

Case law

Case Details

National ID: 680/2003

Member State: Spain

Common Name: Eusebio v "Humbert Camions S. L."

Decision type: Other

Decision date: 22/11/2004

Court: Audiencia Provincial (Appellate court, Barcelona)

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, 5](#). Consumer Sales and Guarantees Directive, [Article 3, 6](#).

Headnote

1. The rules for consumers on sales guarantees are not applied to the relations between professionals are not applied, but the general rules of the Civil Code.
2. If the defects of the purchased good (by a non-consumer) are not of certain magnitude, the option for the purchaser between the resolution of the contract and the reduction of the price can not to be triggered, but only the latter applies by analogy with the criteria of proportionality established in the article 5 of the Law 23/2003 of transposition of the Directive 1999/44/EEC.

Facts

The applicant, who was not a consumer, bought a lorry the 8th February 2000 that suffered two major repairs six days after the purchase. After these repairs, the lorry continued in circulation. The purchaser exercised the "action for latent defects" (actio redhibitoria), demanding the resolution of the contract. The judgment interprets that the contract is still valid but with a reduction of the price (actio quanti minoris).

Legal issue

The interest of this judgment lies in the application by analogy of some criteria gathered in the Law of transposition of the Directive of 1999 on sales guarantees to contracts that are not drawn by consumers. According to the judgment, the contract is prior to that Law 23/2003 coming into effect, which transposed the Directive and "in which the system of protection typical of the actions of "latent defects" of the Civil Code is broadened by introducing the possibility that the purchaser demands the replacement of the delivered goods, which is not found in the system of the Code". It rejects that the Law for the Protection of the consumers is applied, since the purchaser acquired the goods to be integrated in his business, and therefore he is not a consumer. There are two legal regimes: one when the purchaser is a consumer, who will have the special protection of the Law 26/1984 (general law for the consumers) and the Law 23/2003 (law of transposition of the Directive on sales guarantees). The other regime will apply when the purchaser is not a consumer and affect the actions for latent effects of the Civil Code (art. 1484 ff.) the general rules of contractual Law (especially, art. 1124). For cases of retail trade, it is acknowledged a six month guarantee in the Law 7/1996 that regulates that matter. Therefore, this case is ruled by the Civil Code.

The identified defects justify a reduction on the price, but cannot be the base for a rescission of the contract because there is not unsuitability of the object as such, since the lorry passed the official technical check and have not had additional breakdowns. "Although the legal text appears to recognize a right of option for the purchaser, it is obvious that the decision to resolve (terminate) the contract needs certain proportionality between the nature of the defect affecting he object and the serious consequence that it is intended to come out of it, so the demand to rescind the contract when there is not the required proportion and the object, once repaired, is in the right condition to be used normally. This criteria, for a case of certain similarity, is the one followed in the law 23/2003 of 10th July, on sales guarantees" (art. 5).

It does not exist therefore, neither total nor partial failure to comply with the obligation, in the sense of one thing given for the other (aliud pro alio), nor the defects are such that affected the suitability or quality of the goods. For all this, it is not appropriate to cancel the contract, but to reduce the price, that amounts to the expense incurred by the repairs paid by the purchaser and a compensation for damages (renting another vehicle), which makes a total of 2,912.84 euros.

Decision

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