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Case Details

National ID: link

Member State: Italy

Common Name: Fiat Auto S.p.A. v. Comitato Difesa Consumatori (Comitato Consumatori Altroconsumo)

Decision type: Other

Decision date: 22/02/2000

Court: Corte di Appello (Appellate court, Torino)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [ANNEX I, 1](#). Injunctions Directive, [Article 4](#)

Headnote

1. A clause in the general conditions of sale providing that, when the purchased car is defective, the consumer has not right to claim for breach of contract is unfair under the article 1469-bis and followings of the Italian Civil Code.

At this regard, it is not relevant the fact that the manufacturer and its distributor is available to substitute or to repair the car.

2. It is also unfair under the article 1469-bis and followings of the Italian Civil Code, a clause that excludes or reduces the warranty of proper functioning (art. 1512 Italian Civil Code).

3. On the contrary, a clause providing that the consumer has to anticipate the 10-15 % of the total price as earnest on performance of the contract is not unfair under the art. 1469-bis of the Italian Civil Code.

Facts

On the 14th December 1996 the consumer association Comitato Difesa Consumatori sued the car manufacturer Fiat S.p.A. and its distributors before the Tribunale di Torino to obtain an injunction to prohibit the adoption of certain clauses in the standard contract of sale of cars.

As for the plaintiff, such clauses should be declared unfair under the article 1469-bis and followings of the Italian Civil Code.

Fiat S.p.A. argued that the consumer association has no legal standing to act on behalf the consumers under the Law 30 July 1998, no. 281 on "The rights of consumers and users".

The Tribunale di Torino issued an injunction to prohibit the use of such clauses and Fiat S.p.A. has appealed the decision before the Corte di Appello di Torino.

Legal issue

The discipline Directive 93/13/EEC of 5th April 1993 on the unfair terms in consumer contracts has been implemented in Italy by the Law of 6 February 1996 no. 52 "Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee".

The Law no. 52/1996 has then introduced in the Italian Civil Code the articles from 1469-bis to 1469-sexies.

In this leading case, the Corte di Appello di Torino has stated that is unfair under the art. 1469-bis of the Italian Civil Code a clause of the standard contract of sale of Fiat S.p.A. upon which, when the purchased car is defective, the consumer has no right to claim for breach of contract, but is only entitled to ask that the car is substituted or repaired by the seller and its distributors.

As for the article 1490 of the Italian Civil Code, a seller is obliged to warrant that the good sold is free of defects which render it unfit for the use for which it was intended or which appreciably diminish its value.

It is also unfair under the article 1469-bis and followings of the Italian Civil Code, a clause that excludes or reduces for the consumer the warranty of proper functioning (art. 1512 Italian Civil Code).

The article 1512 of the Italian Civil Code provides that is the seller has warranted the proper functioning of the good for a specified time, unless otherwise agreed, the purchaser shall notify the seller of the defect in functioning within thirty days after discovering it.

On the contrary, a clause of the standard contract of sale of cars providing that the purchaser should anticipate the 10-15 % of the total price of the car as earnest on performance of the contract is not unfair for the purposes of the discipline on consumers' protection.

In the same decision, the Corte di Appello di Torino has confirmed that the consumer association has the legal standing to act on behalf the consumers to protect their collective interests under the Injunctions Directive 98/27/EC.

The Directive has been implemented in the Italian Legal System by the Law 30 July 1998, no. 281 on "The rights of consumers and users", published in the O.J. no. 189 of 14 August 1998.

The Law no. 189/1998 establishes a common procedure to allow a qualified body from one country to seek an injunction in another. It aims to control traders that undertake activities in one Member State, which harm the collective interests of consumers in another Member State.

At this regard, it should be noted that the Corte di Appello di Torino has rendered this decision unless, during the proceedings, Fiat S.p.A. has agreed with the Comitato Difesa Consumatori to modify the contested clauses of the standard contract of sale of cars.

Decision

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