CONSUMER CLAIMS TRIBUNAL

In the Acts of Claim CCT 105/23/F

Eve Russell

vs

Boris Arcidiacono Ltd

Today, the 29th April 2024

The Tribunal:

Having seen the Notice of Claim filed by the applicant on the 20th July 2023;

Having seen that despite being validly notified, defendant company failed to file a Reply;

Having heard the sworn testimony of the applicant and the final submissions of the parties;

Having seen the documents exhibited by the parties and all the acts of the case;

Having seen that the Claim was put-off for judgement.

Considered:

Whereas through the instant proceedings, the applicant is requesting that the defendant company is condemned by this Tribunal to pay her the sum of three thousand, two hundred and sixty Euro (€3,260) which is the purchase value of a Strässle reclining chair which she had purchased on the 16th February 2016. She complains that after seven years of use, one of the chair arms bent sideways and also, a cable and gas lift broke.

Whereas the defendant company failed to file a formal reply however, Maurice Arcidiacono, attended the sitting of the 20th November 2023 and declared that defendant company will execute the necessary repairs to the chair. Applicant agreed to this proposal and in fact made the chair available for repairs.

Whereas the Tribunal notes that through these proceedings, the applicant is requesting a full refund of the price paid for the chair, a demand which by its very nature presupposes a declaration of rescission of the contract of sale [*actio redhibitoria*]. This remedy is allowed by Article 74(1) of Chapter 378 of the Laws of Malta, however, due to the nature of the defect complained of and also due to the fact that the parties agreed that defendant company is to undertake the necessary repairs, the Tribunal considers that Article 75 of said Act should apply as the remedy chosen would impose costs on the seller that would be disproportionate, taking into account all circumstances.

Whereas during her testimony in cross-examination during the sitting of the 15th April 2024, the applicant declared that the "initial complaint" about the chair has since been addressed during the course of these proceedings but qualified that according to her, there were still pending issues because "the chair is not fit for purpose and was mis-sold to me".

Whereas the Tribunal makes it clear that even though proceedings before it allow for the application of a degree of equity, like all judicial proceedings, the terms of an action brought before it are defined by what is demanded and plead in the written pleadings ["*In-natura u l-indoli tal-azzjoni għandhom jiġu dežunti mit-termini tal-att li bih jinbdew il-proċeduri*" (Vol. XLII Pt. I p. 86)].

Whereas in the circumstances of the case, the Tribunal considers that at this point, the applicant's formal demand in these proceedings has been duly addressed by defendant company and therefore, the merits of the action have been exhausted. As a parenthesis, this Tribunal also considers it rather strange that an argument on a product being mis-sold is raised after no less than seven years of enjoying the product.

Decision:

Therefore, for the abovementioned reasons, in the circumstances, after having seen Chapter 378 of the Laws of Malta, the Tribunal abstains from considering this Claim any further.

Each party shall bear own costs.

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