

Case law

Case Details

National ID: XVI C 2374/14

Member State: Poland

Common Name: link

Decision type: Other

Decision date: 01/09/2015

Court: The District Court for Warsaw - Mokotow

Subject:

Plaintiff: E. Z. and J. Z.

Defendant: Spółka z o.o. with its registered office in Warsaw

Keywords: consumer rights, timeshare contract, withdrawal period

Directive Articles

Timeshare Directive, [Article 12, 1](#). Timeshare Directive, [Article 16, 1](#).

Headnote

A consumer cannot limit or waive its right of withdrawal from a timeshare contract in the form of a unilateral legal action.

Facts

The plaintiffs (a couple) filed a lawsuit against the defendant - a limited liability company. The plaintiffs demanded the return of PLN 54,000 which they had paid pursuant to a timeshare contract concluded with the defendant. The plaintiffs justified their demand by stating that they withdrew from the contract before the stipulated deadline.

The defendant pointed out that the plaintiffs' declaration on withdrawing from the timeshare contract was not valid and effective because it was submitted by a representative who did not have an appropriate power of attorney. Moreover, the defendant stated that even if the power of attorney had been valid, the declaration of withdrawal would not have been effective because the plaintiffs unilaterally waived their right to withdraw from the contract in return for the immediate possibility to exercise their rights resulting from the timeshare contract. Therefore, in the defendant's opinion, the demand for the return of the money was unjustified.

Legal issue

The District Court (hereinafter referred to as "the court") accepted the majority of the claims in the plaintiffs' lawsuit. The court pointed out that the dispute between the parties is based on contrary the opposite legal interpretations of the facts. Neither party questioned the fact that the contract had been concluded or the sequence of events in the case. Therefore, the court pointed out that the key issue is whether the declaration on withdrawing from the contract was effective.

The court noted that according to the provisions of law that were in force at the moment the timeshare contract was concluded, the plaintiffs were entitled to withdraw from the contract without reason within 10 days of their receiving the contract. The declaration on withdrawal should have been submitted in the form of a written notice. Moreover, in accordance with the provisions of law, the right of withdrawal could not be limited or waived in the contract.

However, according to the court's interpretation, however it does not result directly from the law, a consumer cannot limit or waive its right of withdrawal from a timeshare contract in the form of a unilateral legal action as well. that the reduction or exclusion of the right of withdrawal cannot be also performed in the form of unilateral legal action . In making this interpretation the court referred to two EU Directives (Directive 94/47/EC and Directive 2008/122/EC). The court pointed out that according to Article 12(1) of Directive 2008/122/EC, member states must ensure that where the law applicable to a contract is the law of a member state, consumers may not waive the rights conferred on them by this Directive. The court emphasized that the purpose of the Directives is to ensure the right of consumers to withdraw within a defined period. This means that that the consumer cannot waive this right in the contract or by a unilateral legal action.

Moreover, the court pointed out that the plaintiffs' representative was properly authorized and the power of attorney was valid. Therefore, the court declared that the declaration on withdrawing from the timeshare contract was effective and the defendant must return the money paid by the plaintiffs.

Decision

Can a consumer limit or waive its right of withdrawal from a timeshare contract in the form of a unilateral legal action?

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Result

The District Court granted the plaintiffs' claim.