No Knowledge, No Fraud: Warranty disclaimer upheld despite hidden defects

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The Swiss Federal Supreme Court confirmed the validity of an exclusion of warranty (disclaimer of liability) in a sale contract because the seller lacked actual knowledge of the hidden defect at issue and thus had not fraudulently concealed it under article 199 of the Swiss Code of Obligations (SCO).

Judgment of the Federal Supreme Court of 21 November 2024
Case Reference : 4A_47/2024

Facts

C. Sàrl (the "Seller") operated a day spa and hammam center (the "Spa Center") in Geneva, Switzerland. In 2014 and 2016, the Seller undertook repairs in the building to address recurrent water infiltration in a technical room beneath the hammam, including the replacement of silicone joints. The Seller also suspected that part of the issue might stem from an adjacent terrace.

In mid-2017, two private individuals (the "Buyers") purchased the Spa Center for CHF 130,000, agreeing to exclude any post-closing warranty in the written sale contract (the "Sale Contract"). Before closing, the Seller replaced additional joints in May 2017 and noticed no further water damage. The Buyers inspected the premises twice and, at the time of purchase, noted no visible defects.

Shortly after taking possession, the Buyers discovered new leaks in the technical room below the hammam and alleged the Seller had failed to disclose serious structural issues in the hammam area. They withheld the final CHF 15,000 of the purchase price and initiated proceedings for rescission and reimbursement (including ancillary costs). The Seller counterclaimed for the outstanding amount.

Both the Court of First Instance and the Cantonal court ruled in favor of the Seller, concluding there was no fraudulent concealment. The Buyers appealed to the Federal Supreme Court, asserting that the Seller must have known of the hammam defect, thereby invalidating the warranty disclaimer under art. 199 SCO.

Issue

The core question was whether the Seller's exclusion of warranty remained valid under art. 197 SCO in light of alleged hidden defects, or whether it was rendered void under art. 199 SCO because the Seller supposedly knew about the structural defect and deliberately concealed it.

Decision

The Federal Supreme Court dismissed the appeal and upheld that the disclaimer remained valid. According to art. 197 SCO, a seller is generally liable for defects affecting value or usability of the object sold. However, under art. 199 SCO, any contractual clause excluding warranty is null if the seller fraudulently conceals a defect. To establish fraudulent concealment, a buyer must prove that a seller had (i) actual knowledge of the defect; and (ii) intentionally withheld said information.

The Federal Supreme Court found that the Seller lacked definitive knowledge of the deeper, structural flaw in the hammam. The Seller's belief that prior maintenance, including the joint replacement had resolved the infiltration issue coupled with the suspicion that the problem might stem from the terrace supported a good faith assumption that no significant hidden defects remained. Mere suspicion of a potential issue was insufficient to conclude that the Seller knew about an undisclosed defect. In the absence of actual knowledge, the disclaimer of warranty remained enforceable.

As a result, the Federal Supreme Court allowed the Seller's crossclaim for the outstanding CHF 15,000 of the purchase price.

Key takeaway

If a seller genuinely lacks actual knowledge of a hidden defect and has undertaken repairs in good faith, a warranty disclaimer will not be nullified for alleged fraudulent concealment.

Commentary

This case law offers guidance on the conditions under which warranty disclaimers remain valid in Swiss sales contracts. Particularly, it emphasizes the importance of the seller's actual knowledge and intent regarding hidden defects. Under Swiss law, sellers may validly exclude or limit their statutory warranties, as provided by art. 197 SCO. However, such clauses are subject to strict limitations to prevent abuse, most notably the fraud exception under art. 199 SCO, which renders any warranty disclaimer invalid if a seller fraudulently conceals known defects.

This case law reinforces the evidentiary burden on a buyer who seeks to invoke art. 199 SCO and thereby set aside a warranty exclusion. Buyers who wish to invalidate such clauses must demonstrate that the seller knowingly and deliberately withheld information about the defect. Mere suspicion or even severe negligence on the seller's part is insufficient to establish fraud. This principle highlights the high threshold required to prove fraudulent conduct. For example, in one case, sellers were denied the protection of a warranty exclusion clause precisely because the evidence convincingly demonstrated that they had knowingly concealed recurring natural hazards affecting the property.[1]

In contrast, this case illustrates the opposite scenario. The Federal Supreme Court found no fraudulent concealment because the Seller had credibly believed that the recurrent water leaks in the hammam had been effectively resolved through repeated maintenance and joint replacements. The Seller's good-faith assumption that any remaining leaks might stem from an unrelated external source (an adjacent terrace) further undermined any allegation of intentional deception. Consequently, in the absence of definitive knowledge and intentional concealment, the Seller's warranty exclusion was upheld as valid.

Importantly, the Seller's conduct—specifically, its repeated attempts to repair the leaks—played a decisive role in affirming its good faith. These maintenance efforts clearly indicated that the Seller had no intention of concealing persistent issues. If evidence had shown that the Seller knew its repairs were inadequate or merely superficial, the outcome may have been different, as this would have constituted intentional concealment. Thus, addressing potential defects actively and in good faith significantly bolster the enforceability of warranty disclaimers.

Beyond the issue of actual knowledge, this case must also be understood in light of the formal requirements governing warranty disclaimers under Swiss law. In its decision 4A_226/2009, the Federal Supreme Court explicitly addressed this aspect, stressing the importance of precise and unequivocal contractual drafting. In the aforementioned case, the buyer sought to invalidate a warranty disclaimer by alleging that the seller had fraudulently concealed a roofing defect. The Federal Supreme Court dismissed the claim, holding not only that there was no evidence of actual knowledge, but also that the exclusion clause was expressed with sufficient clarity and could not be overridden by a more general "legal warranty" clause inserted elsewhere in the contract. The Federal Supreme Court cautioned against reliance on *clauses de style*—boilerplate language typically added by notaries or copied from standard templates. Such generic clauses are insufficient to exclude liability if they do not reflect the parties' clear intent. Only clauses that clearly and unequivocally express the parties' mutual intent are enforceable.

Although not at issue in this case, another established limitation on the validity of warranty disclaimers concerns the presence of extraordinary or unforeseeable defects that fundamentally undermine the purpose of the contract and go well beyond what a reasonable buyer might expect. In ATF 126 III 59,[2] the Federal Supreme Court held that warranty exclusions do not extend to such extraordinary situations. This exception remains narrowly construed, typically applying only where a defect is so severe and unusual that it would not have been reasonably foreseeable even by a diligent purchaser—for example, situations involving concealed contamination that renders a building uninhabitable.

Finally, the intersection between civil and criminal liability is also illustrated with this case. In a similar criminal proceeding based on the same facts (7B_360/2024), the Federal Supreme Court refused to entertain the plaintiffs' appeal, reiterating that purely contractual breaches—such as failure to disclose a defect – do not meet the threshold for criminal liability (fraud) unless accompanied by clear and deliberate deceit.

In sum, this judgment confirms that under Swiss law, warranty disclaimers remain firmly enforceable where the seller acts in good faith and lacks actual knowledge of hidden defects. Only Art. 199 SCO invalidates such clauses in cases of clear, intentional fraud.

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[1] See, for example, Federal Supreme Court decision 4A_461/2024.

[2] See also, for example, Federal Supreme Court decision 4A_261/2020.

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