

**Νομολογία****Στοιχεία της υπόθεσης**

Εθνικός αναγνωριστικός αριθμός: No. of protocol 5354

Κράτος μέλος: Ελλάδα

Κοινή ονομασία: link

Είδος απόφασης: Άλλο

Ημερομηνία απόφασης: 07/03/2014

Δικαστήριο: Συνήγορος του Καταναλωτή

Θέμα:

Ενάγων: Unknown

Εναγόμενος: NTEVETZI SOFIA & SIA OE (PALLET STORES)

Λέξεις-κλειδιά: conformity with the contract, guarantee, legal rights, replacement, right of withdrawal

**Άρθρα της οδηγίας**

Consumer Sales and Guarantees Directive, [Article 2, 1](#). Consumer Sales and Guarantees Directive, [Article 3, 2](#). Consumer Sales and Guarantees Directive, [Article 3, 6](#). Consumer Sales and Guarantees Directive, [Article 5, 1](#). Consumer Sales and Guarantees Directive, [Article 5, 3](#). Consumer Sales and Guarantees Directive, [Article 7, 1](#).

**Περίληψη**

(1) The qualities of a good are considered as agreed properties of that good when the parties have agreed, explicitly or implicitly, that the product bears these specific properties. However, even if a specific quality of a product was not agreed between the parties, the lack of it can still constitute an actual defect of that product. An actual defect exists when the product delivered by the seller to the buyer bears defects in its natural substance that derogate (compared to what has been determined by the parties) the value or the usefulness of that product. So in case that a property is missing, the seller will still be liable for an actual defect of the good (even if parties did not agree on that specific property).

(2) The right of withdrawal is excluded if the defect is not essential. To determine whether a defect is essential or not the specific circumstances of each case will be weighted and the following will be estimated: the effects of that defect on the utility and the general operation of the product, based on the purpose of its use, the ordinary use of similar products

(3) When the buyer exercises the right of withdrawal, the buyer is obliged to return the product to the seller, while the seller is obliged to refund the price of the product together with interest with effect from the day of delivery.

**Πραγματικά περιστατικά**

The plaintiff bought a set of 6 wooden chairs and a table from the defendant. Just 4 days later, one of the chairs broke, risking injury to the person sitting on it. Then, 2 days after that incident another chair broke as well. The plaintiff noticed that a third chair was cracked and ready to break in the same place, because of a manufacturing problem. Thus, the plaintiff decided to return the whole set of chairs. The defendant received the defective furniture and proposed to the plaintiff to replace them or to credit the amount paid in order to purchase other products of equal value. The plaintiff, having lost his confidence in these products, was not interested any more to purchase other products from the defendant. So, Plaintiff asked instead to be reimbursed with the whole sum of money he had paid for the set of chairs. The defendant did not accept the withdrawal request and insisted on its initial proposal.

**Νομικό ζήτημα**

(1) When does an actual defect exist and when is a property considered to be an agreed (contractual) one?

(2) When is the right of withdrawal excluded?

(3) What are the consequences of the exercise of the right of withdrawal?

**Απόφαση**

The court considered the manufacturing defects of the products to be essential ones and that the loss of confidence of the plaintiff towards the products was justified. Due to these reasons the plaintiff was placed at a disadvantage, hence the court ruled that the plaintiff was entitled to exercise the right of withdrawal.

URL: <http://www.synigoroskatanaloti.gr/docs/reports/2014-03-07.%CE%A3%CF%85%CF%83%CF%84%CE%B1%CF%83%CE%B7-PalletStores.pdf>

Πλήρες κείμενο: [Πλήρες κείμενο](#)

**Συναφείς υποθέσεις**

Δεν υπάρχουν αποτελέσματα

**Νομική βιβλιογραφία**

Δεν υπάρχουν αποτελέσματα

**Αποτέλεσμα**

The court recommended to the plaintiff to return the purchased furniture and it suggested to the defendant to accept the plaintiff's withdrawal and the return of the purchased products as well as to reimburse the total sum of payment (but without interest). The court claimed that this recommendation aimed at an amicable settlement of the dispute and that the panel did not examine whether any fault of the defendant existed, which would have resulted in increasing the liability of the defendant. The plaintiff however, is entitled, to seek further redress before the competent Greek Courts. (plaintiff's request was granted).