

Rechtsprechung

Rechtssachenbeschreibung

Nationale Kennung: 9 Ob 64/13x

Mitgliedstaat: Österreich

Gebräuchliche Bezeichnung: 9 Ob 64/13x

Art des Beschlusses: Beschluss des Obersten Gerichts

Beschlussdatum: 25/03/2014

Gericht: Oberster Gerichtshof

Betreff:

Kläger: Unknown

Beklagter: Unknown

Schlagworte: B2B, B2C, replacement

Artikel der Richtlinie

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

Leitsatz

(1) Whether the costs of removal of defective goods and fitting of the replacements are included in the improvement duty pursuant to warranty, depends on whether a contract is B2B or a consumer contract.

(2) The costs for removal and fitting belong to the improvement of the defect only in cases of warranty claims from consumers. In all other cases, these costs have to be claimed on the grounds of compensation.

Sachverhalt

The plaintiff ordered noise-insulating boards from a supplier who was instructed to buy them directly from the producer (defendant). The defendant knew that the boards had to fulfil specific requirements. Only after applying the floor screed, it turned out that the noise-insulating boards did not fulfil the requirements and cracking occurred. To renew the floor, the plaintiff had to pull out the whole floor structure and lay out new floor boards and apply the floor screed again.

The plaintiff filed a claim for compensation of the renewal costs. The court of first instance granted the action and the court of appeal dismissed the appeal.

Rechtsfrage

Is the inclusion of costs regarding fitting and removal in respect of the warranty duties restricted to consumer contracts or is it applicable to all contracts?

Entscheidung

The court decided to distinguish between consumer contracts and business to business contracts.

Many articles of Directive 1999/44/EC were implemented in Austria by general provisions within the General Civils Law Act, which are applicable for all contracts. But due to the case law of the ECJ regarding the costs of fitting and removal in respect of warranty duties, it became clear that this should only apply to consumer contracts. Therefore, the court deemed it appropriate to make a distinction.

If a B2B contract is concerned, the costs of fitting and removal only have to be paid on the basis of compensation, but not on basis of warranty.

URL: [https://www.ris.bka.gv.at/Dokument.wxe?](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20140325_OGH0002_0090OB00064_13X0000_000&ResultFunctionToken=6df524c9-3f58-4e83-96f4-aa4fa59743cc&Position=1&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=True&SucheNa01.2006&BisDatum=25.10.2016&Norm=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=1999%2f44%2fEG)

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Volltext: [Volltext](#)

Verbundene Rechtssachen

Keine Ergebnisse verfügbar

Rechtsliteratur

Keine Ergebnisse verfügbar

Ergebnis

The request was partly granted.