

Case Details

Case Details

National ID	ECLI:NL:RBMNE:2015:2116
Member State	Netherlands
Common Name	link
Decision type	Court decision, first degree
Decision date	01/04/2015
Court	District Court Midden-Nederland
Subject	
Plaintiff	Unknown
Defendant	Unknown
Keywords	advance payment, delivery, delivery charges, distance contracting

Directive Articles

Unfair Contract Terms Directive, [link](#)

Headnote

A general term or condition in an electronical environment is unreasonably onerous when this particular condition obliges the consumer to pay the full amount of the ordered goods upfront.

Facts

The plaintiff bought computer parts via the internet. He agreed to the general terms and conditions of the defendant's website and was obliged, according to these terms and conditions, to pay the full amount of the goods before delivery. The plaintiff refused to pay any amount before delivery of the goods. In response to this, the defendant refused to deliver the goods. The plaintiff thought the full payment up front to be unreasonably onerous.

Legal issue

The agreement was deemed a consumer sale and a distance purchase. According to 7:26 (2) DCC, in the case of a consumer sale, a buyer cannot be obliged to pay more than half of the amount upfront. The defendant does not deny the fact that his general condition on the website obliges consumers to pay the full amount upfront. The court decides that obligating customers to pay the full price of ordered goods up front is unreasonably onerous. The main reason underlying this decision is that this particular condition of full payment upfront implies an obligation to the consumer. The mere fact that the seller has different alternatives for payment, such as (1) picking up the goods in person and paying on site and (2) paying half of the amount up front and paying the other half after goods have been delivered, does not change the unreasonably onerous character of the relevant term or condition. The court declares the defendant in default, orders the defendant to deliver the goods within fourteen days and condemns the defendant to pay the costs of the proceeding. The court orders the plaintiff to pay immediately when the goods are delivered.

Decision

Is a general term or condition in an electronical environment where the consumer is obliged to pay the full price of the bought goods upfront unreasonably onerous?

URL: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBMNE:2015:2116>

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Result

The plaintiff's requests were partially granted. His request to declare the defendant in default, to obligate the defendant to deliver within fourteen days and to condemn the defendant to pay the costs of the proceeding were granted. However, his request for annulment of the agreement could not be granted because the plaintiff already annulled the agreement by means of an extrajudicial declaration.