

[Title]

Defective goods, duty to inspect and notify.

[Court of Decision]

Supreme Court

[Date of Decision]

27 November 2001

[Case No.]

Case No. 773 (o) of 1998

[Case Name]

Damages Claim Case

[Source]

Minshu Vol. 55 No. 6: 1311; *Hanrei Jiho* No. 1769: 53; *Hanrei Taimuzu* No. 1079: 195; *Kinyu Homu Jijo* No. 1633: 71; *Kinyu • Shoji Hanrei* No. 1134: 3.

[Party Names]

Kaneaki Hayashi, (X, Appellee at the Court of Last Resort, Intermediate Appellant, Plaintiff)

Vs.

Mamoru Iizuka (Y, Appellant to Court of Last Resort, Intermediate Appellee, Defendant)

[Summary of Facts]

In February 1973, X purchased the residential property in question from Y, as well as the building on the property. X paid the purchase price at that time. In May of that year, the transfer of title to the land from Y to X was registered, and X took possession of the land from Y. Part of the land however had been designated as the site of a road pursuant to *Kashiwa City Ordinance* No. 157 of 27 October 1972. This caused problems for X, including the fact that in the course of reconstructing the building on the land its floor area had to be greatly reduced. X first learned of the existence of this road designation around February – March of 1994, and in around July that year, X sent a notice to Y, demanding that Y act to have the road designation removed, and if that could not be achieved, X would seek damages from Y. When X sued Y for damages on the basis of warranty for defects, Y employed a prescription defense, arguing that X's right to seek damages had been extinguished through prescription.

The court at first instance dismissed X's claim, stating that in the case of liability to warrant against defects, "in light of the fact that the rights and obligations under the contract of sale are extinguished after ten years through prescription, reckoning either from the time of execution of the contract, the registration of the transfer of title or from X's taking of possession of the property, the parties' rights and obligations have expired owing to the passage of ten years." By contrast, the lower court upheld X's claim, stating that a vendor's liability to warrant against defects is a statutory liability especially imposed on a vendor by the law for the purpose of the protection and confidence of purchasers, and that since it is therefore different from an obligation under a contract of sale, it does not fall within the operation of Article 167(1) of the *Civil Code*. The court stated that the fact that Articles 570 and 566(3) stipulate the starting point of the prescription period only as "the time when [the purchaser] becomes aware of the facts" indicates that the purpose of those provisions is not just the early resolution of parties' legal rights and obligations, and if this interpretation were not adopted, it would be tantamount to imposing an obligation on purchasers to themselves inspect properties to detect defects, which could not necessarily be described as equitable. Y appealed to the court of last resort.

[Summary of Decision]

Decision quashed and remanded.

“A purchaser’s right to seek damages from a vendor for breach of warranty against defects is a right to claim a monetary payment that arises by law on the basis of a contract of sale; it clearly therefore constitutes a “right” under Article 167(1) of the *Civil Code*. The period of prescription for this right to seek damages is stipulated as being one year from the date when the purchaser learns of the facts (Articles 570 and 566(3) of the *Civil Code*), and since for the purpose of the early resolution of the parties’ legal rights and obligations this particularly restricts the period when a purchaser must exercise his or her rights, the view cannot be taken that with the existence of this provision for a period of prescription, the right to seek damages for breach of the warranty against defects is thereby excluded from the operation of Article 167(1) of the *Civil Code*. Furthermore, provided it is after the taking of possession by the purchaser of the sale property, whereas it would not be unreasonable to expect the purchaser to discover any defects at the latest by the time of the expiration of the normal prescription period so as to exercise his or her right to seek damages, if the statutory provisions for prescription did not apply to the right to seek damages on the basis of the warranty against defects, the result would be that so long as the purchaser did not notice any defect, his or her rights would survive in perpetuity, which would impose an unduly excessive burden on the vendor.

"Accordingly, the statutory provisions concerning prescription of rights do apply to the right to seek damages for breach of warranty against defects, and it is reasonable to take the view that the clock began running in this case from the time when the purchaser took possession of the property.”