

Duty of safety in food purchase: consumer's health protection

Abstract

In the field of consumer relations, the duty of prevention occupies a central role as the protection of the integrity of the consumer becomes a fundamental and unavoidable duty on the part of the supplier. Specifically, in the purchase and sale of food, based on the protection of health and safety, it implies that the product should be safe for human consumption, not altered and harmless. Failure to comply with this duty generates liability on the part of the company, to which the special rules of consumer law and the common provisions of civil liability apply, being of an objective and solidarity character between the participants of the production chain.

Keywords: consumer law, health law, duty of safety, food, civil responsibility

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Introduction

The work focuses on the analysis of the judgment sentence dictated by the Chamber of Appeals in the Civil and Commercial of the Sixth Appointment of the city of Córdoba, in the cars labeled "VENENCIO LEMOS, DAHYANA GISEL C / EMBOTELLADORA DEL ATLANTIC SA - Y PERDAVIAOS - Y PERJUICIOS OTHER FORMS OF EXTRACONTRACTUAL LIABILITY," which affirmed the trial court's ruling. Accordingly, the defendant, Bottler of the Atlantic SA (EDASA), producer of soft drinks "Coca-Cola", was exonerated from liability. It happened that, upon acquiring the exciting Mrs. Venencio Lemos, the product in a store would have found strange elements inside, product of the hacking of its lid. Therefore, the food became unfit for consumption, capable of producing damage to the health of the consumer.

In this order of ideas, the purpose of the work is through a legal analysis to evaluate the protection of consumer health in the framework of consumer relations. That is, the right to health in this area occupies a central place, proper to a fundamental right of the subject that is in a contractual imbalance in the established legal relationship. Thus, the duty of safety and prevention of harm in the context of a food purchase tends to completely guard the integrity of the human person, requiring greater emphasis and care on the part of the supplier. In this way, food insecurity becomes an unavoidable budget.

As to the facts of the case which motivated the resolution, the appellant Ms. Venencio Lemos indicated that he had bought in 2016 a soft drink "Coca-Cola", produced by the defendant Bottling of the Atlantic SA (EDASA). He detailed that it was a 350ml glass returnable container, sealed with metal lid. According to him, shortly after his acquisition he noticed strange elements inside: the drink contained small black balls seated in the base. Therefore, he avoided its consumption and transferred it to a laboratory for analysis and, subsequently, promoted an action for damages, claiming the repair of various damages, both arising (by the expense resulting from the purchase) and moral and punitive damage, conducive to a sanction for the supplier's misconduct. Once the consumption relationship in the case was established, the liability of the company was determined as objective, based on the risk of introducing food into the commercial chain. In addition, the duty of safeguarding the rights of the consumer, founded on the guarantee of making a food according to standards of harmlessness, occupied a central role. The elements deposited inside the bottle were fungi, mold and yeast, which would have occurred

once the drink left the factory, due to failures in its closure. It is that the entrance of air to its interior produced loss of carbonation and allowed its development.

As for the legal defeater, the case reached the highest provincial court. At first instance, the judge understood that although it was an alleged objective liability, the causal nexus that would enable the attribution of liability to the defendant company was not established. From the evidence in the file it did not arise that the foreign substances were already present at the time of purchase, rejecting the claim. Faced with this, appellant filed appeal, the Appellate Chamber of Fifth Appointment gave way to the claim. He submitted that the defendant was liable for the damages suffered by the plaintiff on having acquired a container whose lid had been vulnerable and its contents found to be altered. He emphasized that the health of the consumer had been put at risk and that, since the work of a third party totally stranger to the production and marketing process was not credited, the defendant was held liable. Appealing the decision, the Superior Court of Justice of the Province of Córdoba annulled the judgment since it failed to adequately justify the nexus of causation attributed to the defendant company. Therefore, without going into the heart of the matter, he ordered the forwarding of the cars. Thus, they were finally resolved by the Chamber of Appeals in the Civil and Commercial of Sixth Nomination of the Province of Córdoba, which are analyzed below.

The consumer safety and information obligation

The phenomenon of consumption has become in recent years one of the most transcendent in the legal field of civil property law, characteristic of social and economic transformations (such as the massification of production, new technologies, globalization, etc.), where consumers and users occupy a central role. They are those who acquire or use, free of charge or chargeable, goods or services as the ultimate recipient, for their own benefit or that of their family or social group (According to Article 1 of Law 24.240). In this context and due to the lack of information and technical knowledge, in addition to its economic inferiority, it is placed in a situation of disadvantage vis-à-vis the supplier. Therefore, the law seeks to restore the contractual balance, granting it two fundamental rights, which are broad enough to cover the different situations that can arise within the consumer legal relationship. These rights are fundamental and public order and make the Consumer Statute. They are enshrined not only in their special legislation (Consumer Protection Law), but also the Civil and Commercial Code and the National Constitution, among other

regulatory plexes. Furthermore, they arise implicitly from the duty of good faith to be presented in any legal relationship.

