

Case law

Case Details

National ID: 684

Member State: Italy

Common Name: link

Decision type: Court decision, first degree

Decision date: 24/10/2016

Court: Court of Pordenone

Subject:

Plaintiff: Ma. Lu. Ma.

Defendant: Sc. Ga., and FIDITALIA S.p.A.

Keywords: information requirements, right of cancellation, right of withdrawal

Directive Articles

Doorstep Selling Directive, [Article 4](#) Doorstep Selling Directive, [Article 4, \(a\)](#) Doorstep Selling Directive, [Article 4, \(b\)](#) Doorstep Selling Directive, [Article 4, \(c\)](#)

Headnote

Per the legislative decree 15 January 1992, n. 50, implementing directive 85/577/EEC, the operator must inform the consumer of his right to withdrawal and that the information must be in written form (art. 5 legislative decree 15 January 1992, n. 50).

Facts

The plaintiff received a visit by a Sole Mio s.r.l. employee proposing to him the purchase of a photovoltaic system. On that occasion, the husband of the plaintiff signed a module for the acceptance of a prospectus in relation to the photovoltaic system feeding (connection). The following week, the Sole Mio s.r.l. employee paid another visit to the plaintiff. In that circumstance the plaintiff signed the contract for the photovoltaic system purchase, signing also a loan contract of € 10.000,00 with Fidelity s.p.a.

Several written communications followed, in which the plaintiff showed her intention to withdraw from the contract with no response.

The plaintiff brought an action before the court against the defendant in order to ascertain the invalidity of a contract for the purchase of a photovoltaic system signed on the 4th June 2014 with Sole Mio s.r.l. and the consequent termination of the loan contract concluded with Fidelity s.p.a. for the purchase of such system.

Sole Mio s.r.l. claimed that the obligations arising from the contracts had been performed; Fidelity s.p.a. claimed its extraneousness to the contractual relationship between Ma. and Sole Mio, having funded the amount of € 10.000,00 in favour of Sole Mio.

Legal issue

The module for the acceptance of the prospectus in relation to the photovoltaic system feeding is not a contract since it has only an information content and furthermore, it was signed by the plaintiff's husband, not by the plaintiff herself. The strict discipline in relation to the requirement to inform the consumer about his right to withdrawal imposes the insertion of the information in the contract itself.

Decision

Is it necessary to explicitly provide for the right to withdrawal of the consumer in the contract, or is it sufficient that it is mentioned in the signed module for the acceptance of the prospectus?

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Legal Literature

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Result

The Court granted the plaintiff's request declaring the contract's invalidity and ordering Fidelity s.p.a. to reimburse her the amount of € 1.345,13.