

Z. v. O. (The Defective Armchairs Case)

KEYWORDS:

Sale contract – furniture – consumer – seller – manufacturer – default of conformity – liability for defective product

FACTS:

On 28 January 2017, the client and her partner bought two armchairs for 16 999 CZK (approx. 650 EUR) in a retail store. The armchairs were purchased instore and transported by the client herself. The client claims that the armchairs differed from those purchased in the store; those she saw in the store did not have the same defects. One of the armchairs has a shorter armrest as well as wrinkled fabric on the armrest.

The client contacted the seller who referred them to the manufacturer. On 8 February 2017, they, therefore, lodge a complaint with the manufacturer who acknowledge the defects on 17 February 2017 and offered to replace the products. The client agreed but on 29 March 2017 when the employees of the manufacturer arrived with the new set of armchairs, the client refused to accept them as she found out that those were made of a different fabric and in different colour and the fabric was wrinkled. She requested the original armchair to be repaired as well as a discount from the original price. The manufacturer then offered a discount in the amount of 1 500 CZK (approx. 60 EUR) per piece. It was agreed upon orally; the protocol drafted on 31 May 2017 only stated that the original armchair should be repaired and that a discount was to be offered without specifying the exact sum. Since then the company then stopped reacting.

On 18 December 2017, the client wrote the manufacturer a (handwritten) letter. She does not have a copy of the letter but provided a delivery note. She never received an answer. She then called them several times and has been repeatedly reassured that they will call her back but never did.

The consumer visited the Students Legal Aid Office requesting an advice on how to proceed in order to preferably get the armchairs repaired and get a discount. She did not wish to exercise her right to a withdrawal and to get a refund.

LEGAL ANALYSIS:

In this case, a conformity issue was at stake. Students analyzed how the client should proceed in order to get the door repaired, replaced or refunded.

- **Legal provisions with specific reference to EU directive when applying:**

National provisions (Law no. implementing Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees).

LEGAL SOLUTION:

The client has been informed about possible remedies under Directive 99/44/CE, as transposed in the Czech Republic (Law No. 89/2012 Col., Civil Code and Law No. 634/1992 Coll, on the protection of the consumer).

1) Right to the replacement or repair of the defective goods, to a discount or to a withdrawal

When a purchased good is defective from the beginning (as in the case of the client), the consumer has a right to choose how she or he wishes to rectify the situation; s/he may request:

- replacement of the defective goods;

- repair of the defective goods;
- discount from the price of the defective goods or
- withdraw from the sale contract.

The consumer has to choose one of the options when informing the seller about the lack of conformity. The client informed the seller about the lack of conformity on 8 February 2017. However, the seller refused to deal with the claim. Therefore, the client may recontact the seller and inform him that she insists on her complaint and the chosen method of rectification of the lack of conformity (replacement of the defective goods).

2) Right to a withdrawal

Having regard to the fact that the seller refused to comply with his legal obligation and to deal with the clients claim, he, thus, committed a significant breach of contract. The client may, hence, withdraw from the contract and request a refund.

3) Legal claims against the manufacturer

The client does not have any legal claims against the manufacturer who is not party to the sale contract concluded between the client and the company O.

SUGGESTED SOLUTION:

The client was informed that she should contact the seller and insist on her original claim of the lack of conformity which the seller refused to deal with.

It has been suggested that if the seller does not deal with her claim, she may try the alternative dispute resolution (ADR) secured by the Czech Trade Inspection to whom the client may apply free of charge.

Alternatively, or if any dispute resolution agreement has not been reached, the client has been advised to apply to the court. It is, however, necessary to pay the court fees. She was also informed that she should not wait much longer with the resolution of the issue as the statute of limitation has begun to run when she learnt about the defects (on 28 January 2017) and will elapse in three years from that day (28 January 2020).

SPECIFIC REMARKS:

