

Rechtspraak**Bijzonderheden van de zaak****Nationaal ID:** HD 200.071.971 T2**Lidstaat:** Nederland**Gangbare benaming:** X v. Dakbedekkingen BV**Soort beslissing:** Overige**Datum beslissing:** 20/12/2011**Gerecht:** Gerechtshof**Onderwerp:****Eiser:****Verweerder:****Trefwoorden:****Richtlijnartikelen**

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 2.](#) Unfair Contract Terms Directive, [Article 3, 3.](#) Unfair Contract Terms Directive, [Article 6, 1.](#) Unfair Contract Terms Directive, [Article 6, 2.](#)

Koptekst

Standard contract terms in consumer contracts need to be tested as to their fairness even if the consumer does not call for such a test.

Term on the basis of which consumer forfeitures his rights sooner than on the basis of binding legal rules is considered unfair.

Feiten

Consumer is an owner of a bungalow as of summer 2003. Shortly after the purchase, consumer noticed problems with moisture on the roof of the bungalow. The company Dakbedekkingen BV secured the roof for a previous owner of a bungalow in 1999/2000 and gave him a guarantee that there would not be any problems with the moisture gathering on the roof. This guarantee was passed on to the new owner of the bungalow who now demands from the company compensation of his damage. One of the issues raised by the professional party was the question whether consumer may still rely on the guarantee, since it obliged the consumer to notify the company without delay about any moisture problems. The consumer noticed the problems with the moisture in summer 2003, but he only notified them in December 2004.

Juridische kwestie**Uitspraak**

The consumer did not claim that the provision in the guarantee that obliges him to notify without delay any potential risk to the roof is an unfair contract term. The court stated that the Directive obliges it to examine the potential unfair character of this provision of its own motion (with reference to CJEU's case law: Asturcom, Mostaza Claro, Codifis, Oceano). The court decides that it needs to check the unfair character of this provision on the basis of Art. 3 Sec. 1 of the Directive. It notices that the consumer forfeitures his rights sooner on the basis on the provision in the guarantee, than on the basis of binding legal rules (art. 6:89 BW). Such a provision is presumed to be unfair pursuant to art. 6:237h BW and no circumstances justifying its application were so far given in this procedure. Since art. 6 of the Directive demands that an unfair contract term did not bind the consumer, the court states that this provision in the guarantee is void based on art. 3:40 Sec. 1 BW unless the professional party proves that under circumstances of this case the use of this provision was justified and not unfair.

Integrale tekst: [Integrale tekst](#)

Verwante zaken

Geen resultaten

Rechtsleer

Geen resultaten

Resultaat