

Case law

Case Details

National ID: 11S/92/2011

Member State: Slovakia

Common Name: link

Decision type: Court decision in appeal

Decision date: 24/04/2012

Court: Regional Court Trenčín

Subject:

Plaintiff: Z.G., s.r.o.

Defendant: Slovak Trade Inspection, Central Inspectorate of the Slovak Trade Inspection in Bratislava

Keywords: consumer, consumer rights

Directive Articles

Consumer Sales and Guarantees Directive, [Article 3, 2](#). Consumer Sales and Guarantees Directive, [Article 3, 3](#), - Consumer Sales and Guarantees Directive, [Article 3, 4](#). Consumer Sales and Guarantees Directive, [Article 8, 2](#).

Headnote

(1) A consumer cannot be obliged to pay the expenses for the expert assessment or the expenses in connection to such assessment, irrespective of the findings of the expert assessment.

(2) A purchaser cannot impose an obligation on the consumer without any legal reason.

Facts

The plaintiff demanded to examine the defendant's decision on imposing penalty and stated that the decision is unlawful and incorrect.

The plaintiff proposed to terminate the decision of the defendant and return the case to the defendant for further proceeding.

The case concerned a clause in the plaintiff's terms and conditions, which stated that "the expenses related to the handing over of the goods are to be paid by the purchaser and in the case of an accepted claim the expenses shall be paid by the seller."

The plaintiff claimed that such clause does not impose an obligation without any legal reason upon the purchaser and that such explanation would be unreasonably extensive in relation to the general meaning of the provisions related to the rights and obligations of the consumer.

The plaintiff further disagreed with the defendant's conclusion that the seller should bear the costs of a warranty claim regardless of whether the claim was justified or not. The plaintiff agreed that he should bear the cost of professional assessment of the claim, however not the cost of delivery.

The defendant argued that such wording places an obligation on the purchaser without any legal reason.

The first instance body of the defendant (administrative authority) has imposed a fine to the amount of EUR 500 to the plaintiff in the administrative proceeding. The defendant as the appellate body also found a violation of the consumer's rights and confirmed the fine.

Legal Issue

(1) The court agreed with the legal reasoning provided by the defendant and stated that such reasoning is also in line with the Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees ("Directive 1999/44"), whereas the directive allows to have a more strict provision in the national law.

The court also stated that in line with Section 598 of Act No. 40/1964 Coll. Civil Code ("Civil Code"), the purchaser shall have the right to the reimbursement of necessary expenses he incurred in connection with the exercise of rights from liability for defects. Such obligation shall apply irrespective of the reasonability of the purchaser's claim.

(2) The court decided that the provision used by the plaintiff in its terms and conditions is in breach with the provision of the Act No. 250/2007 Coll. on consumer protection, as the consumer cannot be obliged to pay the expenses for the expert assessment or the expenses in connection to such assessment irrespective of the findings of the expert assessment.

The court confirmed the legal view of the defendant and stated that the seller cannot place any obligations on the consumer without a legal reason.

Decision

(1) When a consumer submits a complaint to the seller, is the consumer obliged to pay the expenses connected with handing over of the purchased goods and the letter of guarantee to the seller?

(2) Is a purchaser entitled to impose an obligation on the consumer without any legal reason?

URL: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/c71911d9-f1cd-4113-b0e6-4adbbc01399b%3Aa0ff37c0-faf6-461f-bb88-6a28b032c391>

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Result

The court dismissed the plaintiff's motion.