

Case law

Case Details

National ID: 1256/1996/1

Member State: Malta

Common Name: N/A

Decision type: Other

Decision date: 19/05/2003

Court: Qorti tal-Magistrati (Court of first instance)

Subject:

Plaintiff:

Defendant:

Keywords: Case law Malta English

Directive Articles

Doorstep Selling Directive, [Article 5](#)

Headnote

1. The cancellation form to cancel the doorstep contract within the cooling off period of 15 days must be sent in accordance with the procedure and requirements stated at law. (In this case the form was sent by ordinary mail and not by registered mail or delivered in person as was then required – with the trader stating that he never received any cancellation form from the consumer within the said period).

2. Consumer did not show any just cause in asking for the cancellation of the contract on the basis of article 10 which enabled the consumer to cancel a contract if he or she showed just cause.

Facts

The trader as plaintiff was requesting the full payment of books with interests and court expenses further to a doorstep contract made with consumers in March 1996. Consumers in refusing to pay, claimed that the contract was cancelled in accordance with articles 8 and 10 of the Door-to-Door Salesmen Act.

The consumers also claimed that the agreement was not made with the consent of both spouses. In this context the Court upheld the claims of the trader only against Veronica Saliba requiring her to make full payment with interests and to bear court expenses.

Legal issue

The Court noted that from the evidence of the consumer, it resulted that the cancellation post was sent by ordinary post, whereas the trader had declared that he had never received the cancellation form. The Court held that it was clear that the consumer had, in trying to cancel the contract, failed to abide with the requirements of the law which stipulated that a doorstep contract must be cancelled by delivering the cancellation form in person or sending it by registered post to the trader. The Court therefore decided that the contract had not been cancelled in accordance with the requirements of the Door-to-Door Salesmen Act.

Consumer had also raised the plea on the basis of article 10 of the Act that she had a just cause in cancelling the contract. The Court held that consumer however had failed to show that she had a just cause to justify the cancellation of the contract on the strength of this provision. The Court noted that just cause could be a mistake on some fact of substance or action consisting of some form of trickery or abusive conduct which may have been conducive to the consent of the consumer to the contract or else some other shortcoming with regard to the essential elements required for the validity of contractual obligations agreed to.

Decision

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