

## Case Details

### Case Details

National ID	AP de Barcelona (Sección 17 <sup>a</sup> ) Sentencia num. 301/2011 de 16 junio
Estado miembro	España
Common Name	link
Decision type	Court decision in appeal
Decision date	16/06/2011
Órgano jurisdiccional	Audiencia Provincial de Barcelona
Asunto	
Demandante	Unknown
Demandado	INVERCANTOS S.L. and AVANT GARANTIAS S.L.
Palabras clave	commercial guarantee, conformity with the contract

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 6](#)

### Headnote

The commercial guarantee is additional and ancillary to that of the seller (the legal guarantee), and does not replace the latter. Therefore, liability of the seller and the guarantor (commercial guarantee) is a joint liability.

### Facts

The plaintiff bought a second-hand car from one of the defendants. The other defendant offered a commercial additional guarantee over the car. A breakdown occurred after some time. However, the defendants refused to cover the repair cost. The plaintiff took legal action against both the seller and the guarantor. The seller argued that he was not made aware of the defect until November 2007, the statute of limitation being applicable. The guarantor alleged that the defect was not covered by the guarantee because, according to the wording of the guarantee, defects which are known or ought to be known by the seller and are not communicated to the guarantor, were not under the scope of the guarantee. However, the defect was difficult to detect as it required a time of use for it to be noticed. Therefore, it was considered that the seller was unaware of the lack of conformity of the product and the commercial guarantee may be deemed to be applicable.

### Legal issue

How is the liability regime of the seller and the guarantor (offering an additional commercial guarantee) construed when it is not proven that the seller is aware (or ought to have been aware of) the non-conformity of the product?

### Decisión

The Court considered that the lack of conformity was very difficult to detect, therefore, it could not be proven that the seller was aware or ought to be aware of such lack of conformity at the time of the conclusion of the contract. However, this does not entail that the seller is not liable at all and is the guarantor the one to respond for the lack of conformity. On the contrary, the Court stated that the right of conformity of consumer goods and services with the contract is a legal provision and therefore it cannot be waived by a contractual stipulation. As a result, where a contractual guarantee overlaps with the legal guarantee, the seller and the guarantor are jointly liable.

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#### **Related Cases**

No results available

#### **Legal Literature**

No results available

#### **Result**

The consumer's claim succeeded. The plaintiff had to be repaid for the repair, arrears and damages.

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