

Aspects of the Seller's Warranty Against Vices in the Good Sold in Romania

Robert Șerbănescu

*Member, Romanian Forensic Scientists Association, Bucharest, Romania
serbanescu.robert.2013@gmail.com*

ABSTRACT: The sales contract has the legal nature of a consensual civil legal act, i.e., it takes the form *ad validitatem*, the simple agreement of will between the parties, if the law does not provide otherwise being sufficient for its valid conclusion. Being a synalagmatic contract, it gives rise to rights and obligations on both sides that are interconnected in order to achieve the agreement of will in the way it was expressed at the conclusion of the contract. However, there are situations when, after the termination of the legal relationship, certain circumstances may arise that make it impossible to exercise the buyer's ownership right over the purchased asset. In this sense, it is required that the party called the seller, before the termination of the civil legal relationship between him and the buyer, undertakes obligations to guarantee the right of ownership transmitted through the sales contract. The importance of this obligation also emerges from certain aspects that are presumed at the conclusion of any civil legal act, namely, the good faith of the parties at their conclusion, a presumption that can be overturned by any means of evidence by the party invoking bad faith. The article aims to analyze some of the most important aspects of the sales contract in relation to the seller's obligations to guarantee the buyer against hidden vices of the purchased good. Some conclusions at the end of the paper will aim to summarize all the information presented in a clearer way.

KEYWORDS: buyer, Civil Law, contract, vices, property, guarantee, good faith, obligations, relationship of will, seller, legal relationship, rights, consent

The warranty against vices of the sold goods

According to Romanian legislation, the seller has the obligation to guarantee the buyer against any hidden vices of the good at the time of transfer of ownership or only a dismantling of this right to the buyer. (Dobrilă and Macovei 2019, 132).

The legal consequence of the guarantee of the thing sold against any of its vices is one of substance, so that any element of subjectivity of the proven or presumed fault of the debtor is eliminated (Florea 2013, 112). The guarantee being automatic and abstract, the seller's fault does not constitute an element of its employment, a fact that gives it, from a legal point of view, a character of objectivity (Deak, Mihai and Popescu 2017, 328).

This fact means that the debtor of the guarantee obligation cannot be exempted from the obligations even if there is a case of force majeure, which means that this obligation has nothing to do with the subjective circumstances in which the force majeure arose, being considered as an obligation to result (Ciochină 2019, 213).

With regard to European legislation in this matter, the European Union adopted on the one hand Directive no. 374 of July 25, 1985, which establishes a no-fault liability for the act of defective products, called "security vice", the scope of the regulation being smaller than that of the warranty for a hidden vice (Marcusohn 2018, 154).

And on the other hand, Directive CE/44/1999 of May 25, 1999 on some aspects of the sale and guarantees of consumer goods, which regulates the material guarantee of the seller of tangible movable goods acting in the framework of his professional or commercial activity, against of the buyer, in his capacity as a consumer, sales between consumers and those between professionals being excluded (Urs 2017, 125).

The notion of hidden vice

In understanding the term hidden vice, two of its specific elements must be taken into account, namely: a hidden vice makes the good unsuitable for the use for which it is intended or reduces its use or value, and also, a hidden vice cannot be discovered on the date of contracting (Urs 2015, 115). Therefore, we derive the idea that the hidden vice refers to deficiencies in the use of the work, such as making it unsuitable for the use of its destination or the expectation of the buyer (Turianu and Duțu 2016, 432).

The seller's warranty obligation thus extended to all hidden vices consisting of the physical defects of the thing sold, such as malfunctioning, poor condition, the impossibility of use according to the destination and others (Comăniță and Comăniță 2013, 155). This obligation of guarantee against hidden vices of the sold good extended, however, also to its legal vices. The only legal condition to be considered a hidden vice of a good is that the circumstance is redhibitory, i.e., it prevents the use of the thing, having no relevance if the vice is important or secondary or the thing is easy to repair (Ciochină 2012, 231). But the situation of the occult nature of the hidden vice is also accepted, that is, the circumstance in which the vice is not observable or cannot be discovered by the buyer at the time of contracting.

There is also a situation where the seller informs the buyer of some vices in the sold good or these vices are only apparent, not making the good unusable, and in these situations, we cannot talk about a hidden vice of the asset at the conclusion of the sales contract (Moțiu 2020, 86). This situation is only an exception to the legal notion of a hidden vice of the good and is relative, depending on the qualities of the buyer or the nature of the good sold through the sales contract concluded between the parties.

Regarding the buyers, they can be casual or professional, regardless of the category they belong to, the relation to the quality of the buyer being considered from the perspective of a prudent and diligent one (Turianu and Duțu 2016, 435). Casual buyers are considered those who do not have the technical competence to allow them to know the hidden vices of the work, while professional buyers have the competence to notice, especially if they work in the same specialty as the seller, certain defective aspects of the sold good (Marcusohn 2018, 155).

Regarding the nature of the good sold, the guarantee against hidden vices is also analyzed according to the essence of the good, a matter left, in principle, to the discretion of the magistrate. The objective aspects taken into account regarding the nature of the good are those related to the fact that the good is new or used, that it is the subject of special training for certain categories of goods and others (Chirică 2017, 217).

A particularly important aspect in considering the hidden vices of the sold good is that the vice exists on the date of delivery of the good. Thus, the seller guarantees the buyer only for hidden vices already existing at the time of delivery of the good, as well as when vices are in the bud in the case of agricultural or other products in which the essence of the good consists in the production of fruits (Adam 2011, 512).

