

Case law

Case Details

National ID: 487/2003

Member State: Spain

Common Name: Luis Enrique v "Médula Hombre"

Decision type: Other

Decision date: 25/11/2003

Court: Audiencia Provincial (Appellate court, Córdoba)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Consumer Sales and Guarantees Directive, [Article 1, 1](#). Consumer Sales and Guarantees Directive, [Article 2, 1](#). Consumer Sales and Guarantees Directive, [Article 3, 3](#). Consumer Sales and Guarantees Directive, [Article 5, 1](#).

Headnote

1. The Directive 99/44/EC cannot be applied between individuals before it is transposed, since it lacks of direct horizontal effectiveness.
2. It is understood that the period of guarantee is met when the manufacturer and the purchaser admit the return of an object because of it having a defect that cannot be corrected, independently of the number months passed.
3. In the absence of the application Of the Directive and of its law of transposition, the General Law for the Protection of Consumers of 1984 is applied. In article 11 establishes rather different solutions: first the reparation, and if it was not enough for the use it was intended for, the replacement of the object or the refund.

Facts

The consumer bought a man's suit in February 2002 in the defendant's shop. Several months later, between September and November of the same year the consumer went to the same shop because of a defect that the trousers had. The manufacturer acknowledged the defect impossible to repair and gave the salesman a full refund. As for the consumer's complaint, the salesman intends to keep half of the amount as a penalty clause, since the suit had been used and the good had not been returned within the period of guarantee.

Legal issue

The Directive 99/44/EC cannot be applied as Law in force in this case (because the events happened before the transposition of the Directive into the Spanish case law), since insofar as it was not transposed, lacks the direct efficiency that claims the appellant, since it is an application between individuals. This direct effectiveness can only be given within the relations between individuals and States (judgments of ECJ 14th July 1994 and 26th September 2000, C 91/92).

However, it does not make any sense to talk about whether the period for the guarantee has run out or not when the salesman, as well as the manufacturer of the object (suit) have accepted its return, which can be considered as the acceptance of the guarantee still being in effect. Therefore, once admitted by all the parties that the object has an irreparable defect and once the manufacturer refunds the salesman, it is irrelevant that it had been used from the moment it was bought or that the consumer had had it available for his use more or less time, since it has to be interpreted as being under the guarantee.

Therefore, when the problem of the object has been acknowledged, and it has been returned by the client, "it is not he salesman who has to impose a solution to the client, but the client has to be the one who chooses among the various solutions available, once the product has been acknowledged as being faulty. These alternatives cannot be the ones indicated by the Directive, but neither the ones of the Law 23/2003, not even published at the time of the hearing. They will be the ones derived from the General Law for the Protection of Consumers and the principles applicable to a contract". For that reason the judgment interprets that the deduction of 50% is not applicable at all, because the penalty clause (art. 1154 of the Civil Code) has to be agreed between the parties and it is always an instrument to settle prejudices and none of these facts occur in this case. Therefore, the art. 11 of the Law 26/1984 for the Protection of Consumers has to be applied, which allows for corrections of the object in the first place and if this was not satisfactory, the replacement of the object or the refund. The latter is what is requested in this case and it has to be granted.

Decision

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