

Case Details

Case Details

National ID	12/2007
Member State	Malta
Common Name	Antoinette Abela vsInternational Sales Direct
Decision type	Other
Decision date	28/01/2008
Court	Qorti ta' l-Appell (Appellate court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Consumer Sales and Guarantees Directive, [Article 3, 2](#).

Headnote

Judgment concerning the choice of either seeking the rescission of the contract or else a reduction in the price

Facts

Plaintiff bought from the defendant company a steamer which after some time proved to be defective. Defendant contested the claim lodged before the Consumer Claims Tribunal but failed to attend for the Tribunal sitting. Defendant in its appeal argued that the Tribunal acted contrary to the principles of natural justice by failing to give it a fair hearing, pleading also that the Tribunal failed to adequately ensure conformity with the requirements of article 79 of the Consumer Affairs Act since plaintiff did not act immediately but kept the defective product for two whole years. Defendant company further contended that the Tribunal was wrong in granting plaintiff the remedy of rescission of the contract in accordance with article 76(2) of the Consumer Affairs Act as the circumstances of the case did not justify recourse to such a remedy.

Legal issue

In dismissing the plea that the Tribunal acted contrary to the principles of natural justice, the Court said that from the Tribunal records it was evident that both parties had adequate opportunity to present their case, observing that if defendant company had valid grounds for not attending it should at least have made a written request to the Tribunal giving its reasons therefore, something which defendant failed to do.

The Court in relation to the pleas raised with regard to article 76 of the Consumer Affairs Act which relates to the remedy of rescission of contract granted by the Tribunal to plaintiff, noted that this article must be read in conjunction with articles 74 and 75 of the Act. According to these provisions it is up to the consumer to decide which remedy to ask for, whereby the consumer may ask either for the repair of the product or its replacement, or where the defect is significant or major for a reduction in the price paid or for a rescission of the contract and full refund. In this case defendant company failed to show that the non-conformity was insignificant or minor. The Court said that plaintiff acted promptly when she discovered the defects in the product and communicated with defendant company in order to rectify the said defects. If the initial remedies provided by defendant company proved to be inadequate,

plaintiff could not then confronted with the plea that she had consequently lost the right to seek redress because she kept the defective product. The Court in the circumstances confirmed the decision of the Tribunal.

Decision

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