On the one hand, the obligation of security arises, which translates into a secondary and autonomous duty, of result, which obliges to guarantee the compensation of the consumer. In this framework, the consumer deserves special protection throughout the entirety of the contractual iter, even before its celebration and after its extinction and also in its absence. In this way, civil liability arising from a consumer injury can become both contractual or obligatory and extra-contractual or shareholder. Therefore, the safety obligation relates directly to the avoidance of damage to the integrity of the consumer, particularly to their life and health. Thus, the duty to maintain the innocence of the object of the consumption relationship is recognized, especially if it is a food item. As the Constitution of the World Health Organization recognizes, to protect the health of the consumer is to maintain the full physical, mental and social well-being with which the legal relationship is initiated or, in its case, to improve it. Consequently, it is about guaranteeing the complete physical, mental and social well-being, which must be present at all times throughout the validity of the consumer legal relationship. Therefore, upon ending the bond, the health of the consumer should be found to be equal to or better than it was initially, not admitting any harm attributable to the supplier, however minimal. In the purchase and sale of food, error is not admitted, making the obligation of safety stricter. Therefore, we talk about a zero tolerance criterion, where the protection of the health of the consumer does not admit exceptions or margins of error. This criterion becomes a fundamental principle of protection, which requires that goods and services offered in the market do not cause harm to the bodily or mental integrity of consumers and users. In this way, the marketing of a food product -such as in the case of study, a beverage altered in its contents- requires fitness for human consumption, in accordance with quality, safety and safety standards, so that it does not pose any risk to the consumer's health.

On the other hand, the obligation to report is relevant in the field of consumer relations and specifically with regard to the purchase and sale of food. The consumer must be able to know the conditions under which he enters into the contract and, especially, the content of the food he acquires. In terms of their health, having clear, sufficient, true and truthful information about food content allows the consumer to make an informed and reasoned choice. This involves receiving, from the consumer, accuracy regarding the conditions of consumption and risks of the food in question. In conclusion, it is relevant that the consumer is guaranteed information and security, which allows a comprehensive protection of the weak subject of the consumption relationship.

Civil liability for consumer injuries in the food market

The establishment of a consumer legal relationship that is frustrated involves the responsibility of the supplier for the damage caused. This is an objective and solidarity responsibility, which holds all stakeholders in the marketing chain responsible for effective consumer protection. Of particular relevance in this context is the preventive protection of the health of those who enter into this type of relationship. This is an advance analysis, through the implementation of the necessary measures to prevent damage: the condition of safety of the product must be preserved until made available, without being interrupted throughout the marketing chain.

However, this guardianship requires the classic elements of damage law to be verified, which is why the claim was dismissed in the resolution in question. It happens that, even in the field of

consumer law, it is necessary to acknowledge the existence of the legal relationship. In particular, the conditions of its celebration and how the product was when it reached the consumer. The additive accompanied only the bottle and the report of the bromatological laboratory, which allowed to credit the relationship invoked.

In addition to this, it is necessary even in the framework of objective liability, the accreditation of a causal link between the damage and the conduct attributed to the supplier; which was not tested. That is, although the expert report showed the existence of a deficiency in the drink, which made it unfit for consumption and could harm the health of the additive, it was also credited that the opening of the container was subsequent to the process of elaboration, when it was already circulating and had left the scope of control, causing interruption by the intervention of a third party stranger to the supplier. It is that it took into account the high standards of quality that the respondent maintained in its products, being an expert in food, hygiene and safety.

However, it should be noted that consumer protection is not limited to repairing the damage. The duty of safety also operates from the beginning of the relationship, becoming preventive. It is that food contamination is unacceptable, due to the product maintaining its quality and safety standards when it reaches the hands of the consumer. Only in this way will the health of the person acquiring a food be protected, where the subjects are not exposed to a risk that may generate a threat to its integrity.

Material and methods

The work analyzes the case "VENENCIO LEMOS, DAHYANA GISEL C/ EMBOTELLADORA DEL ATLANTICO SA - ABBREVIATED - DAMAGES AND DAMAGES - OTHER FORMS OF EXTRACONTRACTUAL LIABILITY", file n°6203082, before the Court of Appeal Province of Córdoba, Argentina, whose consultation is public, having brought the case before the Court of First Instance and Second Appointment in Civil and Commercial.

