

**Case law****Case Details****National ID:** 719/2001/1**Member State:** Malta**Common Name:** C. Fino & Sons Limited Vs Neville u Antoinette konjugi Bonnici**Decision type:** Other**Decision date:** 06/10/2010**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 3, 1](#). Consumer Sales and Guarantees Directive, [Article 5, 1](#).

**Headnote**

Burden of proof, repair as a remedy.

**Facts**

Plaintiff company initiated proceedings against defendants asking the payment of the outstanding balance of furniture delivered to defendants.

Defendants in turn whilst contesting the claims of plaintiff company for the payment of the full amount, made a counterclaim requesting that plaintiff company pay damages because the cooker [extractor] hood delivered to them by plaintiff company was defective and had caused a fire in the kitchen of defendants' residence. Plaintiffs in turn contested this counterclaim. From the evidence submitted it resulted that defendants were not prepared to pay the full amount as they were contending that from the full price there should be deducted the damages suffered as a result of the fire caused by the allegedly defective cooker hood sold to them by plaintiff company as part of the furniture and appliances purchased.

The Court of Magistrates decided to uphold the claim of plaintiff company whilst however deducting from that amount the sum claimed by defendants for the damages suffered as a result of the faulty installation of the extractor in the kitchen hood

**Legal issue**

This was a decision of the Court of Appeal from a decision given by the Court of Magistrates [the court of first instance].

Plaintiff company decided to appeal from the decision of the first court contending that that court made a mistaken appreciation of the facts of the case and that it was not correct in stating that the burden of proof to demonstrate that it was not responsible for the damages suffered was incumbent upon it.

The Court of Appeal noted that objectively once defendants had purchased a new product, it was expected that this would be adequately functional and one should not expect that when it malfunctions one should have to repair it. If anything the Court noted that the buyer logically was entitled to assume that the product once new was not serving its purpose. The Court further noted that from the expert's report it was clear that the cooker hood was not functioning properly from the very beginning. The Court said that on the basis of the evidence submitted including the expert's report, it was clear that malfunction of the product caused the damages suffered by defendants.

The Court then proceeded to consider the contention of plaintiff company, that the burden of proof should not be onerous on it. The Court of Appeal however did not agree with this submission noting that once defendants demonstrated that malfunction of the cooker hood this brought an inversion of the burden of proof in that it was up to plaintiff company to show that it was not at fault. The Court further noted that plaintiff company cannot claim that it was not aware of the malfunction as it had previously agreed to take the cooker hood for repairs prior to the incident which caused the damage to defendants. The Court decided to confirm the decision of the first court.

**Decision**

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**Result**