

Case law

Case Details

National ID: link

Member State: Luxembourg

Common Name: Union luxembourgeoise des consommateurs nouvelle ASBL - M.

Decision type: Supreme court decision

Decision date: 02/02/2012

Court: Supreme Court

Subject:

Plaintiff: Association Union luxembourgeoise des consommateurs

Defendant: M.

Keywords: cessation of contract, conformity with the contract, consumer rights, guarantee, judicial recourse

Directive Articles

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

Headnote

(1) The action for an injunction provided for by Article 2 of the Law of 19 December 2003 on the protection of the collective interests of consumers introduced by an approved consumer organization is inadmissible since an impugned clause constitutes an isolated clause in a single contract and not a clause in a standard contract.

(2) An action for cessation provided for by Article 9 of the Act of 21 April 2004 on the protection of the collective interest of consumers and of a preventive nature, a clause constituting an isolated clause in a single contract and not a clause in a standard contract the renewal of which is not to be feared, the action for an injunction brought by an approved consumer organization does not seek to protect the collective interests of consumers as a preventive measure and is therefore inadmissible.

Facts

By order of 15 July 2009 the judge replacing the President of the District Court of Diekirch, ruling on the legal protection of the consumer, ordered the defendant to stop selling products to consumers without complying with the legal provisions relating to the time limits for guarantee of conformity provided for by the law of 21 April 2004, declared abusive any clause in a contract, an invoice or an offer to contract which refers to a warranty period shorter than the duration of the guarantee without specifying it, this clause being null and unwritten and ordering the display of the device of its order within the shop operated by the defendant; that on appeal by the latter, the Court, by a review of the order made, declared the applicant's application for cessation inadmissible.

Legal issue

(1) Whereas the Court of Appeal found that the guarantee clause complained of was specially drafted on the occasion of a specific contract and held that it resulted from a whole series of other contracts containing clauses complying with the requirements of the law of 21 April 2004 that there was no fear that the trader would conclude other contracts without a valid guarantee;

That the first part of the plea seeks merely to have the Court of Cassation re-examine the evidence submitted to the Court of Appeal and sovereignly assessed by it;

That the Court of Cassation has no jurisdiction to review the findings of fact of the trial judges and to assess the evidence they have adopted;

That the plea can not be upheld in its first limb;

Whereas the action for annulment provided for by Article 2 of the Act of 19 December 2003 is designed to protect the collective interests of consumers;

Whereas the Court of Appeal considered that there was no reason to fear that the merchant would conclude other contracts without a valid guarantee if the impugned clause constituted an isolated clause in a single contract and not a clause of one Model contract, could infer that the injunction brought by the ULC association did not seek to protect the collective interests of the consumers as a preventive measure and was therefore inadmissible;

That the plea is not founded in its second limb;

(2) Whereas, in the light of the unfounded complaint of a violation of Article 9 of the Law of 21 April 2004 on the guarantee of conformity due by the seller of tangible personal property, the first part of the plea seeks, to reconsider the facts and evidence which have been sovereignly found and appreciated by the trial judges;

Whereas these sovereign findings and assessments are beyond the control of the Court of Cassation;

Hence it follows that the ground can not be accepted in its first branch;

Whereas the action for the cessation of Article 9 of the aforementioned Act is aimed at protecting the collective interest of consumers and is of a preventive nature;

By saying that the ULC association has no interest in bringing an action for the cessation of any act contrary to the provisions of the aforementioned law unless the renewal of the act contrary to the provisions of this law is to be feared, the trial judges did not infringe the text relied on by the plea;

Hence it follows that the ground of appeal is not founded in its second branch;

Decision

(1) Is an injunction for the protection of the collective interests of consumers by an approved consumer organization admissible where the contested clause does not constitute a clause in a standard contract?

(2) is a preventive action for an injunction by an approved consumer organization admissible where the contested clause does not constitute a clause in a standard contract and the renewal of which is not to be feared?

URL: http://www.pasicrisie.lu/search_pdf/sites/default/files/tomes/T36_012013_COM_02022012.pdf

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Result

The Court dismissed the appeal and ordered the applicant to pay the costs of the cassation proceedings.