

Case law

Case Details

National ID: 285/2004

Member State: Spain

Common Name: Mauro Carlos v "Renault España Comercial S. a." and "Ferrolterra Móvil, S. A."

Decision type: Other

Decision date: 10/12/2004

Court: Audiencia Provincial (Appellate court, La Coruña)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Consumer Sales and Guarantees Directive, [Article 1](#), [2](#). Consumer Sales and Guarantees Directive, [Article 4](#) Consumer Sales and Guarantees Directive, [Article 5](#), [1](#).

Headnote

1. The definition of guarantee of a product of the Directive 1999/44/ECC fits with the law previous to its transposition, though the law of implementation (2003) cannot be applied retroactively.
2. The art. 11 of the Law 26/1984 for the Protection of Consumers as well as the Law 23/2003 of transposition of the Directive on guarantees establish a period of guarantee, during which the defect of the goods has to be noticed and a deadline or the prescription of the action to exert the rights of the guarantee which is 15 years for the first one (Law 26/1984 plus Civil Code) and three years for the latter (art. 9.2 of the Law 23/2003).
3. The liability derived from the guarantee, in the Law previous to the law 23/2003, is binding between the seller, the manufacturer and the importer of the product.

Facts

The consumer sued the vendor (official franchise of Renault) as well as the representative of the producer in Spain to obtain the termination of the contract of a vehicle purchased on 15th January 2001. A few months after the delivery of the vehicle (May-September 2001), and within the guarantee period a number of breakdowns occurred which were repaired by the vendor, but without he being able to find a solution for the major problems to do with noise and vibrations in the steering system of the vehicle which were due to a defect on the design of that particular model series. The court acknowledges the right for resolution on the part of the consumer and the joint and several liability of the seller and the producer by means of the guarantee.

Legal issue

The judgment revises in detail the progression towards the present system of sales guarantees: the initial system for protection of the Civil Code through the action for latent defects (1486 ff.) doesn't satisfy the expectations of the consumer, since he would either be deprived of the product (termination) or he would keep it for a lesser amount, but accepting the defects. A better regulation would be for the consumer to keep the product but in top-quality conditions. For that reason, the freedom of agreement eventually created the so-called product guarantee, thanks to them the vendor or the manufacturer take on the responsibility for repairing the defects, making up for the initial non-performance. This guarantee created by means of agreement was eventually legally established in art. 11 of the Law 26/1984 for the Protection of the Consumer. The judgment reproduces the definition of guarantee of the product of the Directive 1999/44/ECC (art. 1.2.e) [this definition, not reproduced in the Spanish law for transposition is commonly quoted in Spanish judgments: for example SAP Valencia 30th June 2004].

The guarantee cannot be less than six months (art. 12 of the Law 7/1996 on Retail Trade). At present, the law 23/2003, that transposes the Directive, establishes that the action in connection with the guarantee prescribes in 3 years starting from the moment of delivery of the goods (art. 9.2) and allows as well in art. 10 the action against the manufacturer. This law, published in the Official Bulletin on 11th June 2003, with a vacatio legis of two months, is not applicable to the case, and therefore the application of art 11 of the law for the Protection of Consumers is appropriate instead, since the purchaser is a consumer, the good is of „lasting nature“ (Royal Decree 1507/2000, 1st September includes cars as such) and the defect is „native“ (originario) as it is established by law, since it is a defect of the design (it exists even before the use of the object“

The deadline to exert action (art. 11.2 of the law 26/1984), according with the main doctrine of the scholars, is is not of a lapsing nature (caducidad) nor to do with prescribing, but with guarantee. Therefore, when the defect is clear within that period (6 months), being useless any attempts at repairing it, there is space for personal action to demand the rights of that article, which not having a special deadline is 15 years (according to the Civil Code) and which in the present law 23/2003 is established on 3 years. Therefore, according to the Supreme Court case law, the period of guarantee is the one in which the defect has to be identified, not being necessary to exert the action within that reduced period (STS 23rd May 1991, Proceeding of the Supreme Court of 23rd May 2000, SAP Tenerife 23rd October 1999, SAP Pontevedra 20th November 2000).

The liability for the defects is joint and several between the vendor, the importer and the manufacturer towards the consumer. The vendor is not exonerated of that liability, because has to deliver something suitable to be used.

The termination of the contract does not necessarily involve the total refund, when due to the use of the product (in the case, 50,311 km.) the refund would be disproportionate. Therefore the refund is reduced in proportion.

Decision

Full text: [Full text](#)

Related Cases

No results available

Legal Literature
No results available
Result