

J. P. v. E. (The Defective Door Case)

KEYWORDS:

Contract to make up work – contractor – manufacturer – default of conformity – liability for defective product – consumer

FACTS:

The client, a consumer, purchased a custom-made security door with specified sealing features and its mounting. Within three days after the mounting, which has been carried out on 28 January 2019, the consumer came to the conclusion that the door is defective or wrongly mounted as it did not have the specified sealing features. He therefore notified immediately the contractor. The contractor answered on 7 February 2019, stating that the defects will be reviewed and rectified. On 15 February 2019, still not having any details regarding the repair, the consumer urged the contractor. On 18 February 2019, two assemblers visited the consumer and stated (in oral only) that either the sealing or the door needs to be replaced. As the consumer again got no further information as to how the defects will be repaired, on 1 March 2019, he contacted the contractor again.

On 26 May 2019, the consumer sent the contractor a pre-action call (*předžalobní výzva*) requesting the door to be either repaired or refunded. The contractor in reply rejected the liability claim. The consumer then contacted a lawyer who requested that the assemblers and service technician revisited the consumer and retested the door. They drafted a written protocol stating that the door is without any defects and has standard sealing features. The contractor sent the consumer the protocol with a letter rejecting, yet again, his liability claim.

The consumer visited the Students Legal Aid Office requesting an advice on how to proceed in order to preferably get the door repaired or replaced, or if not possible then to have the door refunded and the entrance restored to its original state.

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 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).

A defect in general is characterized by lack of features agreed upon in the contract. In the present case the parties agreed upon the thermal and noise seal specified in the order and guaranteed in the product catalogue of the contractor.

If a defect manifest itself within the six months after the purchase, it is presumed that the defect already existed at the time of the purchase. Hence, the failure to inform the contractor about the defect at the moment of the takeover does not mean (as opposed to what was claimed by the contractor) that the consumer lost his right to claim liability for defective goods.

If the defect manifest itself within the six months from the takeover, the consumer has the right to request a replacement of the defective goods, its repair or to withdraw from the contract. The contractor is obliged to replace or repair the defective goods if requested to do so; if it is not possible, the consumer has the right to withdraw from the contract.

Moreover, in the present case, the contractor guaranteed in General Terms and Conditions that the delivered goods will have the agreed features for at least two years.

SUGGESTED SOLUTION:

The client repeatedly expressed his wish to resolve the dispute amicably.

It has been, thus, suggested that he may try the alternative dispute resolution (ADR) secured by the Czech Trade Inspection to whom the client may apply free of charge. The client has been informed that it is advisable to obtain an expert opinion on the defects of the door before applying for the ADR. He may try to claim costs of the expert opinion as part of the dispute resolution agreement between the parties at those costs may be qualified as effectively spent for claiming rights against the contractor.

Alternatively, or if any dispute resolution agreement has not been reached, the client has been advised to apply to the court. It is, though, necessary to pay the court fees.

SPECIFIC REMARKS:

