

POLAND

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Supreme Court judgment of 2.10.2015

Product liability

- A defective cell-phone charger, made in China, caused electrocution of the plaintiff when she was using the phone when charging the battery. The producer included warnings against using the phone while charging its battery.
- The plaintiff's original charger had stopped working so she bought a substitute one from the defendant seller.
- The seller pointed to the importer of the chargers such as the one bought by the plaintiff and the importer was joined as co-defendant in this lawsuit.

Regional Court (1) and the Court of Appeals (2)

1. the charger was 'defective' in the sense that it was 'out of order' and did not function properly, but it was not unsafe (sic!).
2. the charger had a construction defect, but the plaintiff failed to properly identify the seller

→ **The CA required the plaintiff to prove the actual transaction with the defendant seller**

KEY ISSUE: interpretation of arts 4 and 7 Directive 85/374 & the Civil Code (art. 449[1] ff CC)

The Supreme Court judgment

- the cassation was limited to the liability of the importer
- Art. 4 Dir. 85/374 prescribes that the injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.
- Art. 4 has not been transposed literally into the CC. Thus, the burden of demonstrating liability falls on the plaintiff pursuant to art 6 CC.
- However, the burden of proof of particular elements is distributed in a detailed way in the Dir. and the interpretation of the CC should comply with the Dir.

S. Ct: Distribution of the burden of proof

- the Directive makes a 'patent distinction' between the importing of the product into the EU territory and the putting of the product into circulation in the EU (art 3.2 and art 7 a. Dir.). Such a distinction is missing from the Polish CC. The Court distinguishes between the 2 elements as regards a product importer.
- Thus: the victim must **identify** the producer or importer into the EU of the **concrete** product (art 6 CC on the burden of proof). The producer/importer may prove that they did not put that product into circulation or that they manufactured/imported it and/or put it into circulation outside of their business activity.
- In order to mitigate the position of the plaintiff, the burden of proving **attribution** of the product to the defendant should be facilitated by presumptions of facts, incl. prima facie evidence.

Comment

- the product liability rules are rarely applied by Polish courts.
- the Court correctly held that the special rules on the distribution of burden of proof originating in the Directive do not cover the attribution of a concrete product to a concrete producer importer.
- the Court rightly indicated that it should be considered whether the defendant is the only known producer of a certain kind of product on a certain territory or the sole known importer.
- product liability rules should not be interpreted to permit anyone to raise their claims against any manufacturer or importer of a certain line of products, and shift the burden to prove the contrary to the defendant.