

## Case Details

### Case Details

National ID	378/2012
Member State	Malta
Common Name	Garraffa vs Gasan Enterprises Limited
Decision type	Court decision, first degree
Decision date	02/04/2015
Court	Civil Court, First Hall
Subject	
Plaintiff	Marco Garraffa
Defendant	Gasan Enterprises Limited
Keywords	guarantee

### Directive Articles

Consumer Sales and Guarantees Directive, [link](#)

### Headnote

1) The law does not require that the object be deposited under the court's authority before the consumer can avail himself of the provisions of the Consumer Affairs Act on legal guarantees (which implement the provisions of Directive 1999/44).

(2) The Consumer Affairs Act makes it clear that the two year prescriptive period in relation to applicability of the legal guarantee is suspended during negotiations between the parties.

### Facts

Plaintiff bought a new car from defendant. A little after car was delivered to plaintiff, water was leaking through the windscreen and sunroof of the car. Although defendant tried to remedy the problem, including changing the windscreen water was still leaking. Parties entered into negotiations but the dispute was not resolved. Plaintiff instituted this lawsuit on the basis that the vehicle was not of the quality agreed upon. Plaintiff requested the court to declare that the vehicle did not conform with the quality agreed upon and that it cancel the contract of sale. Defendant pleaded inter alia that the plaintiff could not rescind the sale because he failed to deposit the car under the court's authority and moreover that plaintiff's claim was prescribed.

### Legal issue

Since there was no need for the consumer to deposit the car under the court's authority, and the parties had been in negotiation to resolve the dispute, the court found that the first two preliminary pleas raised by defendant could not be upheld.

### Decision

- (1) Does a consumer have to deposit under the court's authority the object subject to a claim for rescission of the contract of sale for lack of conformity?
- (2) Do negotiations suspend the two year time bar laid down at law for the applicability of the legal guarantee?

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**Result**

The court denied the defendant's first two pleas.

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