From this point of view, we can speak of a moment of appreciation of the existence of the hidden vice, this being retained at the time of the conclusion of the contract, the date of delivery of the work being established by the contracting parties, and in the absence of a clause, it is considered as the date of delivery of that work of conclusion of the contract or, in the case of gender goods, the date of their individualization (Popa 2020, 302). In other words, the warranty does not work for vices that appeared after the handover of the good because, from the moment of handover, the risks pass to the buyer. In the case of forced sales, a guarantee against the hidden vice of the sold good is not due from the seller (Mocanu 2018, 122).

The effects of the guarantee against hidden vices of the good

The buyer is granted, based on the seller's warranty obligation against vices, a right of option regarding the remedial measures provided for by law. He can opt for the removal of the vices by the seller or, at his expense, the replacement of the sold good with a good of the same kind, but without vices, the corresponding price reduction or the resolution of the sale (Urs 2017, 129).

The buyer's right of option must be proportional to the seriousness of the vices, the purpose for which the contract was concluded, as well as other circumstances considered by the parties or arising later, so that the negative effects borne by the buyer are removed (Popa 2020, 307). If the chosen measure is disproportionate to the mentioned legal benchmarks, at the request of the seller, the court, based on the evidence administered, may order a different measure than the one requested by the buyer (Moțiu 2020, 93).

In the situation where the buyer has chosen the option for the seller to remove the vices or to remove them at his own expense, the good is considered repaired if it no longer has any vices at all. However, there are also situations in which vices do not affect all the goods sold, that is, situations in which the goods are sold in bulk, the case of the sale of generic goods, as well as the sale of a main good and an accessory, when several goods are handed over to the buyer (Mocanu 2018, 128).

In these situations, if only some of the goods sold are affected by vices and they can be separated from the others without damage to the buyer, and the court orders the resolution only for those affected, the contract is terminated only in part (Dobrilă and Macovei 2019, 140). In the case of the sale of a main good accompanied by an accessory, the resolution of the contract, with regard to the main good, also triggers the resolution regarding the accessory good, a different situation if the accessory good is the subject of the resolution, when this does not also trigger the resolution of the main good (Chirică 2017, 223).

Conclusions

In the case of the sales contract, which is a consensual, synalagmatic legal act, a party called the seller undertakes to hand over the right of ownership or only a part of it to the other party called the buyer. By fulfilling all the obligations established in the contract for the sale of the good, or as the case may be, of goods in bulk, goods of the same kind or main goods accompanied by accessory goods and which are the subject of the respective contract, the legal relationship born by the contract is extinguished.

However, Romanian law provides for certain situations in which, after the termination of the civil legal relationship, certain circumstances may arise that make the respective asset unusable, in which case the buyer would be harmed. For these situations, both the Romanian legislator and the European Union, of which Romania is a part, have provided certain aspects to protect the buyer from possible situations that may arise in relation to the purchased good.

A particularly important aspect is that of the guarantee against hidden vices of the good sold by the seller at the time of delivery of the good, the law giving the buyer a right of action whose prescription begins to run, either from one year after the delivery of the good or from to 3 years in the case of constructions, or from the date on which the buyer ascertained the existence of vices in the case of both types of goods.

The obligation to guarantee against hidden vices of the good when rests with the seller who, depending on the option of the buyer and in the case of the existence of the vice at the time of delivery, will be able to either remove the vice, or repair the good at his own expense, or reduce the price accordingly or return it in full.

Depending on the type of seller, the law provides for separate sanctions for the existence of hidden vices in the goods sold. For bona fide sellers, the penalty is provided by law and consists of the buyer's option to choose from the options mentioned above. For the

one in bad faith, in addition to the legal sanction, he will also have to pay certain damages and interests established by the court.

Also, through the sales contract, the parties can agree on the exemption of the seller from the obligation to guarantee the good against its hidden vices, if absolutely all the vices were presented at the time of handing over the good, otherwise, the exoneration clause is null and void. The seller, through the guarantee against hidden vices of the sold good, is also responsible for its situation in the case of force majeure, because before handing over, the respective good is in his ownership. A case of guarantee against hidden vices of the goods sold is also the guarantee that the goods sold by sample or model correspond to those that the buyer is to receive upon delivery.

Regarding the buyers, they can be of two types depending on the quality they have: occasional buyers, who do not have the ability to immediately notice the possible hidden vices of the good, and professional buyers who have this ability.

In the case of the latter, the law obliges them to inform the seller of the existence of hidden vices within two working days at most from the date of delivery of the good.

References

- Adam, I. 2011. *The obligations, The contract*. Bucharest: C. H. Beck Publishing House.
- Chirică, D. 2017. *Civil Law Treaty. Special contracts*. Bucharest: Hamangiu Publishing House.
- Ciochină, D., 2012. *Civil Law. Special Contracts*. Bucharest: Universul Juridic Publishing House.
- Ciochină, D., 2019. *Civil Law. The contracts*. Bucharest: Universul Juridic Publishing House.
- Comăniță, G., and Comăniță, I. 2013. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Deak, F., Mihai L., and Popescu, R. 2017. *Civil Law Treaty. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Dobrilă, M., and Macovei, C. 2019. *Civil Law. Property transfer contracts*. Bucharest: Universul Juridic Publishing House.
- Florea, B. 2013. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Marcusohn, V. 2018. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Mocanu, M. 2018. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Moțiu, F. 2020. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Popa, I. 2020. *Civil contracts*. Bucharest: Universul Juridic Publishing House.
- Turianu, C. and Duțu A. 2016. *Compendiul. Introduction. The persons. Real rights, General theory of obligations, Special contracts. Legacies. Liberality*, Bucharest: Universul Juridic Publishing House.
- Urs, I. 2015. *Civil Law. Special contracts*. Bucharest: Universul Juridic Publishing House.
- Urs, I. 2017. *Civil Law. Special contracts*. Bucharest: Pro Universitaria Publishing House.