

Jurisprudencia**Detalles del asunto**

ID nacional: AP de Islas Baleares (Sección 5ª) Sentencia núm. 303/2009 de 15 septiembre

Estado miembro: España

Denominación común: N/A

Tipo de resolución: Resolución judicial recurrida

Fecha de la resolución: 15/09/2009

Órgano jurisdiccional: Audiencia Provincial de Palma de Mallorca

Asunto:

Demandante: EURODETECTION, S.L.

Demandado: Unknown

Palabras clave: prior information, repair, written confirmation

Artículos de la Directiva

Distance Selling Directive, [Article 4](#) Distance Selling Directive, [Article 5](#)

Nota preliminar

(1) Failure to provide specific information on the product to be sold remotely to a consumer renders the contract null and void. Spanish law is more stringent than Directive 97/7/EC as it requires the contract with the consumer to be in written form.

(2) Moral rights are compatible with damage compensation arising from infraction of the distance contracts advance information/documentation regime.

Hechos

The plaintiff sold remotely a metal detector to the defendant without providing information on the product brand, model, features, etc. The product was returned by the defendant. The plaintiff did not reject or express any objection to said return at the time but it did not reimburse the price to the defendant. The defendant filed a successful claim asking for twice the price of the product and moral damages. The plaintiff claims that the returned product was damaged and asks for the decision to be repealed.

Cuestión jurídica

(1) Does failure to provide specific information on the product to be sold remotely to a consumer render the contract null and void?

(2) Are moral rights compatible with damage compensation arising from infraction of the distance contracts advance information/ documentation regime?

Decisión

The court ruled to partially confirm the first instance decision on the basis that according to the means of evidence filed by the parties, the information provided to the defendant was general and entitled him to return the product purchased, as the Spanish laws compel to the use of a contract in written form when consumers are involved. Moral rights are potentially awardable in these cases but in the case at stake, the defendant's uncertainty and concern do not qualify as a cause for which moral rights can be awarded.

Texto completo: [Texto completo](#)

Asuntos relacionados

No hay resultados disponibles

Literatura jurídica

No hay resultados disponibles

Resultado

The court partially confirms the first instance decision. The plaintiff is ordered to pay the defendant twice the price of the product but no moral rights compensation.