

**Ġurisprudenza****Dettalji tal-Każ****ID Nazzjonali:** 11/2007**Stat Membru:** Malta**Isem Komuni:** Jason Pace v Carmelo sive Charles Borg Paul Borg Antiques**Tip ta' deċiżjoni:** Oħrajn**Data tad-Deċiżjoni:** 09/01/2008**Qorti:** Qorti ta' l-Appell**Suġġett:****Rikorrent:****Intimat:****Kliem Prinċipali:****Artikoli tad-Direttiva**Consumer Sales and Guarantees Directive, [Article 2, 2.](#)**Nota Introduttiva**

Conformity with the description given by the seller

**Fatti**

Plaintiff purchased a painting which was supposedly an antique oil painting for the price of five hundred Maltese liri. The Tribunal decided not to uphold the claim noting that the price paid was agreed to by the parties and plaintiff did not raise any objection when buying the painting. Plaintiff appealed this decision contending that the Tribunal failed to adequately to consider his contention that the painting was not of the promised quality. In doing so plaintiff argued that this decision was contrary to the principles of law as laid in down in the Consumer Affairs Act. Defendant in his reply to plaintiff's appeal said that an appeal could only be made if there was a denial of natural justice to the extent that this was prejudicial to the rights of the party seeking redress.

**Kwistjonijiet legali****Deċiżjoni**

Court noted that plaintiff in substance was asking for the rescission of the contract of sale and for the refund of the money paid by him for the acquisition of the painting. According to articles 74 and 76 of the Consumer Affairs Act, it is up to the buyer to choose what remedy to seek. Seeking redress on the basis of articles 74 and 76 implies that the contract although valid, is defective and therefore annulable. This in turn means that when the object purchased is not in conformity with the description given by the seller, then on the basis of articles 73(1)(a) and (d) of the Consumer Affairs Act, the buyer is entitled to seek redress.

The Court noted that from the records of the case heard in the first instance before the Tribunal it resulted that at the moment of purchase, plaintiff acted on defendant's description that the painting in question was a genuine antique. The Court observed that this particular quality was a determining factor in the decision of the buyer to purchase the painting. The Court further noted that the expert witness who testified before the Tribunal confirmed that the painting was not an antique but a reproduction. The Court decided to uphold plaintiff's appeal given that the crucial point was that plaintiff when buying the painting was told by defendant that it was a genuine antique painting when in reality it was not. The Court in granting redress to plaintiff ordered the refund of the amount paid by plaintiff for the acquisition of the said painting once the said painting is returned by plaintiff to defendant.

Test shiħ: [Test shiħ](#)**Każijiet Relatati**

Ebda riżultat disponibbli

**Letteratura Legali**

Ebda riżultat disponibbli

**Riżultat**