

Case Details

Case Details

National ID	Appell Civili Numru 2/2009
Member State	Malta
Common Name	Paul Ellul Bonici u Lydia Ellul Bonici vs United Automobiles Limited
Decision type	Other
Decision date	02/10/2009
Court	Qorti ta' l-Appell (Appellate court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Consumer Sales and Guarantees Directive, [Article 5, 1](#).

Headnote

The case concerned the prescription of warranty claims which is regulated in article 78 of the Consumer Affairs Act (implementing art. 5 of Directive 1999/44/EC). This article states that the consumer has filed his claim within two years from the date of the delivery of the product in question.

Facts

Plaintiffs Ellul Bonici bought an Opel Astra car from defendant company and subsequently discovered that diesel pump was defective. In order for this pump to be changed plaintiffs had to pay 1253 euro. In doing so plaintiffs argued that this expense should be borne by defendant company. Plaintiffs therefore in December 2007 filed a claim before the Consumer Claims Tribunal.

Defendant company argued that plaintiff's claim was subject to prescription as the car was purchased in December 1999 and that according to article 78 of the Consumer Affairs Act the claim was subject to a period of prescription of 2 years.

The Consumer Claims Tribunal – being the tribunal of first instance - decided to award €600 as part of the damages being claimed by plaintiffs, this with costs in favour of plaintiffs.

The Tribunal in its decision stated that the damage in the pump was not the result of misuse by plaintiffs but was a recurring defect in the car model and that this therefore constituted a manufacturing defect.

Defendant company contested the Consumer Claims Tribunal decision before the Court of Appeal (inferior jurisdiction), arguing that the Tribunal had completely ignored its preliminary plea that the action by plaintiffs was subject to a period of prescription of two years in accordance with article 78 of the Consumer Affairs.

Legal issue

The Court of Appeal (inferior jurisdiction) in its interpretation of article 78 held that for consumers Ellul Bonici to be able to benefit of the remedies available under the Consumer Affairs Act, the consumers should have filed their claim within two years from the date of the delivery of the product in question. The Court noted that the consumers should have noticed the alleged defect with the aforesaid period of two years and taken action accordingly.

The Court noted that the only circumstance whereby the period of prescription could be suspended was for the duration of any negotiations between the parties in order to arrive at an amicable settlement of the issues. The Court observed that from the evidence presented it did not result that between the period 2003 to 2007 there were any negotiations which would therefore have served to suspend the period of prescription. The Court further noted that the fact that defendant company reduced the cost of the fuel pump and of the related labour costs incurred by consumers, did not mean that this brought about an interruption of the period of prescription.

The Court therefore concluded by upholding the plea of defendant company that the action of plaintiffs was subject to the period of prescription of the two years with costs of the proceedings against plaintiffs.

Decision

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