits the party requiring a service to obtain such service elsewhere, unless a compelling reason for untimely termination exists. (2) If the contract is terminated without such reason or notice, then the service provider must pay compensation for the resulting damage.

Application

Ruling of the State Superior Court in Berlin on November 17, 1933

a) Civil Matters

1. Substantive Law

I. Articles 242, 626, 627, of the Civil Code:

Termination without notice of a contract regarding the employment of a Jewish film director, in light of the development of current political circumstances.

The parties concluded a contract, in which the plaintiff [film company A] pledged to provide the services of Director K to the defendant [film company B] for 12,000 RM. Director K would direct and assist on the script for the creation of the film *Aus dem Tagebuch einer schönen Frau* [English title: The Adventure of Thea Roland]. At the same time, the plaintiff [film company A] granted the defendant [film company B] the option to involve Director K in a further film in 1933 for a fee of 15,000 RM. The start of the contract was to be sometime between January 1 and December 31, 1933, with the actual start date to be determined later by mutual agreement. After the completion of the first film, *Aus dem Tagebuch einer schönen Frau*, the defendant [film company B] availed themselves by post on November 21, 1932, of their agreed-upon right to employ Director K for another film and paid a fee of 2,500 RM.

1. See Bürgerliches Gesetzbuch <http://lexetius.com/BGB>. Dates indicate years during which each article was effective in this form under German law.

On February 14, 1933, the defendant informed the plaintiff that Director K was to be available to start work [on the second film] starting on March 15. The defendant paid an additional sum of 1,500 RM and soon thereafter refused any further fulfillment of the contract. After a number of verbal and written exchanges, the defendant finally clarified in a letter dated April 5, that, given the current political situation and taking the Director's Jewish heritage into consideration, the public would accept Director K neither as the director nor as the author responsible for the film's manuscript. Thus, completing the contract would constitute substantial material harm to the defendant [film company B].

The plaintiff [film company A] demanded the partial payment of 1,050 RM, with interest [for the termination of the contract]. Both lower courts had rejected the plaintiff's claim.

It is irrelevant whether the agreement between the parties constituted a contract for personal service or work or some other particular kind of contract; in any case, at the time they cancelled the contract on April 5, the defendant [film company B] could not have been expected to make a film with Jewish director K, considering the developments in the political situation in Germany after January 30, 1933. The goal of the Reich leadership is to curb and to exclude Jewish influence, especially in all areas of cultural life. Through the repeated pronouncements made by the Führer and the appropriate ministers, this would have already been publicly known in March 1933. In particular, Minister Goebbels, acting since March 13, 1933, as Minister for Public Enlightenment and Propaganda (and whose oversight includes the German cinema), had made it clear in his speeches that German cinema-goers have an absolute right to see the burning issues that pertain to them portrayed by artists from their own cultural sphere, and to have their need for education and entertainment fulfilled by people who resemble them [Germans] both spiritually and culturally (See Ordinance for the Official Commission of Film Quotas). The court has taken due notice of these facts. Then, once the Jewish boycott began on April 1, 1933, the plaintiff should have relied on sound and reasonable judgment, taking into account the fact that feelings were running particularly high at the time, to determine that it could not be expected of the defendant that they make another film with Director K, because to do so would be to take on an immediate business risk of great proportions for the defendant. The defendant already faced a risk of unimaginable proportions due to the conclusion of the contract and their "calling up" of Director K on February 14, 1933 (for his services on the second film). A later legal provision showed that the defendant truly would have borne such a risk if they had taken on Director K as director [for the second film]. Pursuant to the 4th Decree on the Presentation of Foreign Films of June 28, 1933, the only films that are considered to be German films are those whose production manager, director, and participants are German. A German in the sense of this Decree is someone who is of German ancestry and who possesses German citizenship. Films in which a Jewish director has participated count as foreign films, and are subject to the restrictions placed on them by the quota regulation. It is also of note that, according to information presented [to the court] by the defendant [film company B], the German Cinema Owners' Association rejected on May 24, 1933, films created and directed by K, because the Public Theater has been repeatedly boycotted for showing films with Jewish actors or directors and because the authorities have ordered the closing of such theaters [those that show films made by Jews].

The defendant was in the right in summarily ending the contract.²

2. *Juristische Wochenschrift* (Jurist Weekly), Journal of the German Lawyers' Association (1933): 2918.