

Case Details

Case Details

National ID	409/08.1TBVIS.C1.S1
Estado-Membro	Portugal
Common Name	AA and BB v. CC and DD
Decision type	Outro
Decision date	11/10/2011
Tribunal	Supremo Tribunal de Justiça
Assunto	
Requerente	
Requerido	
Palavras-chave	

Directive Articles

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

Headnote

The rule introduced by DL 84/2008, article 5-A can only cover the cases or situations that refer to movables (assets) but not to the cases where the sales contract has immovables (real property) as its object. The inclusion of real estate law in the transposition act is excessive and goes beyond the scope of application of Directive 99/44/EC. The amendments by DL 84/2008 cannot be regarded as a correction, but as modifications or innovations regarding the time period set by the transposition act which had been six months.

Facts

CC and his wife DD entered into a sales contract on immovable with AA and his wife BB in April 2005. The real property was acquired while construction works at the level of the garages were not yet completed. In August 2006 it was not possible for the purchasers to enter with their vehicle in the garage. This was notified by a letter send to the defendants and sellers on 11 September 2006. To solve the problem the sellers went to the real property to carry out works to remedy access, but did not succeed as the problem was on the support beams of the building. Consequently to the impossibility of using the garage the buyers raised a claim to reduce the amount paid for the real property. The defendants alleged the limitation period (caducidade) to exercise the right, as the claimants notified the defects in September 2006 but raised the claim only in January 2008. The constructions works were completed in October / November 2004. The claimants and buyers argue that DL 84/2008 of 21 May 2008 in line with Directive 1999/44/EC states a new period of three years of period to exercise the consumers' rights, a period that begins with the date of notification. The court of law granted the defense of limitation period (caducidade) to claim the right.

Legal issue

Decisão

The Court granted the defense of limitation period (caducidade) to claim the right according to following considerations:

- The community legislative acts have immediate application in the Portuguese legal system (art. 8 Constitution of the Portuguese Republic, CRP), and so is the application to the situations for which the domestic legal order set a shorter period to exercise the right to react to a notification of defect in movable assets acquired by the consumers, as stated in the Directive;
- The rules of DL 67/2003 of 8 April 2003 are applicable to this case. DL 67/2003, article 5, para 4 explicitly sets the exercise of a right of notification in regard to real property (immovables), so that the right of reaction prescribes in the period of six months for the situations of defect on both movable or immovables.
- By leaving the period of time untouched, the transposition act set a shorter time than that established by Directive 1999/44/EC, which established a minimum of two years for the reaction right for the interested part to claim to the court repair, replacement, reduction in price or rescission of the sales contract of a corporeal (tangible) asset.

- But the Directive regulated only the situations in regard to corporeal movable assets, while the Portuguese legislator dealt with both movables and immovables. However, a subsequent amendment extending the period of time as set by art. 5-A of DL 84/2008 of 21 May 2007, as a corrective disposition, only applies to movables and not to immovables.

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