



Useless products...For how long can the receiver of the goods claim against the supplier?

Judgment of the Supreme Court, Civil Chamber, of 3 October 2018

Reception of goods

In the context of a supply relationship, the goods delivered by a supplier (either raw materials to be incorporated into a manufacturing process, or finished products to be distributed to other distributors or end customers) must comply with the agreed specifications and be useful for their agreed purpose.

Otherwise, the recipient of such goods may claim against the supplier. But, for how long can the recipient of the goods make such a claim? Is there any rule or doctrine in this regard? In this recent Judgement, the Supreme Court reminds us of some ideas.

Evident and hidden defects

When negotiating a supply contract, the starting point for most suppliers is usually the Spanish Commercial Code which, aiming to speed up trade, foresees very short claim periods counted from delivery date: 4 days for evident or obvious defects and 30 days for hidden ones.

Such short deadlines may leave the recipient of goods unprotected... For example, what happens if, 2 months after an API batch has been delivered, the recipient discovers that it does not meet the agreed specifications and is useless for the manufacturing process? Or if, 1 year after the delivery took place, the distributor realizes that the final product that he has been supplied with cannot be marketed because it does not meet the agreed standards or specifications?

In such cases, it is essential for the supply agreement to set periods which are longer than those provided in the Commercial Code. In this respect, regardless of the negotiation skills or position that the parties may have, it is essential to know the arguments that the recipient of the goods can use to position himself against the application of the Commercial Code and to defend the idea of regulating longer claim periods in the agreement.

Breach of contract

The Supreme Court, in this recent Judgement, talks about one of these arguments. If the goods delivered "have features which are totally different from the agreed ones", "are totally unfit for the use to which they are intended", are "unusable" or "their use is completely impossible" there is an actual breach of contract because the delivered goods are different from the agreed ones.

In none of these cases can the goods be considered to be merely defective. Consequently, the period to claim against the supplier should not be limited to the 30-day period set forth in the Commercial Code. In any such case, the period shall be of 5 years, as contemplated for breach of contract cases in the Spanish Civil Code.

In our opinion, judgments like this, reinforcing the doctrine known as *aliud pro alio* (i.e. delivery of goods different from the ones agreed), can be used as a solid argument to negotiate claim periods in supply contracts that go beyond the 30 days provided in the Commercial Code.