

Case law**Case Details****National ID:** [link](#)**Member State:** Belgium**Common Name:** [link](#)**Decision type:** Court decision in appeal**Decision date:** 12/10/2012**Court:** Ghent Court of Appeals**Subject:****Plaintiff:** A.C.M. Urbano BVBA**Defendant:** B.R.**Keywords:****Directive Articles**Consumer Sales and Guarantees Directive, [Article 2, 2., \(b\)](#)**Headnote**

(1) When a motorhome's Maximum Weight Allowed (MWA) is meaningfully exceeded in the course of its normal use, it will not be in conformity with the contract on account of its not being fit for purpose per article 2(2)(b) of Directive 1999/44 (implemented into Belgian law by article 1649ter, §1, 2° of the Civil Code) and on account of it no longer offering the same quality and performance that could be expected of a similar vehicle.

Facts

On 27 September 2007, the defendant bought a motorhome from the plaintiff. The defendant used this motorhome for a trip to Croatia, during which it suffered mechanical problems which the defendant paid for. The defendant notified the plaintiff of these problems, stating that the motorhome was unfit for its purpose, mainly on account of its weight being above the MWA threshold.

The defendant requested the plaintiff to repay the price or to replace the vehicle. The issue came to a head and defendant filed suit. The court of first instance agreed with defendant, rescinding the contract and awarding damages. The plaintiff appealed against this decision.

Legal issue

The court ruled that the motorhome was not fit for the purpose it usually serves because (1) safety is threatened and (2) the motorhome no longer offers the same quality and performance which is normal for a motorhome of a similar kind, taking into account the MWA. The exceeded MWA presented a defect which the consumer was not expected to be aware of, since the consumer is not expected to make the calculations necessary to determine the weight of the vehicle at the moment of purchase.

Decision

(1) Should a vehicle that exceeds the maximum weight allowed by a meaningful margin be considered unfit for purpose?

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Result

The court rescinded the contract and awarded damages.