



STOCKHOLM GÖTEBORG BORÅS JÖNKÖPING HELSINGBORG

GWA ARTICLES

Titel: Refunds and deductions in the case of contract termination or delivery of substitute goods

Rättsområde: Sales law

Författare: Jon Kihlman

Datum: 2008-05-29, summary 2009-06-25

When a contract for the sale of goods is terminated due for example to non-conformity of the goods, the purchase price shall be restituted with a deduction corresponding to the benefit which the buyer has derived from the goods. This is to address the risk that a buyer might otherwise find himself in a better position following termination than if he had never entered into the contract at all – by benefiting from the goods for a certain period of time before the non-conformity was discovered, and then receiving the entire purchase price refunded.

Although the relevant provisions of the Swedish Sale of Goods Act and the Consumer Sales Act mention only the situation where a contract is terminated, the question arises of whether a similar deduction shall be made where the buyer demands delivery of substitute goods instead of terminating the contract. The European Court of Justice in a judgment from April 2008 (case C-404/06 *Quelle AG*) has held, however, that this principle of deduction cannot be applied by analogy to demands of substitute goods, at least not within the scope of the EC directive on the sale of consumer goods and associated guarantees – essentially in the case of sales from business to consumers.

The effect of the judgment is that certain consumers – those with a right to delivery of substitute goods – randomly find themselves in a better position than those who merely terminate the contract and buy a new product from a different seller. From the



perspective of sellers of consumer goods, the implication is that it is better to encourage the customer to follow the contract termination route rather than merely accepting a demand for delivery of substitute goods, even if the latter is the preferred solution under the Consumer Sales Act.

Full article in Swedish, by LL.D. Jon Kihlman, Attorney at Gärde Wesslau's Stockholm office.