

Car Manufacturer's Warranty

Car manufacturer's warranty as a quality characteristic to which the buyer is entitled at the time of purchase

Court	<i>Federal Court of Justice (Bundesgerichtshof - BGH), Eighth Civil Senate</i>
Date	<i>15 June 2016</i>
Case number	<i>VIII ZR 134/15</i>
Reference	<i>ZIP 2016, 1928</i>
Finality	<i>Final</i>
Provisions	<i>Sections 434 para. 11 German Civil Code (BGB)</i>

Official Headnotes

- a) *Section 434 of the German Civil Code (BGB), which replaced the former Section 459 BGB under the Law on the Modernisation of the Law of Obligations, is based on a substantially broader concept of a material defect, with the result that the narrow definition of quality set out in the former Section 459(1) BGB can no longer be applied to this provision.*
- b) *The 'quality' of a purchased item within the meaning of Section 434 para. 1 BGB is to be understood as comprising both all factors inherent in the item itself and all relationships between the item and its environment which, according to common understanding, influence the item's value (in line with the Federal Court of Justice, judgments of 19 April 2013, V ZR 113/12, NJW 2013, 1948 marg. no. 15 and of 30 November 2012, V ZR 25/12, NJW 2013, 1671 marg. no. 10; continuation of the Senate decision of 26 August 2014, VIII ZR 335/13, juris marg. no. 17).*
- c) *The existence of a manufacturer's warranty for a motor vehicle generally constitutes a quality characteristic of the purchased item under section 434 para. 1 BGB, such that its absence – provided the other requirements of that provision are met – constitutes a material defect (distinguishing from the Senate judgment of 24 April 1996, VIII ZR 114/95, BGHZ 132, 320, 324 et seq.).*

Operative Part

The plaintiff's appeal is upheld and the order of the Munich Higher Regional Court – 21st Civil Division – of 13 May 2015 is set aside.

The case is referred back to the Court of Appeal for a fresh hearing and decision, including on the costs of the appeal proceedings.

Ipsa iure

Facts of the Case

- 1 *The claimant seeks the rescission of a contract of sale for an Audi TT RS Coupé. The defendant, a car dealer, had offered this vehicle for sale on the internet platform "m. .de" with the description "including Audi warranty until November 2014". The claimant purchased the vehicle on 6 July 2013, with a mileage of 45,170 km, for a price of €42,200.*

- 2 *Under the Audi warranty, the claimant initially received a replacement gearbox at the intervener's Audi Centre in August 2013 due to gearbox problems, and a new fuel pump control unit in September 2013. As the engine faults persisted, the intervener arranged for an analysis to be carried out by Audi AG. Audi AG identified a discrepancy between the odometer readings on the combined unit and the engine control unit and subsequently refused to provide further warranty services on the grounds that, during an engine analysis, signs of odometer tampering – prior to the vehicle being handed over to the claimant – had been detected. The intervener then demanded payment from the claimant of a total of €1,121.65 for repairs carried out and for the courtesy car provided during the last repair.*
- 3 *By letter dated 2 October 2013, the claimant declared his withdrawal from the contract of sale. In his claim, he seeks reimbursement of the purchase price, less the benefits of use for the kilometres driven, as well as compensation for wasted expenditure, totalling €45,773.87 plus interest, to be paid concurrently with the return of the vehicle. The claim was unsuccessful in the lower courts. By his appeal, which has been granted by the Senate, the claimant continues to pursue his claim.*

Reasons of the Decision

- 4 *The appeal is successful.*

I.

- 5 *In support of its decision, in so far as it is still relevant to the appeal proceedings, the Court of Appeal essentially stated:*
- 6 *The claimant is not entitled to any claims arising from an obligation to return the goods. He was not entitled to rescind the contract because the vehicle did not have any material defect. The fact that the manufacturer's warranty did not apply due to the apparently undisputed tampering with the odometer reading prior to the handover of the vehicle to the claimant does not constitute a material defect within the meaning of Section 434 BGB. This is because the manufacturer's warranty does not relate to a characteristic of the vehicle in question, as it is not 'inherent' to it. It is merely a legal relationship external to the subject-matter of the sale and does not derive its basis from it. This is in line with the case law of the Federal Court of Justice (BGHZ 132, 320), which, although handed down prior to the reform of the law of obligations, remains applicable because the concept of quality was not altered by that reform. Nor can the claimant derive any benefit from the provision of Section 434 para. 1 third sentence BGB, which was newly introduced in this context. It can merely be inferred from this provision that the 'quality' referred to in Section 434 para. 1 second sentence No. 2 BGB also includes characteristics of an item which the buyer could reasonably expect based on public statements, in particular those made by the seller. However, this merely broadens the manner in which a quality of the goods sold may become part of the contract – without altering the substantive meaning of the concept of quality.*

II.

