

Case Details

Case Details

National ID	link
Lidstaat	België
Common Name	G. et P. / S.A. Centrale immobilière de Couillet
Decision type	Overige
Decision date	22/10/2001
Gerecht	Hof van Beroep (NL)/Cour d'appel (FR)
Onderwerp	
Eiser	
Verweerder	
Trefwoorden	

Directive Articles

Doorstep Selling Directive, [Article 1, 1.](#)

Headnote

The Act of 14 July 1991 on trade practices and consumer information and protection applies to contracts between real estate agents and consumers, since the former provide services within the meaning of the Act. A contract concluded away from the seller's business premises which contains no renunciation clause is valid when the consumer explicitly requested the seller's visit with the aim of negotiating the purchase of the service.

Facts

In the present case, appellants contacted the seller with the request to visit their home, after having read the seller's advertisement in the newspaper.

On 26/4/1995 parties sign at the consumers' home a contract entrusting the real estate agent with the "exclusive and irrevocable mandate" to sell appellants house. The contract does not contain a renunciation clause.

On 28/11/1995, the real estate agent claims that appellants tried to sell the house themselves, and thus did not respect the exclusivity clause in the agreement. Therefore, the real estate agent claims the damages agreed upon in the contract which amount to five percent of the selling price.

Legal issue

Uitspraak

Appellants claim that the contract is null because it does not contain the renunciation clause provided for by Article 88 TPA.

The court examines in the first place whether the TPA is to be applied. It finds that the contract aims at the provision of certain services connected with the real estate agency and also at the provision of a mandate to sell the house. The court therefore concludes that the real estate agency contract consists of selling services within the meaning of Article 86 TPA.

Article 87 TPA stipulates that contracts concluded at the consumer's home do not fall under the provisions of the TPA concerning "sales concluded away from the seller's business premises" if the consumer explicitly requested the seller's visit with the aim to negotiate the purchase of a good or service.

Appellants do not dispute the finding that they requested beforehand the visit of the real estate agent after having read his advertisement in the press. Appellants also confirmed in writing to the real estate agent's counsel that they "made the company come to their home". Consequently, the court concludes that appellants explicitly requested the seller's visit.

In absence of any serious explanation for the seller's visit other than to negotiate the purchase of the service, the court concludes that the conditions of Article 87 TPA are fulfilled. Consequently, the contract in the present case must not contain a renunciation clause.

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