

Case law

Case Details

National ID: link

Member State: Germany

Common Name: link

Decision type: Supreme court decision

Decision date: 10/12/2014

Court: Federal Court of Justice

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: terms and conditions

Directive Articles

Consumer Rights Directive, [Chapter 1, Article 2, \(8\), \(a\)](#)

Headnote

The law of distance contracts applies to contracts only in which an entrepreneur acts as supplier and the consumer acts as recipient.

Facts

The plaintiff claims damages due to preliminary termination of an eBay auction.

The defendant had offered a power set with a starting bid of EUR 1, 00 with a 10-days period. The auction sale was made based on the terms & conditions of eBay.

The plaintiff accepted the bid of the defendant on 18 May 2012. On 19 May 2012 the defendant preliminarily terminated the auction and caused the cancellation of the bid of the plaintiff. There were no other bids. The plaintiff subsequently paid the defendant the purchase price of EUR 1,00.

With this lawsuit, the plaintiff demands restitution and transfer of ownership of the power set or, alternatively, damages amounting to EUR 8.500,00 plus interest and reimbursement of pre-trial attorney fees. The district court dismissed the case, arguing that a purchase contract between the parties had not been concluded considering the terms & conditions of eBay.

The terms & conditions contained provisions which stipulated that

- an auction may be terminated preliminary and bids may be cancelled if the vendor is legally entitled to do so
- at expiry of the auction or at the time of preliminary termination a purchase contract is concluded between the vendor and the highest bidder, unless the vendor was legally entitled to revoke his offer and cancel the bids.

This provisions were linked to an eBay website with the following information:

- An auction may be terminated preliminary only if the article was lost or damaged without fault of the vendor or is not available for sale due to other reasons.
- The vendor can also terminate the auction preliminary if he did a mistake by inserting the offer, the starting bid or a minimum bid.
- In case the auction expires later than 12 hours, the auction can be terminated without limitations.
- In case the auction expires prior to 12 hours, the possibility of terminating the auction preliminary depends on whether there are bids for the item or a minimum bid is required. If there is no bid yet, the auction can be terminated. In case there are bids, the item must be sold to the highest bidder. In case the minimum price was not reached, a preliminary termination is not possible.

In the appeal instance the parties agreed the legal dispute to be settled with regard to the restitution and transfer of ownership of the power set, as the defendant sold the power set to another buyer. The appeal based on the damages was successful.

The defendant now demands restoration of the first-instance judgement.

Legal issue

The defendant must pay damages amounting to EUR 8.500,00 to the plaintiff.

Decision

Is the law of distance contracts applicable to contracts in which an entrepreneur acts as recipient and a consumer acts as supplier?

URL: <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?>

[Gericht=bgh&Art=pm&Datum=2014&Sort=3&anz=185&pos=0&nr=70014&linked=urt&Blank=1&file=dokument.pdf](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2014&Sort=3&anz=185&pos=0&nr=70014&linked=urt&Blank=1&file=dokument.pdf)

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Result

The plaintiff's appeal was dismissed.