

Case law

Case Details

National ID: no. 6089/2002

Member State: Italy

Common Name: Soc. Zanzi Vivai v. Severino Elena

Decision type: Other

Decision date: 12/05/2000

Court: Corte di cassazione (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

1. The forfeiture of the right under Art. 1495, paragraph 2 (eight days for informing the seller of the faults in the sold good) does not run whereas the seller only acknowledges the faults in the sold good, but the limitation of a year for the remedy against the faults continues running. However if the seller, other than the acknowledgement of the faults, undertakes to remove them, a new obligation (different from the warranty against faults) arises from his undertaking and this new obligation is not subject to the limitation period of Art. 1495 c.c. but to the general limitation period under Civil Code of ten years.

Facts

In 1983 and in 1984 Elena Severino bought from the company Zanzi Vivai around 2000 plants of Actinidia Hyward, male and female type for increasing the production of fruits. Before the production of fruits, the company informed Elena Severino of some possible inconveniences relating to the type of the plants, already found in the plants sold to other customers and, consequently, the company made at its own cost some grafts into the plant purchased by Elena Severino.

In 1986 Elena Severino sued the company Zanzi Vivai before the Tribunale di Latina for the condemnation for damages relating to the scarce productivity of her plants. The pleading of the defendant consisted that the forfeiture and the limitation of the remedy against faults under the Civil Code had been run.

The Tribunale declared the pleading of the defendant was right and rejected the demand of the plaintiff. The Corte d'appello di Roma, on the contrary, reversed the decision of the Tribunale di Latina. In particular, the Court observed that the company had replaced, through its acknowledgement of the faults and its intervention of grafting, the legal duty against the fault with a new obligation whose remedy has a time limit of 10 years.

The company Zanzi Vivai has brought an action before the Corte di cassazione asking for the overturn of the sentence of the Court of Appeal

Legal issue

The duty of the seller for the faults of the sold good (Art. 1490 c. c.) covers not only the actual faults but also the potential faults, especially where the subject matter of the sale is not a good of immediate consumption, as in the case of plants for production of fruits. Thus, if the seller acknowledges even only a possibility of faults, in any case his declaration implies the legal effect of dispensing the purchaser from the duty of denunciation of the faults, under Art.

1495, paragraph 2 (in conformity with the prevalent case-law of the Supreme Court, see Corte di Cassazione, sez. II, 10/09/1980, no. 5214). The equivalence before the acknowledgement of the seller and the effective faults denounced by the purchaser is a matter of fact (that can be evaluated only before the inferior Courts and not before the Supreme Court, see Corte di Cassazione, sez. II, 28/10/1986 no. 6326).

The forfeiture of the right under Art. 1495, paragraph 2 (eight days for informing the seller of the faults in the sold good) does not run whereas the seller only acknowledges the faults in the sold good, but the limitation of a year for the remedy against the faults continues running. However if the seller, other than the acknowledgement of the faults, undertakes to remove them, a new obligation (different from the warranty against faults) arises from his undertaking and this new obligation is not subject to the limitation period of Art. 1495 c.c. but to the general limitation period under Civil Code of ten years. The ascertainment of the novation of the legal obligation against faults is in any case a matter of fact, not assessable before the Supreme Court.

In consideration of that, the Corte di Cassazione rejected the claim of the company Zanzi Vivai.

Decision

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