It involves the direct application of the provisions of the Consumer Statute, the set of laws that have under his tutelage, recognizing him as a weak subject within the legal relationship, owning the lack of information in which he is. Therefore, Consumer Protection Law No. 24,240 was applied, which provides:

- I. ARTICLE 1 — Object. This law aims to protect consumers or users. Consumers or users are considered to be natural or legal persons who hire for their final consumption or benefit of themselves or their family or social group: a) The acquisition or lease of movable things; (b) The provision of services; (c) The acquisition of new immovable property intended for housing, including lots of land acquired for the same purpose, when the offer is public and addressed to unspecified persons.
- II. ARTICLE 2 — Suppliers of goods or services. All natural or legal persons, of a public or private nature, who, in a professional manner, even occasionally, produce, import, distribute or market goods or provide services to consumers or users, are obliged to comply with this law. (...)
- III. ARTICLE 4 — Information. Those who produce, import, distribute or market goods or provide services must provide consumers or users, in a true and objective manner, with true, detailed, effective and sufficient information about the essential characteristics of the same.
- IV. ARTICLE 5 — Consumer Protection. Things and services must be supplied or provided in such a way that, used under

foreseeable or normal conditions of use, they do not pose any danger to the health or physical integrity of consumers or users.

- V. ARTICLE 6 — Dangerous Goods and Services. Goods and services, including household utilities, the use of which may pose a risk to the health or physical integrity of consumers or users, shall be marketed observing established or reasonable mechanisms, instructions and standards to ensure the safety of the same. (...)
- VI. ARTICLE 40. — Joint and Several Liability. If the harm to the consumer results from the vice or defect of the thing or the provision of the service shall be liable the producer, manufacturer, importer, distributor, supplier, seller and whoever has put his mark on the thing or service. The carrier shall be liable for damage caused to the thing with reason or in the course of the service. The liability is joint and several, without prejudice to the corresponding repeat actions. Only whoever proves that the cause of the injury has been alien to him shall be released in whole or in part.

On the other hand, immersed in the reparative guardianship of the civil liability in which the supplier would have incurred, common rules of the Civil and Commercial Code of the Argentine Nation apply, such as:

- I. ARTICLE 1716.- Duty to repair. The breach of the duty not to harm another, or the breach of an obligation, gives rise to the reparation of the damage caused, in accordance with the provisions of this Code.
- II. ARTICLE 1722.- Objective factor. The attribution factor is objective when the agent's fault is irrelevant for the purposes of attributing liability. In such cases, the responsible person is released by proving the other cause, unless legal provision to the contrary.

Finally, it is appropriate to mention what the Constitution of the Argentine Nation provides, which advocates a special protection of the consumer:

- I. ARTICLE 42.- Consumers and users of goods and services have the right, in the consumption relationship, to the protection of their health, safety and economic interests; to adequate and truthful information; to freedom of choice, and conditions of fair and dignified treatment. (...)

With regard to the applicable doctrine, the thoughts of the Dres. R. Pizarro, J. Vallespinos, J. Zalazar, F. Junyent Bas, and A. Rinesi.

Discussion and results

The right to consumer health becomes a fundamental requirement for the supplier of goods and services, which plays an even more important role in the food market. Therefore, the standard of zero tolerance against harm produced by food or beverage offered to the public becomes an imperative. In this sense, the direct affect on

consumer health constitutes an essential premise for the exercise of all other rights, being a concrete manifestation of the right to life. The food offered should be of good quality, guaranteeing your safety. Now well, the protection of consumer health against harm in the food market implies, as in the rest of the assumptions of the law of damage, the existence of the elements to attribute liability to the supplier for the breach of its safety obligation. Thus, failing to verify the causal nexus between the plaintiff's conduct and the damage alleged, even in its preventive phase, implies that it cannot hold the offeror liable.¹⁻⁷

Conclusion

The protection of the consumer's health becomes a prevailing imperative throughout the legal bond and is transformed into positive measures that prevent the production of risks in its entirety. It is therefore incumbent on the suppliers to maintain safety standards of the product they offer to the market until the same reaches its end consumer. It is not appropriate to accept the existence of risks but the search for better practices in terms of quality that allow the safe consumption of food becomes necessary. Thus, in the face of a damage, the civil liability will be objective and joint and several for the breach of the safety obligation which, as an assumption of civil liability, will require the verification of all the elements that make the damage compensable.

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None.

Conflicts of interest

None.

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