CONSUMER CLAIMS TRIBUNAL

In the Acts of Claim CCT 70/24/F

Andrea Carnali

vs

Frank Barbara Car Dealer

Today, the 2nd July 2024

The Tribunal:

Having seen the Notice of Claim filed by the applicant on the 1st April 2024;

Having seen that the defendant failed to file a formal Reply but however attended for the hearing before the Tribunal;

Having heard the sworn testimony of the parties;

Having seen the documents exhibited by the parties;

Having seen all the acts of the Claim;

Having noted that the Claim has been put off for judgement.

Considered:

Whereas through the instant proceedings, the applicant is claiming the sum of nine hundred and fifteen Euro and fifty-four cents (€915.54) from defendant to cover repair costs incurred over a second-hand Nissan Qashqai car which he bought from defendant. The applicant states that despite being assured that the car has no major issues, it started giving trouble just after he collected it on the 16th January 2024. Problems included a jammed clutch, poor performing battery and issues with the

front suspension and steering components. Applicant explains that he is claiming the sum of €790.54 as per invoice issued by Tony's Garage, Gzira and €125 incurred to replace the battery of the car.

Whereas in his testimony before the Tribunal, the defendant confirms that when the applicant was interested in buying the car, he had explained that it had some issues with the ball-joint and refers to the fact that a €500 deduction from the selling price was in fact conceded upon applicant's request. Defendant also confirmed that the complaint regarding the jammed clutch was immediately addressed at his expense. Whilst referring to the Used Car Sale Agreement signed by the parties which states that the car was being sold as seen and with no warranties, the defendant stated that out of good will, he had offered the applicant €300 in relation to his complaints about the car, which offer was not accepted. This is confirmed in the message exchanges exhibited by the applicant.

Whereas the Tribunal notes that the applicant acknowledges that "I am aware that the car was not under warranty" and that "the dealer offered me €300 as compensation". It also emerged that a significant discount had already been given on the price of the car. The parties agree that the car was sold for €4,000. The applicant states that this discount was of €200 whilst the defendant claims that the original selling price was that of €4,500, implying that a €500 discount was given. The Tribunal notes that when the defendant mentioned this €500 discount is a Whatsapp conversation with the applicant, no contestation of such statement was made by the latter. Therefore, on a basis of probability, the Tribunal considers that a discount of €500 was in fact given. Defendant's argument that such a high discount was given owing to the condition of the car is also deemed credible.

Whereas when all factors are considered, the Tribunal draws the following conclusions:

- The object sold is a used car of a considerable age;
- The parties specifically agreed that the car was being sold "as seen" and with "no warranties about the condition of the car";
- The applicant fully understood that he was buying a used car of considerable age and was also aware that it had some problems;
- The defendant had conceded a discount of €500 from the selling price which the Tribunal believes was linked to the condition of the car;

- It is proven that the car had to undergo relatively extensive repairs in the months following the sale;

- The above-mentioned repairs and replacement parts cost nine hundred and fifteen Euro and fifty-four cents (€915.54) which is the sum being claimed by the applicant;

- The defendant offered an *ex gratia* payment of €300 to the applicant in relation to the complaints made, which is over and above the discount already given.

Whereas the Tribunal refers to Article 21(1) of the Consumer Affairs Act which states that it shall determine the issues in dispute in any claim or counter-claim before it according to the substantive merits and justice of the case, and in accordance with equity.

Whereas in the circumstances, the Tribunal believes that the cost of repairing the car should be shared by the parties and considers that when the discount of €500 is factored in together with the defendant's offer of €300 which was refused, a total sum of €800 would have presented fair and adequate compensation for the applicant given that the facts of the case indicate that he was aware of the condition of the car. Therefore, the Tribunal will proceed to order the defendant to pay the applicant compensation of €300 as initially offered.

Decision:

Therefore, for the abovementioned reasons, in the circumstances, after having seen Chapter 378 of the Laws of Malta, the Tribunal hereby decides this Claim by upholding it partially and consequently orders the defendant to pay the applicant the sum of three hundred Euro (€300).

Interest shall run from the date of this decision.

Each party shall bear own costs.

Avv. Mattia Felice LL.B., LL.D. (Melit.)
Arbiter