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*Legal Translations,  
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*Translation of  
Excerpt of  
Civil Judgment*



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**The following is an excerpt from Plus Ultra’s translation into English of the March 27, 2024 judgment of the trial court for the Central District of the Netherlands, case number: C/16/553041/HA ZA 23-157, in the civil action brought by a Dutch musician and his limited liability company against Triodos Bank N.V.**

**The case focuses on the alleged breach of the bank’s duty of care for failure to inform its client sufficiently about the risks of “putting all his eggs in one basket” at the bank.**

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## **“2. What is This Case About?”**

### *In A Nutshell*

2.1. In 2011, [Plaintiff 2] invested part of his assets (approximately € 2.6 million) in Triodos Bank depositary receipts. [Plaintiff 2]’s cause of action sounds in mistake, seeking rescission of (multiple) purchase agreements. Additionally, [Plaintiff 2] claims Triodos Bank breached its duty of care towards [Plaintiff 2]—essentially—by advising him to buy a very risky portfolio when in fact he was actually very risk-averse and by failing to warn him of the risks of investing in depositary receipts. Accordingly, [Plaintiff 2] seeks damages through a damages-computation proceeding. Triodos Bank denies [Plaintiff 2]’s claims of mistake and breach of its duty of care, averring in addition that the statute of limitations has run on [Plaintiff 2]’s claims.

### *What Is The Court’s Opinion?*

2.2. The statute of limitations has run on most of the mistake-based claims which, further, cannot be granted on other grounds. So those claims will be dismissed. The claims sounding in breach of the duty of care will be granted for the following reasons.

### *Investing in Triodos Bank Depositary Receipts Explained*

2.3. Triodos Bank issues shares to Stichting Administratiekantoor Aandelen Triodos Bank (hereafter: “SAAT”) which in turn issues depositary receipts. Financially, receipt holders are comparable to shareholders. For example, they receive dividends and incur price risks; however, they have no voting rights during Triodos Bank’s annual general meeting of shareholders. The depositary receipts were not traded on any exchange. The purchase and sale of depositary receipts was through Triodos Bank (except for private transactions among investors). Using the depositary receipt’s net asset value, the bank would be the counterparty to buyers and sellers. Whenever the number of sell orders exceeded the number of buy orders, Triodos Bank would apply its buy-and-hold limit [the maximum value in euros of depositary receipts that Triodos Bank may buy and hold] as permitted by law, which had a maximum of 3% of Triodos Bank’s core capital.

2.4. Up till 2019 it maintained an average buy-and-hold ratio of no more than approximately 0.17% of the maximum buy-and-hold limit. By mid-2019 Triodos Bank halted its depositary-receipt trade for four weeks to transition into a new accounting valuation system. After resuming trade, it saw an increase in its buy-and-hold ratio during approximately three months of as much as 40% of the maximum buy-and-hold limit. That was the first time when Triodos Bank adopted a limit to sell depositary receipts of € 1 million per week. After those three months the percentage returned to its prior level, bringing its buy-and-hold ratio back to approximately 0.17% of the maximum buy-and-hold limit. In March 2020—with the outbreak of Corona—its ratio skyrocketed, reaching approximately 71% by late March 2020, which was when Triodos Bank decided to close its depositary-receipt trading. By October 2020 the bank reopened trading with a reduced sell limit for depositary receipts of €

5,000 per week and two weeks later of € 1,000 per week. For the remaining months of 2020 the buy-and-hold ratio remained approximately 80% of the maximum buy-and-hold limit (which in the meanwhile had been raised by almost € 8 million). Ultimately, on January 5, 2021, Triodos Bank definitively discontinued its depositary-receipt trading (Triodos Bank's Exhibit 2).

2.5. Triodos Bank announced in December 2021 that its depositary receipts would be listed on a multilateral trading facility (hereafter: "MTF") in the future. An MTF is a centrally organized and regulated venue where receipt holders can engage in private transactions to buy and sell depositary receipts. The receipt price fluctuates depending on offer and demand. At that point, Triodos Bank would no longer be the counterparty in depositary-receipt transactions. The MTF ultimately resumed depositary-receipt trading on July 5, 2023. On October 25, 2023 the receipt price was at € 24.

#### *The Start of the Relationship Between [Plaintiff 2] and Triodos Bank*

2.6. [Plaintiff 1] is a Dutch [ ] and [Plaintiff 2] B.V. (hereafter: [Plaintiff 2]) is the company he uses to organize his work. [Plaintiff 1] is both director and sole shareholder of [Plaintiff 2]. In May 2011 [Plaintiff 2]'s agent [A] (hereafter: "[A]") introduced him to Triodos Bank. At the time, he was (still) a client of ING Bank but wanted to leave the bank. His reason was that the bank, against his will, increasingly invested in stocks, which he thought was too complex. On May 18, 2011, after talking to [B] (hereafter: "[B]") who would become his advisor at Triodos Bank, they started to open (bank) accounts at Triodos Bank.

