

Case law

Case Details

National ID: 200.045.224/01

Member State: Netherlands

Common Name: link

Decision type: Other

Decision date: 26/04/2011

Court: Gerechtshof (Appellate court, Gravenhage)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

Non-conformity justifies termination of the contract when repair without inconvenience to the consumer is impossible.

Facts

A consumer bought a boat from the seller. On the 25th of July 2005 consumer left with a boat for holiday in Greece. On the 7th of August 2005 the bottom of the boat went loose, which meant that the boat started filling in with water and sinking. The consumer managed to steer the boat to a Greek island, and after phone consultation with the seller brought it to a manufacture in Italy for repair, ca. 15th of August. On the 22nd of August the consumer notified the seller that he is no longer interested in the boat and demanded full compensation. The seller received the repaired boat in the end of September and asked the consumer to pick it up. The consumer once again notified that he did not want the boat. In April 2006 the seller once again addressed the consumer to pick up the boat or be charged with parking costs of the boat. The question was what legal consequences for the sale contract these facts could bring and whether the consumer could claim damages from the seller.

Legal issue

The consumer has a right to terminate a sale contract if the non-conformity is not minor and repair or replacement of the consumer goods cannot happen without significant inconvenience, pursuant to art. 7:22BW implementing Art. 3 of the Directive. The parties agree that the defect in the construction of the boat was more than a minor non-conformity. The consumer bought a boat to sail on it. By delivering a boat that sinks the seller did not conform to an essential aspect of the contract. This justifies termination of the contract. The replacement of the boat by another, comparable boat was not seen as feasible by either party. The seller stated that repair of the boat in the short time that the consumer had left of his holidays was impossible, as well. Since both repair and replacement were impossible without significant inconvenience to the consumer, therefore, the consumer had a right to terminate the contract which he had done by letter of 22nd of August.

Decision

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