

Case law

Case Details

National ID: 8/2015

Member State: Malta

Common Name: Micallef vs Orienta

Decision type: Administrative decision in appeal

Decision date: 29/07/2016

Court: Court of Appeal (Civil, inferior)

Subject:

Plaintiff: Nello Micallef

Defendant: Orienta Limited

Keywords: cessation of contract, consumer goods, consumer rights, court, durable medium, sales contract

Directive Articles

Consumer Sales and Guarantees Directive, [RECITALS, \(15\)](#) Consumer Sales and Guarantees Directive, [Article 3, 5](#). Consumer Sales and Guarantees Directive, [Article 5, 1](#). Consumer Sales and Guarantees Directive, [Article 5, 2](#).

Headnote

(1) A consumer has no obligation to deposit an object at court in order to request a rescission of the sale, under the Consumer Affairs Act, however the consumer may not continue to make use of the object while also demanding a rescission of the sale.

(2) The Tribunal, when rescission is permitted, may reduce the amount returned to the consumer to take into account the use the consumer has already made of the object. Directive 1999/44/EC provides for such yet this was not implemented in Maltese law. Notwithstanding this, applying the principles of equity, by virtue of Article 21 of the Consumer Affairs Act, the Tribunal may still apply such a reduction.

Facts

The plaintiff filed a lawsuit against the defendants before the Consumer Claims Tribunal, claiming that a sofa he had bought from the defendants was not made of leather as the defendants had claimed and that it was also of inferior quality. The Tribunal found in favour of the defendant, ruling that the plaintiff had not deposited the sofa with the Court and thus the plaintiff's action had failed. The plaintiff then appealed this decision.

Legal issue

The court disagreed with the Consumer Claims Tribunal in so far as the consumer cannot be expected to deposit the sofa in court. However the Court of appeal went on to say that although the consumer does not have the obligation to deposit the sofa in court, this does not mean that the consumer is at liberty to continue using the sofa while also expecting the sale to be rescinded due to faults in the sofa.

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) Can the amount returned to the consumer, in respect of defective goods, be reduced by a court?

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Result

The plaintiff's appeal was rejected and the appealed decision was confirmed by the court.