

# The burden of proof of a professional salesperson might be substantially greater

Sometimes purchases may have defects, that cause the buyers to file claims against the retailers. Whilst submitting the claim, the defect itself and proving the existence of the defect are essential. Generally, all parties have to prove their statements themselves during (court) disputes. However, some exceptions might occur, according to the new case law.

In a situation, where one of the parties is a professional retailer and the other party is a consumer, the burden of proof might be divided differently in some cases-, since the consumer is considered to be in a weaker position. In those cases, the professional retailer might have a greater burden of proof than the consumer. Additionally, the consumer doesn't have to list the defects in great detail, a statement regarding the defects is considered to be enough.

The difference in burden of proof doesn't apply automatically nor always, but depends on the circumstances. The Supreme Court has decided in one of their resolution from last year regarding a defected car, that the consumer's burden of proof can't be unlimited in a situation that requires in-depth knowledge. The Supreme Court found that if there is a need for in-depth knowledge, then the retailer must have a bigger burden of proof than the consumer, since the consumer can't be expected to have such knowledge. In addition, the consumer might lack the possibility to prove that the defects exist in situations, where the defects have been fixed and defected part has been destroyed.

To avoid a situation where professional retailers lack evidence to defend themselves with, it's wise to analyse the nature of the product, i.e. could they have defects, which would require in-depth knowledge, revise the terms and conditions of the contract and if possible, ensure as many evidence of the product being in accordance with the contract as possible.

Need help in this area? Contact Attorney Triinu Hiob.



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