

Jurisprudență

Detalii privind cazul

ID național: Bucharest County Court, Civil Section IV, Judgement 917

Statul membru: România

Denumire comună: N/A

Tipul de decizie: Decizie a Curții care face obiectul unui recurs

Data deciziei: 06/03/2019

Instanța: TRIBUNALUL BUCUREȘTI - SECȚIA A-VI-A CIVILĂ

Obiect:

Reclamantul:

Pârâtul:

Cuvinte-cheie: right of withdrawal, model withdrawal form, information obligation, return

Articole din directivă

Consumer Rights Directive, [Chapter 3, Article 6, 1., \(h\)](#) Consumer Rights Directive, [Chapter 3, Article 11, 1.](#) Consumer Rights Directive, [Chapter 3, Article 12](#)

Consumer Rights Directive, [Chapter 3, Article 12](#) Consumer Rights Directive, [Chapter 3, Article 13, 1.](#) Consumer Rights Directive, [Chapter 5, Article 23, 2.](#)

Consumer Rights Directive, [Chapter 5, Article 25](#)

Notă preliminară

ECLI:RO:TBBUC:2019:017

The exercise of the withdrawal right is valid if it respects the legal provisions of the GEO 34/2014; any contractual clauses modifying or restraining the consumer's rights are not binding for the consumer.

Fapte

The buyer, a consumer, was delivered a product which had a fabrication defect and immediately exchanged e-mails with the seller, requesting a similar product or reimbursement of the price. The consumer returned the product, but the seller refused to take it back. The consumer brought court proceedings against the seller and against the carrier (paid by him, who did not deliver the good). The Court in first instance admitted the claim against the carrier (who was obliged to reimburse the price of the transportation, since they had not properly informed the consumer about his rights) but rejected the claim against the seller on the ground that, since the product was not returned to him, he cannot be obliged to reimburse the price. The consumer brought an appeal, alleging the violation of the legal provisions of the GEO 34/2014.

Chestiune juridică

How can the exercise of the right of withdrawal be proved?

Which is the relation between the contractual clauses and the legal provisions on the exercise of the withdrawal right?

Hotărârea

Regarding the notification of the seller about the consumer's intention to withdraw from the contract, the Court stated:

Since the provisions of the GEO 34/2014 have a mandatory nature (acc. to art. 25(2)), the Court in first instance should have verified whether the exercise of the withdrawal right was made according to the provisions of art. 11(1) of the GEO; any contractual clauses modifying or restraining the consumer's rights are not binding for the consumer.

Even though the consumer did not send a formal notification of withdrawal, the electronic correspondence between the consumer and the seller within the withdrawal period clearly establishes the consumer's intent to that effect. The problems resolved regarding the carrier (who was not specifically authorised by the consumer to accept that the seller verifies the returned product upon reception), do not create any doubts about the consumer's intention to return the product in exchange for the money paid. Also, according to art. 6(1)(h) of the GEO, the seller has the obligation to inform the consumer about the time limit and procedure for the withdrawal and to send them the model withdrawal form; it is not possible to simply refer to its website, in order to prove that it accomplished this duty.

Regarding the effects of the withdrawal, the Court stated that :

According to articles 12 and 13(1) of the GEO, once the consumer exercised their right of withdrawal, the parties obligations are terminated and the seller must reimburse the money received and the costs for the shipment (which they did not) no later than 14 days from the moment when the seller has been notified about the consumer's intent to withdraw. The refusal of the seller to take back the returned product and the different pretexts invoked in order to deny the consumer's right of withdrawal denote bad faith and such conducts may also be sanctioned by administrative fines.

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Cazuri conexe

Nu există rezultate disponibile

Doctrină

Nu există rezultate disponibile

Rezultat

The Court clarified the relation between the contractual clauses and the legal provisions on the withdrawal right. It also clarified the conditions for and the effects of the exercise of the withdrawal right. The Court admitted the appeal launched by the consumer and obliged the seller to the reimbursement of the price. The decision may be contested with a recourse.