- 7 *This assessment does not stand up to legal scrutiny.*
- 8 *On the grounds given by the Court of Appeal, the plaintiff's claim for rescission of the contract of sale (Section 437 no. 2, Section 434 para. 1, Sections 323, 346 para. 1 and Section 348 BGB) cannot be denied. Contrary to the view of the Court of Appeal, the existence of a manufacturer's warranty generally constitutes a quality characteristic of the goods sold under Section 434 para. 1 first sentence BGB (agreement on quality) and Section 434 para. 1 second sentence BGB (suitability for the use stipulated in the contract or for normal use), such that its absence – provided the other conditions of these provisions are met – constitutes a material defect.*
- 9 *1. The Court of Appeal – as the appeal rightly points out – failed to recognise that the legal position regarding quality under the law of sale changed fundamentally on 1 January 2002 with the entry into*

force of the Act on the Modernisation of the Law of Obligations (Schuldrechtsmodernisierungsgesetz) of 26 November 2001 (BGBl. [Bundesgesetzblatt = German Federal Official Journal] I p. 3138). This is because Section 434 BGB, which replaced the previous version of Section 459 BGB, is based on a substantially broader concept of a material defect, with the result that the narrow definition of quality in Section 459 para. 1 of the previous version of the BGB – on which the Court of Appeal relied and which the Senate had also upheld in relation to the previous law, and specifically in relation to motor vehicle warranties – (Senate judgment of 24 April 1996 – VIII ZR 114/95, BGHZ 132, 320, 324 et seq.) – can no longer be applied to this provision.

- 10 a) As a result of the reform of the law of warranty under the Law on the Modernisation of the Law of Obligations, the distinctions existing under the previous law between defects (Section 459 para. 1 BGB (old version)) and characteristics subject to warranty (Section 459 para. 2 BGB (old version)) have been abolished in such a way that, going beyond the narrow concept of a defect, any characteristic that was capable of being the subject of a warranty under the previous law now constitutes a quality within the meaning of Section 434 para. 1 BGB (Federal Court of Justice, judgments of 5 November 2010 – V ZR 228/09, NJW 2011, 1217 marg. no. 13; of 30 November 2012 – V ZR 25/12, NJW 2013, 1671 marg. no. 10). Consequently, the ‘nature’ of an item within the meaning of Section 434 para. 1 BGB is to be understood as comprising both all factors inherent in the item itself and all relationships between the item and its environment which, according to common understanding, influence the item’s value (Federal Court of Justice, judgments of 19 April 2013 – V ZR 113/12, NJW 2013, 1948 marg. no. 15; of 30 November 2012 – V ZR 25/12, loc. cit.; Senate decision of 26 August 2014 – VIII ZR 335/13, juris marg. no. 17; Higher Regional Court of Koblenz, MDR 2012, 507, 508; similarly Staudinger/Matusche-Beckmann, BGB, revised edition 2013, § 434 marg. no. 54; MünchKommBGB/Westermann, 7th ed., § 434 marg. no. 10; Reinking/Eggert, Der Autokauf, 12th ed., marg. no. 2441; each with further references; by contrast, a narrower view is taken by Erman/Grunewald, BGB, 14th ed., § 434 marg. no. 3).
- 11 b) Contrary to the response to the appeal, this broader concept of ‘quality’ – as compared with the previous legal position – is in line with the intention of the legislature behind the reform of the law of obligations. According to the explanatory memorandum to the Law on the Modernisation of the Law of Obligations, the term ‘quality’ was not to be defined and, in particular, no decision was to be made as to whether it encompasses only characteristics that are directly and physically inherent in the purchased item or whether circumstances external to the item itself are also to be taken into account (Bundestag printed Paper 14/6040, p. 213). However, the legislature expressly adopted the subjective concept of defect and emphasised that, in defining a material defect, a distinction could be made between defects and the absence of warranted characteristics – a distinction under which the predictability of court decisions had hitherto suffered to an almost intolerable extent – could be dispensed with if the focus were placed on the agreement between the parties rather than on ‘objective’ characteristics lying outside the parties’ control (Bundestag printed Paper 14/6040, p. 211 et seq.).
- 12 c) Furthermore, a narrow interpretation of the term ‘quality’ is inconsistent with the wording of Article 2 para- 1 of 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 (Consumer Goods Sales Directive, OJ EC No L 171, p. 12), which, in the context of the sale of consumer goods, obliges the seller, without restriction to physical characteristics, to ‘supply goods in conformity with the contract of sale’. The transposition of this Directive was one of the main objectives of the Law on the Modernisation of the Law of Obligations.
- 13 Whether the concept of ‘quality’ must therefore be interpreted even more broadly – for example, to encompass not only the relationship between the item and its environment that originates from the object of sale, but such that any actual connection to the object of sale would suffice (left open in Federal Court of Justice, judgment of 19 April 2013 – V ZR 113/12, *ibid.*; in the affirmative: Reinicke/Tiedtke, Kaufrecht, 8th ed., marg. no. 303 et seq.; Schmidt-Räntsch, AnwBl 2009, 260, 261; Redeker, ‘The Concept of Quality and Agreements on Quality’, 2012, pp. 207 et seq., 227; *ibid.*, NJW

2012, 2471, 2474; presumably also Munich Higher Regional Court, judgment of 6 September 2006 – 20 U 1860/06, juris marg. no. 29), need not be decided in the present case.

