

First judgment in Spain to award damages to the buyer of a vehicle affected by Volkswagen Group's emissions fraud

Ainara Rentería Tazo

Senior Associate, Gómez-Acebo & Pombo

On 25 October 2016, the claim of a buyer of a vehicle affected by Volkswagen Group's emissions fraud was upheld in Spain for the first time, specifically by a court of first instance in Valladolid.

The vehicle buyer claimed lack of conformity of the product, as provided in consumer and user protection legislation, and breach of the seller obligations set out in article 1101 of the Civil Code. The buyer, distrustful of the repair offered by Volkswagen Group, requested the replacement of the vehicle by an equivalent one. This distrust was vindicated by the judge, according to whom it had not been undoubtedly proved that such repair did not affect vehicle performance in the case of vehicles as old as the claimant's car.

All previous judgments had rejected the claims of owners of vehicles affected by Volkswagen Group's emissions fraud, arguing that in order for rescission of the sale and purchase of the vehicle (with restitution of the price paid) there must be (a) intentional misrepresentation on the part of the seller or vitiated intention on the part of the buyer; (b) a 'serious' breach of contract that could support such rescission; (c) lack of conformity of the vehicle, albeit the aedilician remedy must not be disproportionate. In relation to the above points, the judges stated that: (a) there was no 'intentional misrepresentation' since the vehicle marketer, dealer or importer was unaware of the manipulation of the software in the vehicles on sale; (b) there was no 'serious' breach of the contract since the vehicle was still fit for the purpose for which it was intended and was still in use; (c) there was no lack of conformity of the vehicle with its use and the repair offered by the seller was the least onerous type of remedy.

What is new about the judgment under review is that the judge, though concurring with the previous legal grounds and that there is no serious material breach of the seller's own obligations (which would lead to rescission of the contract of sale of the vehicle and restitution of the price paid), does however conclude that there is a partial breach or defective fulfilment that gives rise to the duty of compensation. The judge based such decision on three arguments: (a) breach of the seller's good faith duties as there is clear misrepresentation; (b) it is reasonable from the consumer's point of

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view that he does not wish to accept the repair by the brand itself and without undisputed evidence (as is taking appropriate expert evidence) that such repair does not affect the performance of the vehicle with the age it has, and (c) because it can be deemed that if the consumer had been provided with information concerning the misleading practice, i.e. that the vehicle intended for purchase had deactivation software installed as a means of obtaining approval, such consumer would not have taken the decision to purchase that defective product.

Of the three legal arguments on which the judgment for the claimant relies on, it is important to note that the existence of misleading acts contrary to good faith has been upheld for the first time, although the consumer has not directly purchased the vehicle from the manufacturer (responsible for the misleading act) but to the dealer and such in turn from the importer, the two defendants. The judge is of the opinion that the two defendants, despite ignoring the existence of misrepresentation, are benefited in their trade by Volkswagen's brand image, *"the misleading conduct being attributable to the company group and all of it as a whole benefiting from such misrepresentation, a community of interests is formed and for this reason it is the group that must be held accountable to the consumer"*. It therefore finds both companies jointly and severally liable under the provisions of article 132 of the Consumer and User Protection (Recast) Act.

The judge states that the arising compensation arises from the breach of the duties of good faith and the loss of consumer trust, *"legal goods that are difficult to quantify given their intangible nature"*. He concludes that all this must be placed in relation to the vehicle's objective value, in this case fifty thousand euros, and the reality that said car has been used and is still being used normally. It is finally held that the damage must be valued at 10% of the vehicle's purchase price, in this case €5000.

We must stay alert to what appellate courts say in this regard, but this judgment opens a new line of argument in which civil remedies (compensation, rescission, nullity) are made to apply where claimant interests have not been personally affected.