

Case Details

Case Details

National ID	32/2005
Member State	Spain
Common Name	Diego v “Prosovano S. L.”
Decision type	Other
Decision date	09/02/2005
Court	Audiencia Provincial (Appellate court, Ciudad Real)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

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

Headnote

1. It is not valid to set-off the absence of a due element in the good sold by the delivering a different, non-requested nor accepted element by the consumer, although the latter is more valuable.
2. The claim made by the consumer within the 2 years period guarantee starting from the time of the delivery of the good established in the article 9 of the Law 23/2003 doesn't require from the consumer the evidence of the origin of the defect, but from the seller, in application of the general rule of the article 26 of the Law 26/1984 on the Protection of Consumers.

Facts

The seller of a dwelling did not install an entry video camera in the house of the purchaser, in spite of that provision having been made in the building report. The seller intends that building a paddle court that has not been projected initially should make up for this defect. Moreover, the main entrance to the building presented a fault that prevented the entry once it was locked, for that reason it had to be repaired.

Legal issue

This is one of the first judgments that already apply in Spain the Law of transposition of the Directive of 1999 (Law 23/2003), with the additional interest of having to do with elements integrated into an immovable asset.

According to the judgment, it was not documented why the vendor built a paddle court that had not been requested (and was more expensive for him), intending this way to be exonerated from the obligation of installing an agreed video camera at the entrance of the house. Given the absence of agreement on the part of the purchaser and the lack of explanation as for why he did undertake a much dearer service than the agreed one, he is obliged to comply with what was agreed.

Moreover the repair of a door's lock was within the two year period guarantee starting from the moment of delivery established in the Law 23/2003, of 10th July (article 9) on guarantees for consumer goods, and in these cases the

article 29 of the General Law for the Protection of the Consumer, Law 26/1984, has to be applied too. In these cases the article 26 of the General Law for the Protection of the Consumer has also to be applied. This Law establishes the inversion of the burden of proof, assigning to the seller the task to prove the facts in litigation such as that the problem with the lock was a consequence of its use and not an issue of its quality, which was not proved in the end.

Decision

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