

**Case law****Case Details**

**National ID:** 3K-3-406/2013

**Member State:** Lithuania

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 19/07/2013

**Court:** Supreme Court of Lithuania

**Subject:**

**Plaintiff:** D. Š.

**Defendant:** UAB "Borgalita" and BUAB "Kardera"

**Keywords:** B2C, capacity of trader, consumer rights, goods, guarantee

**Directive Articles**

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

**Headnote**

The contractual guarantee can be applied only under the conditions which are agreed between the traders and the consumers.

**Facts**

The Plaintiff and the Defendants had concluded a sale - purchase agreement under which the Defendants sold and installed a roof on the Plaintiff's house. A 10 year contractual guarantee was issued under the sale – purchase agreement provided that the guarantee was applied only in cases when the corrosion covered 5 or more percent of the roof area. After 7 years the Plaintiff noticed that in some places the roof was affected by corrosion.

The Defendants claimed that the contractual guarantee could only be applied when the corrosion covered 5 or more percent of the roof area, whereas the Plaintiff demanded to apply the contractual guarantee and fix the roof area despite the fact that the corrosion affected only much smaller area

**Legal issue**

The court in this case found that the contractual guarantee did not apply since only 0,04% of the roof area was affected by the corrosion and the contractual guarantee explicitly provided the conditions under which it was applied. However the court also noted that in cases when contractual guarantee cannot be applied, then the party could claim to apply a statutory guarantee. Nevertheless, the court concluded that since the Plaintiff was a consumer he could have applied other legal remedies to protect his rights and therefore accepted the Plaintiff's request to terminate the agreement between the Plaintiff and the Defendants.

**Decision**

Can the consumers enforce their rights under contractual guarantee despite the fact that not all the conditions provided in the guarantee are met?

URL: <http://eteismai.lt/byla/11688072246425/3K-3-406/2013>

Full text: [Full text](#)

**Related Cases**

No results available

**Legal Literature**

No results available

**Result**

The agreement between the Plaintiff and the Defendants was terminated