

Case law

Case Details

National ID: 393/2008

Member State: Spain

Common Name: Bruno v. "A., S. A. L."

Decision type: Other

Decision date: 09/05/2008

Court: Tribunal Supremo (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Doorstep Selling Directive, [Article 1](#), 1. Doorstep Selling Directive, [Article 1](#), 2. Doorstep Selling Directive, [Article 1](#), 3. Doorstep Selling Directive, [Article 1](#), 4. Doorstep Selling Directive, [Article 5](#)

Headnote

The responsibility for proving that the contract took place away from commercial premises lies with the consumer. However, assessed the result of the proving by the Court(s) of Instance, the Supreme Court must accept this assessment and cannot look through it again.

Facts

On 18 October 1999, the plaintiff signed a contract with the defendant for the latter to provide a tractor "New Holland" to the former, who gave in exchange the old tractor that he owned. The plaintiff renounced the effects of his undertaking by sending notice to the defendant within the period of seven days that art. 5 of the Law 26/1991 stipulates for the exercise of the renounce. However, the defendant retained the vehicle and refused to accept the renounce alleging that Law 26/1991 was not applicable to this case. The court considered that Law 26/1991 was indeed of application and therefore, according to art. 6, the old tractor should be returned to his legitimate owner.

Legal issue

The court estimated that the case was within the scope of application of Law 26/1991 (art. 1), not only because the defendant recognized that the contract was signed in the plaintiff's farm, but also because the commercial agent acting on his behalf gave to the latter a catalogue with the description of the tractor, fact which remains contradictory with the defendant's statement that assures that the plaintiff had already visited in several times the dealership in order to check the vehicle object of the sale agreement.

Decision

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Result