

Case law

Case Details

National ID: H.D. 25. september 2014 i sag 72/2013 (1. afd.)

Member State: Denmark

Common Name: link

Decision type: Supreme court decision

Decision date: 25/09/2014

Court: Supreme Court

Subject:

Plaintiff: Tom Jensen

Defendant: Kennel Svanekær

Keywords: conformity with the contract, consumer, passing of risk

Directive Articles

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

Headnote

(1) The nature and state of health of live animals is not incompatible with the rule of presumption of defects being present at the time of passing of the risk.

(2) The fact that the seller has not consented to the destruction of the good cannot limit the rights of the buyer under the law.

(3) The fact that the seller has not been given an opportunity to examine the good before it is destroyed cannot limit the rights of the buyer under the law when this is due to the state of the good.

Facts

The plaintiff bought a 2-month old puppy from the defendant (a dog kennel) in June 2009. In October 2009, the puppy was put down without the consent of the defendant, which was required under the contract. The parties nevertheless agreed that the puppy suffered from osteochondrose and hip dysplasia at the time it was put down.

Legal issue

(1) The court found that the rule of presumption was not incompatible with the nature of the good or the nature of the lack of conformity. The court rejected the defendant's argument that the defect had been caused by the plaintiffs and ruled that the defendant had not rebutted the presumption that the defects were present at the time of delivery.

(2) The fact that the dog was put down without the consent of the seller in violation of the terms of the sales contract could not lead to the buyer losing his rights under the Sale of Goods Act as the dog was in such a bad state of health that it had to be put down immediately and because of the mandatory nature of Sale of Goods Act in consumer sales. The court further noted that animal protection laws required the plaintiff to have the dog put down due to its medical condition.

(3) In accordance with the principle in § 58 of the Sale of Goods Act, the fact that the seller did not get an opportunity to examine the dog prior to it being put down, could not lead to a loss of rights on part of the buyer as this was due to the state of the dog itself.

Decision

(1) Is the rule of presumption of defects being present at the time of passing of the risk incompatible with cases involving live animals and/or their state of health?

(2) Can the fact that a good is destroyed without the seller's consent in violation of the sales agreement mean that the buyer is excluded from invoking his rights under the Sale of Goods Act?

(3) Can the fact that a good is destroyed before the seller can examine it mean that the buyer is excluded from invoking his rights under the Sale of Goods Act?

URL: <http://domstol.fe1.tangora.com/media/-300016/files/72-2013.pdf>

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Result

The plaintiff could terminate the contract and get a full refund of the purchase price. However, as there was no basis of liability, the plaintiff could not demand to be reimbursed for expenses, including veterinarian bills.