

Case law

Case Details

National ID: IV CSK 75/12

Member State: Poland

Common Name: link

Decision type: Supreme court decision

Decision date: 05/07/2011

Court: Supreme Court

Subject:

Plaintiff: Marzena G. i Wacław G.

Defendant: Grażyna N. i Zdzisław N.

Keywords: conformity with the contract, consumer rights, guarantee, repair

Directive Articles

Consumer Sales and Guarantees Directive, [Article 1, 1.](#)

Headnote

(1) If the seller fails to meet the request to repair defected goods, the buyer may, under Article 8(1) of the Act of 22 July 2002 on special terms of consumer sales and amending the Civil Code, request to have it replaced with a new one.

(2) The seller, who did not reply, within the statutory deadline, to the request for the repair or replacement of the goods cannot avoid responsibility for non-conformity of these goods with the contract.

Facts

The buyers acquired a new car from the defendants. During its exploitation, defects and faults appeared, which the plaintiffs subsequently reported to the defendants. In the period until 15 February 2005 the car was repaired 19 times. Based on the analysis of the identified defects, including some that repeated many times, the Regional Court found that at the time of the sale this car did not meet the conditions set in the agreement. The Regional Court held that in a situation where the defendants declared that the difficulties with the car had been notified for the first time within six months of the sale and issue of the car to the buyers, there is a statutory presumption that non-compliance with the agreement existed at the time of sale. It held that the plaintiffs kept their two-month period to preserve the rights resulting from the Act of 22 July 2002 on special terms of consumer sales. A lack of a defendant's response to the request for a replacement car within 14 days was interpreted by the Court as a recognition of the request. The District Court rejected the seller's appeal, so they submitted the cassation to the Supreme Court.

Legal issue

The Supreme Court interpreted that in the event of non-compliance of goods with the agreement, the Act of 22 July 2002 on specific terms of consumer sales provides for consumer's rights against the seller, limiting the possible order of their choice by the buyer. The buyer may, in the event of non-conformity, use in the first place the powers contained in the first sequence (art. 8, paragraph. 1 of this Act), i.e. require bringing the goods into compliance with the agreement by their repair or replacement, free of charge, with new ones, and only then, if certain requirements are met, request, as provided for in the second sequence (art. 8 paragraph 4 of this Act), a reduction of the price or withdrawal from the contract.

So, in the event the seller's failure to meet the request to repair the goods, the buyer may request for the replacement of the goods with new ones. Moreover, if the seller has not given a response to the buyer's request to repair the good by the defined deadlines, he will be responsible for its non-compliance with the agreement.

The Supreme Court stated that this interpretation is in accordance with the general purposes of the Act on consumer sales, as envisaged by Directive 99/44. As a consequence, it ensures a high level of consumer protection, the actual and effective implementation of consumer rights, and strengthens consumer confidence.

Decision

(1) Is it possible to change a request for having sold goods repaired to a request for the replacement of such goods with new ones?

(2) What is the legal effect of not-giving a reply to a consumer's request by the statutory deadline?

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Result

The Supreme Court denied a cassation of the defendants