

CONSUMER PROTECTION IN EUROPE



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In this edition of Horse International we would like to discuss an interesting case of our client in Belgium, and recent case law of the European Court of Justice (the "ECJ") that introduces, as it seems now, new possibilities for consumer buyers within the European Union. This case law is also applicable to agreements regarding horses and may lead to a significant relief of the burden of proof on the consumer's side.

THE BELGIAN CASE OF MRS X

The EEL client from the USA, Mrs X, purchased a showjumper from a professional horse dealer in Belgium

for an amount of more than EUR 40.000,-. Mrs X is an amateur rider and it was agreed between the parties that the horse had to be suitable for showjumping in amateur classes and for amateur riders. Further it was agreed between the parties that the horse that was a stallion would be castrated prior to the delivery and the transfer of ownership to Mrs X. The seller arranged for castration in a veterinary clinic in Belgium. Afterwards he collected the horse and sent it to the US. The horse arrived at Mrs X who established that the horse could not be ridden, became dangerous and was simply not rideable for an amateur. Mrs X asked a professional

rider in the US to try on the horse too. The professional rider experienced the same difficulties with the horse as Mrs X, the horse was unpredictable and dangerous for the rider. Mrs X was informing the seller accordingly about the established problem with the horse. Such appeared from among others Facebook messages exchanged between the parties. She stated that the horse would stop before an obstacle, also when ridden by a professional rider. The seller informed Mrs X that he would come to the US and try the horse himself and informed her that the reported problem would probably have something to do with the castration, the new rider, the new stables and



temperature. This all would be simply too much for the horse. Afterwards Mrs X summoned the seller on many occasions as she could not use the horse for the intended goal of the purchase (the so-called non-conformity) and that the horse was dangerous and unpredictable.

CONSIDERATIONS OF THE COURT

The Court in Leuven considered in this case as follows. Reciting the EU Directive 1999/44/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 the Court considered that according to the consumer law:

(1.) the seller must deliver goods to the consumer which are in conformity with the contract of sale; and
(2.) Consumer goods are presumed to be in conformity with the contract if they:

(a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;

(b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;

(c) are fit for the purposes for which goods of the same type are normally used;

(d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

The abovementioned considerations of the Court refer of course to goods and things. Animals like horses are not goods / things in terms of law and but are rather treated under the continental legal systems as things sui generis. The civil law provisions related to "goods" and "things" are however applicable on base of analogy to animals.

FACTS ESTABLISHED

On the abovementioned assumptions and considerations the Court investigated the case. Based on the correspondence the Court considered that it was agreed between the parties that the horse

was meant for showjumping in the amateur classes. Further, the Court established that even though the seller said he would come to the US to visit Mrs X and to try the horse, he in the end failed to do so. The Court considered also the statement of the trainer in the US in whose perception the horse was unsuitable for the intended goal of the purchase agreement as described above. It was also established that shortly after the arrival at Mrs X farm, the horse stopped jumping even the smallest obstacles. Even though, the Court could not establish based on the

been established by the Court, Mrs X. would push towards a fast shipment to the US, he should have persuaded her to wait due to the horse's best will. Such he did not do. The Court granted the claim of Mrs X and annulled the purchase agreement between the seller and Mrs X, awarding an additional amount of damages related to stalling, training and other further costs incurred by her.

RELEVANCE OF THE CASE

Normally, in cases where buyers are confronted with similar problems (defects) of the horse like Mrs X was

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evidence in the case who initiated the castration, it considered that it was the seller who arranged for that, who brought the horse to the clinics and who subsequently collected the horse from there and sent it to the US. It was also established that the seller himself sent the horse directly afterwards to the US. Later in the proceedings, he exhibited a statement of veterinarian who adopted the point of view that horses after castration require at least 14 days of rest in the box after the surgery.

PRESUMPTION OF NON-CONFORMITY

Under the EU regime, there is a presumption of non-conformity if defect had materialized within 6 months after the delivery to the consumer. In other words the defects is deemed to be pre-existent to the purchase agreement. The seller can then try to agitate that such was not the case and that the defect is caused by the buyer, but in such situation he really needs to prove otherwise. In our case, the seller stated that the defect could have possibly been caused by the castration of the horse. As said, the Court could not establish who introduced the idea of castration, but given the established facts the Court stated the seller cannot defend him with the argument that the castration would cause the horse's sudden change of behavior. In the end, the seller himself stated in the proceedings that after castration the horse requires rest. Something he failed to do himself. Even if, what – nota bene - has not

confronted with, the Courts are not easily granting the claims due to the fact that this type of defect is described as the so-called "character / behavior problem". It is further acknowledged that such problems can arise spontaneously and can be caused by various external circumstances. Most probably, the Court considered the seller's conduct decisive as the seller knowing the risks of castration failed to prevent them from happening and against his better knowledge sent the horse to the US directly after the surgery and in this sense acted frivolously. Again, the circumstances of the specific case turn to be decisive even though that at first sight Mrs X's case could be considered very difficult.

FURTHER HELP TO CONSUMERS FROM THE EUROPEAN COURT OF JUSTICE

In the recent case (C-497/13 Froukje Faber v Autobedrijf Hazet Ochten BV) decided by the ECJ, the position of consumers in terms of their burden of proof related to non-conformity and the described presumption of non-conformity has been further relaxed.

The ECJ set the following conditions: i.) the consumer must allege and furnish evidence that the goods sold are not in conformity with the contract in so far as, for example, they do not have the qualities agreed on or even are not fit for the purpose which that type of goods is normally expected to have; ii.) the consumer is required to prove only that the lack of conformity

exists; and iii.) the consumer must prove that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods. He is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller. Once he has established those facts, the consumer is relieved of the obligation of establishing that the lack of conformity existed at the time of delivery of the goods. The ECJ stated that occurrence of that lack of conformity within the short period of six months makes it possible to assume that, although it became apparent only after the delivery of the goods, it already existed 'in embryonic form' in those goods at the time of delivery. The professional seller needs to provide, as the case may be, evidence that the lack of conformity did not exist at the time of delivery of the goods, by establishing that the cause or origin of that lack of conformity is to be found in an act or omission which took place after that delivery. It is further understood that the seller must deliver the evidence of the opposite and not just state that all problems are caused by the buyer. From our point of view this case law gives consumers in horse deals new legal also when it comes to difficult problems like character problems. ■

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