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## Case law

### Case Details

**National ID:** 26/2009

**Member State:** Malta

**Common Name:** Natasha Grech vs G.I. Trading Ltd

**Decision type:** Other

**Decision date:** 18/06/2010

**Court:** Qorti ta' l-Appell (Appellate court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 2](#), 1. Consumer Sales and Guarantees Directive, [Article 2](#), 2. Consumer Sales and Guarantees Directive, [Article 2](#), 4. Consumer Sales and Guarantees Directive, [Article 2](#), 5. Consumer Sales and Guarantees Directive, [Article 6](#), 1. Consumer Sales and Guarantees Directive, [Article 6](#), 2. Consumer Sales and Guarantees Directive, [Article 6](#), 3. Consumer Sales and Guarantees Directive, [Article 6](#), 4. Consumer Sales and Guarantees Directive, [Article 6](#), 5.

### Headnote

No Headnotes available.

### Facts

Plaintiff bought a set of pots and pans from defendant company which goods were subject to 25 year commercial (or voluntary) guarantee on "stainless steel only". Plaintiff said that after some time she noticed that rust started to result. Plaintiff complained with defendant company which in turn contended that the rust was the result of "over-cooking" since plaintiff did not abide with the user's instructions given to her and that the guarantee did not apply to the burning of such goods. Plaintiff filed a claim for the replacement of such goods.

Plaintiff in the first instance filed a claim before the Consumer Claims Tribunal being the court of first instance. The Tribunal upheld plaintiff's claims/ However defendant company contested the Tribunal's decision before the Court of Appeal. In doing so defendant company raised an initial plea that the Consumer Claims Tribunal had acted in breach of the audi ad alteram partem principle in that it failed to afford defendant company a fair hearing. The Court of Appeal as a preliminary decision given on the 7th May 2010 upheld this preliminary plea and decided to hear the claim itself in accordance with article 22 of the Consumer Affairs Act which empowers the Court of Appeal to hear the claim in such instances.

### Legal issue

The Court of Appeal in determining the actual substantive merits of the case noted that it is evident from the claim made that the basis of the action by plaintiff is that the goods purchased were not of the promised quality and that plaintiff was therefore alleging that the defendant company had acted in breach of its contractual obligations and was asking for the payment of damages.

The Court noted that once the sale is not according to what was promised or that the goods purchased are not in conformity with the agreement made or else is not in accordance with a sample of the goods, then the buyer can ask for the nullity of the contract made even though he may have received the goods. The Court in making these observations referred to a Maltese court judgement in the names *Commerciant Michele Grima vs Negoziante Arturo von Kohen* given by the Commercial Court on the 28th February 1884 whereby that Court had annulled a contract on the basis that the thing purchased was different from that which ordered.

The Court specifically referred to article 73(1) of the Consumer Affairs Act whereby it noted that the wording used in this provision is such as to offer an assurance to the buyer by imposing upon the seller an obligation to ensure that the goods sold are in conformity with the description given by the trader and have the characteristics, features and qualities of the goods which the trader had promised or shown or otherwise held out to the consumer as a sample or model. The Court in doing so expressly referred to the various provisions of article 73(1).

The Court further added that the goods were moreover subject to a commercial guarantee given by the trader, noting that any terms in the said guarantee – as happened in the present case – cannot exclude the wider rights relating to guarantees granted by law.

The Court said that it was not satisfied with defendant company's argument that consumer may have a bit careless in the use of the goods and did not follow the instructions, given that it was not acceptable for goods sold as new to become rusty after a relatively short period to the extent that these cannot be used. The Court said that conversely it was clear that the goods were not of the agreed quality. In the circumstances the Court upheld consumer's claim with costs against defendant company and ordered defendant company to provide consumer with new goods within 15 days of the date of judgement, failing which defendant company would then have to refund the cost of the said goods.

### Decision

Full text: [Full text](#)

#### **Related Cases**

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#### **Legal Literature**

No results available

#### **Result**

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