

Case law

Case Details

National ID: AP de Zamora (Sección 1ª) Sentencia no. 35/2012 de 8 marzo

Member State: Spain

Common Name: link

Decision type: Court decision in appeal

Decision date: 08/03/2012

Court: Provincial court of Zamora

Subject:

Plaintiff: BMW IBERICA S.A.

Defendant: Unknown

Keywords: conformity with the contract, guarantee, proof of negligence

Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 2.](#)

Headnote

The burden of proof of the lack of conformity is on the consumer, but they do not need to prove that the lack of conformity was present at the conclusion of the contract. Once the lack of conformity is proven, the burden of proof shifts to the seller. For certain kind of products, such as vehicles, the burden of the proof is stronger for the trader. The prior non-conformity of the product must be totally discarded to avoid being bound by the guarantee.

Facts

The defendant bought a BMW car and after two years claimed against the company for non-conformity of the product with the contract: the clutch broke down and the steering wheel also needed to be repaired. It is also remarkable that the plaintiff had granted the user a commercial guarantee for two years, in addition to the legal guarantee that operates in this field. Notwithstanding the aforementioned, the plaintiff claims that the non-conformity of the product is due to a misuse of product by the consumer, therefore the guarantee would not apply. However, the mechanic expert stated that this type of defect could be due to two different causes: misuse by the consumer, such as pressing the clutch for a long time, using the car in very steep fields, etc. or otherwise a defect present in the very origin of the product (the manufacturing). In this sense, it is important to note that the breakdown happened when the car had been used for an amount of kilometers notably lower than the amount after which the defect usually appears.

Legal issue

The Court ruled that the burden of proof is always borne by the seller/producer once the consumer has proved that there is a lack of conformity. In this sense, the consumer must prove the non-conformity of the product, but not that the product was defective at the time of execution of the contract. The trader, on the other hand, must prove that the consumer misused the product and that this caused the alleged non-conformity. The court also set forth that, for certain kind of products (such as vehicles), the burden of proof is heavier on the seller, due to their special nature. It also clarified that conformity of the product requires that all the requirements set forth in the regulations are fulfilled. Failing to fulfil only one of said requirements is enough for the burden of proof to be supported by the seller.

Decision

Does the consumer have to prove that the non-conformity of the product was present at the time of execution of the contract or rather is it the seller who must prove misuse by the consumer?

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Result

The expert did not clarify whether the non-conformity of the product was due to the consumer's alleged misuse, or whether it could be latent as from execution of the contract. The court concluded that the seller had not provided enough evidence of misuse and ruled in favour of the defendant.