

Legal News: Warranty claims for hidden defects and limitation periods – Chamber of Commerce, 16 January 2019, no. 1721-477

Prior to the reform of the statute of limitations of 17 June 2008, the French Court of Cassation consistently stated that the two-year limitation period for filing a warranty claim for hidden (latent) defects was comprised within the limitation period provided for in Article L110-4 of the French Commercial Code, that is a period of 10 years starting from the date of the sale (Com., 27 November 2001, no. 99-13.428).

With the reform, the limitation period provided for in Article L110-4 of the French Commercial Code was reduced to 5 years. Hence, the question arose as to whether previous case law was still applicable.

The question was legitimate with regards to the innovations introduced by the reform, i.e. (i) the "floating" starting point for the limitation period in French common law and (ii) the 20-year deadline starting from the incurrance of the claim.

The first judgments following the reform established the knowledge of the damage as starting point for the limitation period provided for in Article L110-4 (Com., 5 February 2013, no. 11-24.170), which as a result considerably reduced any joint implementation of the special limitation period under Article 1648 of the Civil Code and the French common law limitation period under Article L110-4 of the Commercial Code. There was a clear aim of unifying the starting points.

Moreover, the existence of a 20-year deadline may lead to the assumption that the special limitation period for claims for hidden defects is comprised within this time limit.

The Court of Cassation clearly answered this question in its judgment of 16 January 2019 (no. 17-21.477):

“That by ruling in this way, although warranty claims for hidden defects, even if they must be filed within two years of the discovery of the defect, are also comprised within the limitation period provided for by Article L. 110-4 of the French Commercial Code, which runs from the initial sale”

Indeed, the Court of Appeal had considered that the claims filed by the final purchaser against the supplier were not time-barred, as substantiated by Articles 1641 et seq. of the French Civil Code, excluding the application of Article L110-4 of the Commercial Code. In this respect the Court of Cassation overturns the decision of the Limoges Court of Appeal in accordance with the explicit argumentation mentioned above.

The Court of Cassation reiterates its previous case law by affirming that (i) the period for filing warranty claims due to hidden defects is comprised within the limitation period of French common law, now being 5 years, and that (ii) the limitation period provided for in Article L110-4 of the French Commercial Code begins with the sale and not the incurrance of the claim.

The Court of Cassation detaches Article L110-4 of the French Commercial Code from the prescription rules under French common law, for the reason that the starting point of the five-year term provided for in this article is a fixed one, i.e. the sale.



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This judgement also provides a very interesting insight into the application of the Vienna Convention by the Court of Cassation, which will be presented in a forthcoming article on our website next month.

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