- 14 d) For, on the basis of the more recent case-law of the Federal Court of Justice referred to above (under II 1 a), the existence of a manufacturer's warranty generally constitutes a quality characteristic of the purchased item under section 434 para. 1 BGB, the absence of which – provided the other requirements of that provision are met – constitutes a material defect (see also, in conclusion, Higher Regional Court at Schleswig, DAR 2012, 581 marg. no. 22; Higher Regional Court at Stuttgart, ZGS 2008, 479 marg. no. 21; dissenting view: Higher Regional Court at Düsseldorf, judgment of 29 November 2011 – I-1 U 141/07, juris marg. no. 37).
- 15 The existence of a manufacturer's warranty for a motor vehicle constitutes a legal relationship between the vehicle owner and the vehicle manufacturer relating to the vehicle, within the framework of which compensation is generally provided for the costs of certain repairs in accordance with the warranty terms. This therefore constitutes a relationship between the item and its environment which, according to common understanding, influences the valuation of the item. In particular, the (non-)existence of a manufacturer's warranty may, in individual cases, be of great economic significance and accordingly have a significant influence on the value of a motor vehicle (see, in this regard, the Senate's judgment of 24 April 1996 – VIII ZR 114/95, loc. cit., p. 325). This is the case here. Even in the appeal proceedings, the parties do not dispute that the manufacturer's warranty at issue here carries considerable economic weight.
- 16 Contrary to the view of the Court of Appeal, the conditions of Section 434 para. 1 second sentence, No. 2 in conjunction with the third sentence BGB are therefore met in any event. It can therefore be left open whether the parties entered into an agreement on quality with regard to the manufacturer's guarantee, a point which the Court of Appeal did not examine and to which strict requirements must be applied, since under the new law of obligations an agreement on quality is no longer considered 'in case of doubt', but only in an unambiguous case (see, for example, the Senate's judgment of 12 March 2008 – VIII ZR 253/05, NJW 2008, 1517 marg. no. 13; Senate decision of 2 November 2010 – VIII ZR 287/09, juris marg. no. 4).
- 17 e) Similarly, the question – which was not examined in depth by either the parties or the Court of Appeal – whether a material defect in the vehicle might also, as raised in the appeal, be seen in the discrepancy between the odometer readings of the combined unit and those of the engine control unit – as established by the Court of Appeal, albeit not in terms of its extent and consequences – and in the manipulation of the vehicle's odometer reading prior to handover, which the Court of Appeal therefore regarded as undisputed (insofar as such a material defect were to be encompassed by a claim for subsequent performance not yet established and by the claimant's notice of withdrawal, the specific content of which the Court of Appeal has likewise not determined; see, in this regard, the Senate's judgment of 20 January 2016 – VIII ZR 77/15, ZIP 2016, 625, marg. no. 13 et seq.).
- 18 2. Nor is the decision of the Court of Appeal correct on any other grounds (Section 561 of the Code of Civil Procedure [ZPO]).
- 19 In so far as the response to the appeal argues that withdrawal from the contract of sale is ruled out simply because the claimant did not demand subsequent performance, the Court of Appeal has failed to make the necessary findings in this regard. To date, the Court of Appeal – albeit consistently with its legal position – has not made any findings regarding the continued validity of the manufacturer's warranty, which are, however, necessary for determining whether a material defect exists in the sense described above. Nor has the Court of Appeal so far had cause to examine whether – as the claimant has argued – the defect was, if anything, irreparable and therefore no demand for subsequent performance was required, or whether – as the defendant has claimed – the manufacturer's warranty could have been readily restored by reversing the measures carried out by a previous owner. The same applies to the question of replacement delivery raised in the response to the appeal (on subsequent

performance by way of replacement delivery in the purchase of a used car, see the Senate's judgment of 7 June 2006 – VIII ZR 209/05, BGHZ 168, 64, marg. no. 23 et seq.).

III.

- 20 *In view of the foregoing, the decision of the Court of Appeal cannot stand; it must therefore be set aside (Section 562 para. 1 ZPO). The case, which is not yet ready for a decision, is to be referred back to the Court of Appeal for a fresh hearing and decision (Section 563 para. 1 first sentence ZPO).*

Notes of the editors

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