

Case law

Case Details

National ID: link

Member State: Portugal

Common Name: B v. C...S.A.

Decision type: Other

Decision date: 15/09/2011

Court: Tribunal da Relação (Appellate court, do Porto)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Consumer Sales and Guarantees Directive, [Article 3](#), 5. Consumer Sales and Guarantees Directive, [Article 5](#), 3.

Headnote

The provision in art. 4 para 5 of Decree-Law 67/2003, of 8 April 2003, contrary to what is provided by Directive 99/44/EC, does not hierarchically rank the rights of consumers in respect of defects of the purchased asset, allowing the consumer to exercise any of the rights, except in case of impossibility or abuse of rights. Decree-Law 84/2008, of 21 May 2008 amended DL 67/2003 and changed the wording as to extension of the limitation period to exercise the right does not apply to situations prior to the entry into force of DL 84/2008, whose deadlines have already expired completely, but only to those that still are in progress (Civil Code, art. 297 para 2).

Facts

The claimant B visited on 16 Sept. 2007 a sales exhibition of used cars promoted by the company C... S.A. At that time the employee and seller D showed the claimant a vehicle. On the following day D went to B's home and celebrated a sales agreement on the vehicle. D received part of the agreed money and the earnest/down payment. At the night of 9 Oct. 2007 D delivered the vehicle and received from B the remainder of the price. The car, when it was inspected by B in the following day at day light showed numerous defects. The claimer B complained to the salesperson D representing the company, but nothing was done. Because of the defects in the vehicle, the claimant sued the company in order to rescind the sales contract and to receive restitution of the money paid for the vehicle. The defendant alleged the limitation period (caducidade) of B's right to invalidate the sales contract and argued that B could only ask for repair of defects or replacement of the vehicle, but not for rescission of the contract, due to the deadline to sue in court.

Legal issue

The Court decided unanimously:

I – About the right to rescind the contract: Art. 4 Decree-Law 67/2003, as amended by Decree-Law 84/2008, provides the consumer with the following rights due to lack of conformity of the goods purchased: a) repair b) replacement c) reduction in the price, d) rescission of contract. Although Directive 1999/44/EC ranks these rights, distinguishing two levels of consumer reaction (the first includes repair or replacement of the asset and the second price reduction or rescission of the contract), the regulation as it stands in DL 67/2003 art. 4 para 5 makes no hierarchy, so that the consumer can exercise any of the four rights, except if the exercise of a right became impossible or if it constitutes an abuse of right. Thus, at least theoretically B may request rescission of the contract on the basis of the defects found on the vehicle to which he was not aware before, because the national Portuguese law on sale of consumer goods did not transpose the solution of the Directive that excludes the option of the consumer for choosing rescission when the lack of conformity is irrelevant. Abuse of rights does not apply in this case, because there is not a marked disproportion between the right of rescission and the size of defects that give reason to this right. Accordingly, as there is no evidence to consider abusive exercise of the right to rescission (Decree-Law 67/2003, art. 4 para 5 and Civil Code, article 334), and being satisfied the conditions required by Decree-Law 67/2003, art. 2 para 2 lit. a), art. 3 and art. 4, the claim of rescission should be granted, if there were not the issue on limitation period.

II – About the limitation period (caducidade) of the right: at the time of this claim the amendments of DL 84/2008 (art. 5-A) into DL 67/2003 were still not in vigour. Consequently the original wording of provision DL 67/2003 art. 5 para 4 still applies (limitation period of the right in 6 months, to be counted since the requirement). The right of the claimant was extinct by caducidade before DL 84/2008 entered in vigour, so that Art. 297 para 2 Civil Code on enlargement of the limitation period does not apply.

Decision

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