2.7. On August 1, 2011, [Plaintiff 2] and Triodos Bank entered into a written investment advice agreement. [Plaintiff 2] signed the agreement but both [Plaintiff 2] and Triodos Bank assumed the agreement covers the relationship between [Plaintiff 1] and Triodos Bank as well.

2.8. The agreement provides in pertinent part that Triodos Bank will advise [Plaintiff 2] on structuring the securities portfolio it holds with Triodos Bank. Triodos Bank commits to behave as a good fiduciary and to pursue [Plaintiff 2]'s interests, needs and goals to the best of its abilities. Triodos Bank will check at least once a year whether [Plaintiff 2]'s portfolio structure still matches its risk profile, unless both or either party decides (in writing) to dispense with that check. The agreement is subject to Triodos Bank's terms and conditions.

2.9. Annexed to the agreement is a form [Plaintiff 2] and Triodos Bank signed on October 24, 2011 to assess the risk profile for legal entities. Apart from the handwritten comment "execution-only portfolio" on the dotted line for the item "Total number of points and corresponding risk profile," they did not complete the form.

2.10. [Plaintiff 2], [A] and [B] had a consultation on October 24, 2011. That is also the date they signed the aforesaid (uncompleted) risk-profile assessment form. Following up on the consultation, [B] sent [Plaintiff 2] a written investment proposal on October 25, 2011 ([Plaintiff 2]'s Exhibit 4) for (liquid) investment assets totaling € 2.6 million. [B]'s proposal was basically as follows: 10% stocks, 10% bonds, 5% gold (not through Triodos Bank), 5% Triodos Renewables Europe Fund, 10% Triodos Bank depositary receipts, and the rest of the assets were kept liquid at [Plaintiff 2]'s request.

2.11. The next day, Wednesday, October 26, 2011, [Plaintiff 2] sent [B] an e-mail in response to the proposal, asking him to go through with the part of the proposal to buy depositary receipts before that coming Friday, because that was when the term for the purchase free of charge would end. [Plaintiff 2] wanted to decide on the remainder of the proposal later on after they have discussed it. In this connection he asks [B] whether the first sale of depositary receipts would be free of charge as well, because, if so, he wanted to invest everything in depositary receipts first and then redistribute

at a later point. [B] answered he could not promise the sale of depositary receipts was going to be free of charge.

2.12. On October 28, 2011, this ultimately resulted in a buy order for a total of 27,396 Triodos Bank depositary receipts, which represented a value of approximately € 2 million.

*The Remainder of the Relationship Between [Plaintiff 2] and Triodos Bank*

2.13. The record includes multiple consultations at Triodos Bank’s office during the period from 2011 through 2019, at least once a year and sometimes more. Internally, [B] would make notes about these consultations in Triodos Bank’s system. [Plaintiff 2] did not receive those notes. The internal notes show that the relationship between [B] and [Plaintiff 2] was a consultative relationship in the broadest sense of the word. They not only talked about investments but also, for instance, about mortgages and writing a will.

2.14. Additionally, the submitted e-mail correspondence shows that, in addition to their annual consultations, [Plaintiff 2] and [B] would also e-mail one another every now and then. For example, on March 15, 2013 [Plaintiff 2] forwarded an e-mail he had received from [corporation] to [B] which warned of the risk [Plaintiff 2] was running by putting his assets in a single investment category at Triodos Bank and included a link to a *Telegraaf* newspaper article about Triodos depositary receipts. That same day [B] e-mailed [Plaintiff 2] to assuage his worries, responding that this was not news nor reason to change course.

2.15. By mid-2012 [Plaintiff 2] bought another 4,053 depositary receipts for a value of € 300,000. In July 2017, [Plaintiff 2] bought another 5,555 depositary receipts for a value of € 450,000. His depositary-receipt portfolio also grew during the years from 2014 through mid-2019 through stock-dividend payments, reaching a maximum number of 46,844 depositary receipts. According to Triodos Bank, [Plaintiff 2] also received cash dividends during those years, totaling about € 304,616.

2.16. When [B] left Triodos Bank by late 2019, he was succeeded by [C] (hereafter: “[C]”). [Plaintiff 2] states he did not get along as well with [C] as he did with [B], and he started to feel increasingly uncomfortable with the depositary receipts. By March 2020 [Plaintiff 2] started a steady sale of his depositary receipts. In March 2020, right before closing of trade, he sold € 1 million in depositary receipts (11,904) and upon resumption of trade in October of that year he continued to sell the maximum number of depositary receipts permitted. By January 1, 2022 [Plaintiff 2] held a rounded total of 33,592 depositary receipts, which at the € 59 price level of that moment per depositary receipt represented a total value of almost € 2 million ([Plaintiff 2]’s Exhibit 34).”





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