

## Civil Law

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### Abstract

This paper scrutinizes 2009 Supreme Court decisions and rulings connected with collateral obligations as well as with the concurrent relationship between warranty for defects and incomplete performance in the case of sales contract.

Collateral obligations can be derived from statutory provisions, contractual agreement and the principle of good faith. The duty of judges and legal writers is, by means of clarifying the purpose and object of the law, exploring the intention of the contract, and applying the principle of good faith, to perceive the presence and content of the collateral obligation. In this regard, several 2009 Supreme Court decisions are worth referring to. It should be noted that although the obligee has carried out performance of the main obligation, it cannot be concluded that the collateral obligation has also been fulfilled. In this respect, some 2009 Supreme Court decisions are worth approving, and some are not.

According to the 2009 Supreme Court decisions, in the circumstances where the obligee violates the collateral obligation, the obligor is entitled to claim damages or terminate the contract pursuant to the provisions of incomplete performance. If damages are claimed, both loss pertaining to the non-conformity performance itself and consequential loss are recoverable. Furthermore, the cause of action based on breach of collateral obligation is also subject to statute of limitations.

As to the problem of concurrence of warranty for defect and incomplete performance in the case of sales contract, the Supreme Court decisions remain disputable even after the announcement of the Supreme Court 1988 No. 7 Civil

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Court Resolution, particularly when the following two disputes are concerned. First, where defects of the object exist prior to the conclusion of the contract, can the buyer, though he/she is indubitably entitled to claim on the basis of warranty, resort to the provision of incomplete performance? Secondly, when the buyer bases his/her claims on incomplete performance, should such claims be constrained by the provisions of warranty (especially Articles 356 and 365 Civil Code)?

Regarding the first issue, the 2009 Supreme Court decisions are contradictory. In the author's opinion, no matter the defects exist prior to or posterior to the conclusion of the contract, the seller, who intentionally or negligently delivers the defective object to the buyer, should be held liable for incomplete performance.

With regard to the second issue, the Supreme Court 2009 decisions persistently rule that in case the buyer asserts his/her rights under the provisions of incomplete performance, Articles 356 and 365 Civil Code are not applicable. However, in the author's opinion, in order to prevent the buyer from intentionally or negligently omitting to inspect the object and to notify, Article 356 Civil Code which relates to warranty and stipulates buyer's obligation to inspect and notify, is also applicable when the buyer terminates the contract in accordance with the provisions of incomplete performance.

**Keywords: main obligation, collateral obligation, principle of good faith, compensation for damage, termination, warranty for defect, incomplete performance, concurrence**