

Bijzonderheden van de zaak

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Gerecht	Hof van Beroep Bergen
Onderwerp	
Eiser	
Verweerder	
Trefwoorden	Unfair contract terms ; Exclusion of liability for hidden defects ; Minimum harmonisation ; Contract law

Richtlijnartikelen

Unfair Contract Terms Directive, [Article 3, 3](#). Unfair Contract Terms Directive, [ANNEX I, 1., \(b\)](#)

Koptekst

A seller is liable for hidden defects known to him as a professional, especially when those defects risk to undermine the normal, actual use of a good. An exoneration clause in a B2C-contract excluding any liability for hidden defects imposed by law is valid provided that the seller could not have been aware of the hidden defect as a professional seller.

Feiten

A real estate company sells building land to a consumer that appears to be heavily polluted. Confronted with the consumer's claim for damages, the company refers to the exoneration clause in the contract and the fact that the contract clearly specified that no soil investigation had been undertaken.

Juridische kwestie

Is an exoneration clause excluding the sellers' liability for all hidden defects valid, even when the defect risks to jeopardise the actual use of a good?

Uitspraak

The Court held that the contract draws the attention of the consumer to the fact that the seller had not undertaken a soil investigation. It stated that the land could be polluted but it also stated that the seller had no knowledge of pollution of the land. The pollution that came to the fore after the contract had been concluded had no connection with the previous commercial activity exercised on that land. Given the depth at which pollution was found and the fact that the previous activity caused no particular risks for pollution, the seller could not have been aware of the pollution.

Integrale tekst: [Integrale tekst](#)

Verwante zaken

Geen resultaten

Rechtsleer

Geen resultaten

Resultaat

The judgement confirms the views of the Business Court du Hainaut, Charleroi, judgement of 27 October 2017, and held that an exoneration clause in a B2C-contract excluding any liability for hidden defects imposed by law is valid since the contract draws the attention of the consumer to the fact that the seller had not undertaken a soil investigation and that the latter could not have been aware of the pollution.