

Case name (date):
The “VEK case” (August 2017)

KEYWORDS:

Competence of the Legal clinic; conformity of consumer goods (Directive 1999/44/EC); sales contract

FACTS:

In this case, a user bought a second-hand car from a garage, the car had a one-year warranty. The car had immediately two different problems: the dashboard light and the right mirror.

The garage dealt with the issue related to the dashboard light by changing the car's battery and redirected the user to a second garage to change the mirror since they could not do it themselves.

The user was told that the first garage would pay the costs.

While fixing the mirror, the second garage noticed that the first garage replaced the battery with used one, that needed to be replaced again.

The user called the first garage to request an explanation about the fact that they replaced the defective battery with a used one. The first garage ensured the user by email that they would cover the cost of the new battery.

After the repair, the second garage sent an invoice for the new battery directly to the user which then understood that both garages were working together, as the first garage eventually refused to pay for the replacement.

The user is asking how to deal with the situation and ensure that the first garage pay for the invoice.

LEGAL ANALYSIS:

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code. At least one of the Luxembourgish Consumer Code's provisions must be applicable to the case. Lastly, the overall amount at stake should not exceed a 5.000 EUR threshold.

The user who bought the car was acting for personal purposes and could be considered as a consumer, while both garages could be considered traders. The price of the replacement did not exceed the 5,000 EUR threshold.

The consumer's question to the Clinic was about conformity of consumer's goods, as covered by the directive 1999/44, transposed in the Luxembourgish Consumer Code, articles L. 212-1 and onwards.

First of all, article L. 212-1 of the LCC mentions that the legal warranty applies to sales of any tangible movable item, from a trader to a consumer. The battery is a tangible movable item and as it was sold with the car she bought, the legal warranty for consumer goods is applicable.

According to article L. 212-4 of the LCC, to conform, goods must be fit for the purposes for which goods of the same type are normally used, which was not the case since the car had trouble starting and the dashboard's light were not properly lit when driving, even after the first replacement by the first garage.

LEGAL SOLUTION:

According to article L. 212-5 of the LCC, consumers are entitled to have the goods brought into conformity free of charge by repair or replacement. As the used battery the first garage replaced the initial battery with was not in conformity, the consumer could request them to bring the battery in conformity, by covering the cost of the second replacement done by the second garage.

he first garage also argued that the warranty they offered was only six months long. According to article L. 212-6 of the LCC however, the legal delay in which the consumer must tell the seller is two-years after the goods were delivered. The consumer could still ask for a repair free of charge.

SOLUTION SUGGESTED BY THE CLINIC:

The Clinic suggested that the consumer wrote a registered letter to the first garage stating all the legal arguments that had been developed and demand that they cover the costs of the battery replacement by the second garage.

SPECIFIC REMARKS:

In the end unfortunately, the second garage which was waiting for the payment to be done eventually menaced the consumer to resort to a bailiff in order to have the invoice paid. This threatened the consumer into paying, even though they were entitled to ask the first garage to pay for it instead.