

Informations concernant l'affaire

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ID national	link
État membre	Belgique
Nom commun	link
Type de décision	Décision de justice faisant l'objet d'un recours
Date de la décision	07/06/2010
Juridiction	Hof van Beroep Antwerpen
Objet	
Demandeur	G.K and G.D.
Défendeur	NV I.K.
Mots clés	general discussion, imbalance between the rights of the parties, price

Articles de la directive

Unfair Contract Terms Directive, [Article 6, 1](#). Unfair Contract Terms Directive, [Article 6, 2](#).

Note introductive

A contractual term in general sales conditions of a seller, stipulating that the seller is entitled to damages amounting to 30% of the agreed price in case of withdrawal of the order, constitutes a term creating a significant imbalance between the rights and obligations of the parties in light of Directive 93/13.

Faits

The plaintiffs signed an order for the purchase of an equipped kitchen in the showroom of the defendant, based on a rough sketch on the back of the order.

The day after they had signed the order, the plaintiffs wanted to cancel the purchase because they were caught off guard in the showroom and wanted to make a deliberate decision concerning the kitchen and the price. There also were uncertainties in relation to the manner in which the price of the kitchen was calculated.

Due to a term in the general sales conditions, the plaintiffs were allowed to withdraw from the purchase only under the condition of a payment of 30% of the estimated price of the kitchen.

Question juridique

Does a contractual term in general sales conditions of a seller, stipulating that the seller is entitled to damages amounting to 30% of the agreed price in case of withdrawal of the order, constitute a term creating a significant imbalance between the rights and obligations of the parties in light of Directive 93/13?

Décision

According to the court, the agreement does not put an obligation of immediate performance on the seller but, conversely, does lead to the consumer being bound immediately and for a long term period to the seller. Consequently, the consumer is deprived of the opportunity to contract with another vendor.

Next, the court considers that by making the termination of the contract subject to the payment of an exorbitant

amount (being 30% of the initial price), a significant imbalance between the rights and obligations of the parties is being established.

For those reasons the court declares the article of the general sales conditions, establishing that imbalance, null and void under article 6 of the Directive 93/13.

Texte intégral: [Texte intégral](#)

Affaires liées

Aucun résultat disponible

Doctrine

Aucun résultat disponible

Résultat

The appeal was upheld by the court.
