

Νομολογία

Στοιχεία της υπόθεσης

Εθνικός αναγνωριστικός αριθμός: Court decision number 575 / 2013 (A1, Civil Cases)

Κράτος μέλος: Ελλάδα

Κοινή ονομασία: N/A

Είδος απόφασης: Απόφαση του Ανωτάτου Δικαστηρίου

Ημερομηνία απόφασης: 01/04/2013

Δικαστήριο: Άρειος Πάγος

Θέμα:

Ενάγων: Unknown

Εναγόμενος: Εταιρεία περιορισμένης ευθύνης με την επωνυμία "Δ. Ι. - Α. Χ. Ε.Π.Ε" και τον διακριτικό τίτλο "Smartsoft Ε.Π.Ε" (Smartsoft Ltd)

Λέξεις-κλειδιά: conformity with the contract, legal rights, passing of risk, repair, 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, 3](#).

Περίληψη

(1) If at the time that the risk passes to the buyer, there is an actual defect or lack of agreed properties of the item sold, the buyer is entitled to ask for the repair or the replacement of the good with another one, or, if such action is impossible or causes disproportionate expenditure, to reduce the price or to withdraw from the contract (unless the defect is minor). Moreover, if an agreed property is missing or the good lacks of conformity due to the seller's fault, the buyer may, in addition to the above rights, claim further compensation for damages. Alternatively, under the same conditions set above, the buyer may choose not to exercise any of the lawful rights and instead seek direct compensation for non-performance of the contract.

(2) An actual defect is the defect of the good that concerns its substance or state at the time that the risk is transferred to the buyer, which has a negative effect on the product's value or utility. As a property of the good is considered not only a particular physical feature or advantage of it, but also any quality that has an impact on the value or the usefulness of the good, according to the existing perceptions of transactions. Moreover, as an agreed property is considered any specific property that has been expressly or implicitly agreed between the parties (the existence of which is of particular significance to the buyer and for which the seller has guaranteed, by undertaking the relevant responsibility).

(3) In case the buyer exercises the right of repair and the defect remains, despite the fact that repair took place, he may also exercise the right to request for the reduction of the price or to withdraw from the contract.

Πραγματικά περιστατικά

The plaintiff owned a fuel station and purchased from the defendant a system for managing and monitoring the operation of his shop with the aim to issue aggregated sales invoices for several delivery notes for the same person. However, the system presented a malfunction and thus the plaintiff called the defendant to repair it. The defendant responded to the plaintiff's call and tried to repair the defect, but nonetheless, the defect remained. For this reason, the plaintiff called again the defendant a few months later, requesting a repair of the same defect in order to definitely solve the, but this time the defendant refused to do so. Consequently, the plaintiff filed a claim before the District court of Kavala, requesting to exercise the right of withdrawal and the court granted his claim. However, that court's decision no. 265/2010 was overturned by the decision no. 165/2011 of the court of First Instance of Kavala (which convened as an Appeal court at the second degree). Following the above, the plaintiff filed an appeal before the Supreme court.

Νομικό ζήτημα

(1) Is the exercise of the right of repair of a defective good final, in the meaning that it excludes the exercise of other rights?

(2) What is an actual defect? What is a good's property? What is an agreed property?

(3) What happens in case the buyer exercises the right of repair and the defect remains, despite the fact that repair took place?

Απόφαση

Even if a buyer has already exercised the right to ask for the repair of a defective good, he may still exercise the right to request for the reduction of the price or to withdraw from the contract, in case that although the repair took place, however, the defect has still remained. The claim to repair a product provides an additional option to the buyer to receive the proper fulfillment of the purchase contract (by repairing the defect) prior to exercising any other, more radical, right. But when this repair is impossible or ineffective, then the exclusion of the buyer from the ability to exercise other rights would have resulted in failing to satisfying him from the purchase contract; this failure would have been against the principles and the purposes of the law. Thus, in the latter case, the buyer may exercise the right of withdrawal, that reverses the contract of sale and the parties bear the mutual obligation to return the received benefits. So, in principle, the right of the buyer to repair the defect of the good, to which the seller did not respond (or has failed to satisfy), does not exclude the exercise of the other rights by the buyer and in particular that of withdrawal. In this context, the court ruled that, since the lack of the agreed property of the system remained (even after the repair efforts), the system became inappropriate for the purpose it was purchased by the plaintiff and thus the latter could withdraw from the contract and request the refund of the amount paid from the defendant.

Πλήρες κείμενο: [Πλήρες κείμενο](#)

Συναφείς υποθέσεις

Δεν υπάρχουν αποτελέσματα

Νομική βιβλιογραφία

Δεν υπάρχουν αποτελέσματα

Αποτέλεσμα

The court set aside the judgment of the no. 165/2011 decision of the court of First Instance of Kavala (which had convened as an Appeal court ruling at the second degree) and referred the case for further hearing at the same court composed by other judges. Plaintiff's appeal was accepted.