

Case law

Case Details

National ID: NJA 2013 s. 524

Member State: Sweden

Common Name: link

Decision type: Supreme court decision

Decision date: 13/06/2013

Court: The Supreme Court

Subject:

Plaintiff: Ekstrand & Son Aktiebolag

Defendant: A.S. (private individual)

Keywords: delivery, goods, passing of risk, proof of damage

Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 1](#). Consumer Sales and Guarantees Directive, [Article 2, 2., \(d\)](#) Consumer Sales and Guarantees Directive, [Article 3, 1](#). Consumer Sales and Guarantees Directive, [Article 5, 3](#). Consumer Rights Directive, [Chapter 4, Article 20](#)

Headnote

When a defect could have occurred both before and after the delivery, the seller shall be responsible to show the defect did not exist prior to the delivery.

Facts

The defendant had ordered two entrance doors from the plaintiff, who is a trader manufacturing and selling doors.

The doors were delivered to the defendant by a freight company and the defendant had approved that the freight company delivered to goods to the defendant's home without the defendant's signature of receipt.

A week after the delivery, the defendant claimed that one of the doors was damaged. Upon delivery, the door was placed under the other door and the packaging was damaged.

The plaintiff brought a claim against the defendant for the full payment of the goods, as the door in question did not have a defect. The defendant brought a cross-action against the plaintiff, demanding the delivery of a new door without any defects. The district court ruled in favour of the plaintiff, whereas the Court of Appeal ruled in favour of the defendant.

Legal issue

The Consumer Sales Act provides that a defect which manifests itself within six months from the date of delivery of the goods shall be deemed to have existed at the time of delivery, unless otherwise proven or if it is inconsistent with the nature of the goods or the defect (see Section 20 a).

The above presumption can be rebutted if proof that strongly indicates that the defect did not exist at the time of delivery is presented. The court states that even though it is not expressly stated in the Consumer Sales Act, the seller has the burden of proof for rebutting the presumption.

When assessing the requirements of the evidence to be presented to rebut the presumption, the court states that nothing in the preparatory work indicates that "unless otherwise proven" shall be a specified demand of evidence. As the seller generally lacks any possibility to gather evidence when the goods have been delivered to the consumer, the court states that the seller shall be allowed a certain relief of evidence to rebut the above presumption. The demand of evidence shall furthermore be decided based on the circumstances in the relevant case, i.e. the type of defect and the time that has passed after the delivery.

As regard the current situation to be tried, the court finds that is clear that the defect is not a manufacturing defect or similar. The plaintiff has provided proof that the freight company driver did not detect any defects on the goods, and that the delivery system of the freight company contained no details of any defects. The court states that based on the circumstances and facts in the case, it cannot be decided whether the door was damaged before or after delivery. Hence, the court finds that the plaintiff did not prove that the defect did not exist prior to the delivery of the goods.

Decision

Is it the seller or the buyer who is responsible to show whether or not a defect existed upon delivery, when such defect could have occurred both before and after the delivery?

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Result

The court upheld the Court of Appeal's ruling and denied the plaintiff's appeal.