CONSUMER CLAIMS TRIBUNAL

In the Acts of Claim CCT 175/20/F

Ieuan Paul Gane

vs

Audi – Continental Cars

Today, the 29th April 2024

The Tribunal:

Having seen the Notice of Claim filed by the applicant on the 20th November 2020;

Having seen the Reply filed by the defendant company on the 22nd December 2020;

Having heard the 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 compensation from the defendant company because as he states, following nine visits to the garage, it failed to properly repair a fault to the electric retractable roof of his Audi TT. He also claims that his car was damaged twice while under the custody of defendant company and also that the vehicle suffered serious flood damage when the electric retractable roof was jammed in the open position owing to the defendant company's failure to adequately address the fault.

Whereas the defendant company replied that the applicant's claims are unfounded in fact and at law since all repairs were made correctly and according to Audi standards. Notwithstanding this, the applicant refused to cooperate and to abide with the professional advice given, particularly when he refused to pay to have a proper diagnostic test done to rule out any ulterior defects in the vehicle.

Whereas it must be cleared at the outset that this case does not concern faults affecting a new vehicle under manufacturer's warranty as the car concerned was a second-hand UK import, having been manufactured in 2008. As declared by himself, the applicant is basing on his claim on the services which he engaged defendant company to perform on his car, which he claims were not up to standard, and the spare-parts supplied. The applicant fails to specify directly the monetary quantum of his claim but exhibited an unauthenticated quotation apparently issued by Harwoods Ltd, an Audi dealership in Portsmouth, UK, which states that the total cost for a full replacement of the electronic retractable roof components of the car as well as elements damaged by flood water amount to £3,951.38 which approximately translates to €4,615.60.

Whereas in his testimony, the applicant explained that his Audi TT developed a problem with the retractable roof on the 10th August 2017, in the sense that it was failing to close. The roof had been replaced locally by the previous owner and thus the parts were still covered by a two-year manufacturer's warranty. That is the reason why he took the car to defendant company's garage for repairs. At that point, the roof was repaired but after collecting the car he noticed that (i) the paintwork was damaged towards the rear of the car and that (ii) the engine cover was not properly secured leading it to fall out of place whilst the car was being driven. The engine cover was replaced free of charge and no evidence of the alleged damage to paintwork was brought. Applicant moves on to explain that unfortunately, in 2019-2020, the roof started playing up once again and in June 2020, the car suffered severe flooding as the roof could not be closed during a storm. Following this incident, defendant company refused to replace the part once again. Applicant then took the car for diagnostics at an independent garage and was informed that the electronic module which controlled the roof was faulty. Defendant company eventually conceded to performing another diagnostic test however the applicant was never informed of the results. Under cross-examination he denied not cooperating or failing to follow defendant company's advice and affirmed that the never attempted opening the vehicle's roof as from the moment that he was instructed not to do so.

Whereas during his testimony, Malcolm Mallia, a representative of the defendant company, presented and authenticated all the service records at its disposal. He ties the allegation that the applicant did not adhere to instructions not to operate the roof

to a service record dated 6th November 2018 wherein it was stated that "please advise client not to open convertible top". The Tribunal has read through all the service records and it results clearly that as per service record dated 15th July 2019, "performed initialisation of both flap motor sensors and lubrication done tested several times works good", a clear indication that at that point, the problems with the retractable top had been solved. Now, the flooding incident occurred in June 2020 which is after the initial problem had been solved and a "calibration" had been carried out once again on the 3rd June 2020. Thus, the Tribunal's understanding is that there is no bearing between the two events.

Whereas the major intervention on the retractable roof was carried out on the 14th March 2016, under instructions of the previous owners of the vehicle. The Tribunal agrees that this kicked-off a warranty period of two years, i.e. up until the 14th March 2018, which was then extended up until the 10th August 2019 limitedly for two drive units purchased by applicant on the 10th August 2017. Now, the applicant's first round of issues with the retractable roof were in fact addressed by defendant company and on the 15th July 2019, the problem was fixed. Applicant was never charged for issues with the roof following purchase of the drive units. It was only after the 12th May 2020 that the applicant complained once again that the roof was not working properly. At this point, the warranty on the parts replaced in 2016 had elapsed and so, applicant is not legally justified in stating that defendant company is bound to replace them under warranty. A careful analysis of the all the service records exhibited indicates that the defendant company demonstrated considerable effort in trying to accommodate the applicant's requests and the unfortunate circumstances faced by the applicant in this case are more the result of the vehicle's condition and age rather than any particular and identifiable shortcomings on part of defendant company.

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 rejecting it.

Each party shall bear own costs.

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