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## Case law

**Case Details**

**National ID:** link

**Member State:** Spain

**Common Name:**Esperanza, Félix v “Cl. Cinco Estr.”, “Comp. Arag. Int. de Viajes, S. A.”, “Viajes Marsans, S. A.”

**Decision type:** Other

**Decision date:** 20/09/2002

**Court:** Audiencia Provincial (Appellate court, Barcelona)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

**Directive Articles**

Package Travel Directive, Article 5, 1. Package Travel Directive, Article 5, 2.

**Headnote**

There is a discrepancy of criteria in case law about whether the liability of the trip organizer and the retailer agency is joint and several or independent one of each other. The criteria about the negligence of each of them regarding their management areas is what it should be considered and it is not possible to alter the art. 11 of the Law on package travels, which comes from the Directive, with general or imaginative interpretations.

**Facts**

The consumers, the appellants, made a combined trip to Greece in the summer of 2000 during which some agreed services were not fulfilled: they had to take a taxi instead of the transfer agreed from Santorini’s port to the hotel; there were no transfer in the Hidrofil agreed because of the checks of boats ordered by the Greek navy authorities due to a shipwreck, so they had to travel in another see transport between Mikonos and Santorini. Moreover, these inconveniencies made them to loose hours in Santorini, so that that day was spoilt for the tourist enjoyment. In these circumstances the consumers demanded to the wholesaler (organizer) and the retailer the additional costs incurred and a compensation for moral damages.

**Legal issue**

It does not exist from the point of view of the negligence, liability of the retail agency that mediates in a closed offer for a package travel, offered by the organizer wholesaler. The agency transmitted the request promptly and with diligence and it did also passed the information from the organizer on to the consumers. The ineffectiveness of the booking for the transport in Hidrofil is down to the organizer. Therefore, from the point of view of the fault, there are no reasons to accuse the travel agency. The court asks itself if any other rule could achieve the imputation of this agency and points out that the case law in the courts of appeal, “shows a wide disagreement of criteria”: in some cases the joint and several liability is argued from the point of view that it is a contract of results, or from the point of view of the liability established in the general law for the protection of consumers and users on the delivery of services. So, among others, SAP Asturias 3rd May 2000 and 21st June 2001, SAP Málaga 14th November 2000, SAP Vizcaya 22nd January 2001 and 25th April 2001.

Nevertheless, according to this judgment, “that criterion is not correct in the sense that there is a specific rule that regulates these issues, compiled in art. 11.1 of the law on combined trips”, which establishes a liability for retailers and wholesalers “according to the obligations that concern them due to their areas of management”, expression well away from the solidarity which it is mentioned in the same precept, but in a different context. This rule is the result of the transposition of the Directive 90/314/CE, so it s not advisable to leave it aside by constructions, more or less general, imaginative or that attach excessive emphasis on the will”. When it is clear, (as in this case) that the retailer had nothing to do with the organization and execution of the trip, there are no grounds to make him liable for the incidents coming from the area of management of the wholesaler organizer. And it is stated as well in other judgments: SAP Barcelona, section 17, of 14th March, SAP Madrid of 20th January 1999 or SAP Badajoz of 26th January 1999.

**Decision**

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**Result**