

CORREA CREMASCHI

ABOGADOS

Gral. J. Espejo 144, 2 Piso, oficina 6 – M5500GJD
Mendoza - Argentina
Tel: (54 261) 425 1401 / 588 4427 / 579 8367
www.correacremaschi.com – info@correacremaschi.com

May 30th, 2015

NEWSLETTER OF CONSUMER'S PROTECTION LAW

Shopping Centre obliged to pay damages to client due to injuries suffered on a robbery action

The National Civil Court of Appeal ruled that any damage suffered in a shopping centre not caused by the victim's act; or an unforeseen event or force majeure, shall be repaired by the owner of the shopping centre.

In the case "M. N. S. vs. Alto Palermo S.A. & other", the claimant claimed compensation for injuries suffered as a result of a robbery occurred at the shopping "The Abasto."

Once the crime was established, the judge of first instance applied the Consumer Protection Act rules, since it should be considered as a user who is within premises of this kind.

Considering that the defendant had an implied safety duty to consumers which obliges it to keep harmless those customers, and since the event did not have the characteristics of an unforeseen event, but constituted a risk inherent in the exploitation of a business like this, the mall was obliged to pay damages to this shopper.

The defendant appealed the judgment of first instance because it considered that the fact has not been duly established, in addition to being an unforeseen event, since the shopping centre claims that it fulfilled its duty of safety.

It also argued that the application of Act 24,240 is inappropriate, since there is no a consumer relationship.

The judges stated that "the doctrine is clear in pointing out that, after the amendment ... to Act 24.240, the concept of" consumer "or" "user" has been significantly expanded, since it not only comprises those who use the goods or services as final beneficiaries for their own benefit or their family, but also to those who are in any way exposed to the consumer relationship."

In that order, the experts explained that "the concept is not fulfilled in the idea of a contract, but also it includes those who are not part of the consumer relationship but find a connection with it, as well as those who are exposed to the said relationship, and suffer some damage as well."

The Court concluded that "the company's owner has not demonstrated that it adopted safety measures to avoid criminal conduct such as that investigated, and that, on the other hand, it undoubtedly makes profits from letting premises and is economically benefited by the presence of people who pass through the aisles of its property ... and therefore, is "obliged to implement the necessary measures to protect consumers (article 5 of Act 24.240) that make its business possible."

Therefore, and to finish this paper, we can conclude that the amended Consumer Protection Act benefits the consumers in a much broader way and with a lower burden of proof to demonstrate such a condition.

This article has been drafted by Facundo Correa Cremaschi. For more information, contact the above telephone numbers or by e-mail to fcc@correacremaschi.com

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