CONSUMER CLAIMS TRIBUNAL

Claim Number CCT/109/24/F

Nicholas Dakin (ID 0211995A) and Milena Dabic-Dakin (ID 0211997A)

vs

Carmel Borg (ID 107261M) and Salvatore Borg (ID 0626462M) trading as "Paul Borg Antiques"

Today, the 28th April 2025

The Tribunal:

Having seen the Statement of Claim filed by the applicants on the 23rd May 2024;

Having seen the Reply filed by the defendants on the 17th June 2024;

Having seen the Tribunal's decree of the 7th October 2024 whereby it was ordered that proceedings be held in the English language;

Having seen all the acts of the Claim;

Having seen that the Claim was put off for a final decision.

Considered:

Whereas in the instant Claim, the applicants are requesting that the Tribunal orders the defendants to pay them the sum of seven thousand, five hundred Euro (€7,500). This sum is made up of €6,200 paid by them for the chandelier, €500 professional fees paid to Perit Reuben Sciortino as well as moral damages.

Whereas the defendants plead that the action is time-barred in terms of Article 67(1) of the Consumer Affairs Act since the product in question was sold over five (5) years prior to the filing of the Claim. On the merits, succinctly, they plead that the Claim is unfounded in fact and at law as there is no nexus between the damage suffered and any act or omission attributable to the defendants, particularly because the chain on which the chandelier was hung was pre-existent in the property and was not supplied by them.

Whereas from the evidence produced by the parties, it results that the applicants purchased an early 20th Century Murano glass chandelier from the defendants on the 6th March 2019. It also results that this chandelier was eventually delivered and installed in the applicants' residence in Bormla on the 21st January 2022, where it remained hanging for about a year and a half. Unfortunately, on the 2nd July 2022, the chandelier came loose of its hangings and crashed to the ground. As a result of this fall, the chandelier was rendered beyond economical repair.

Whereas the Tribunal notes that Article 67(1) of the Consumer Affairs Act deals with the period of limitation for an action in respect of liability for defective products and specifically excludes liability for the destruction of the defective product itself from the sphere of application of that Title of the Act. Since the main element of the present Claim is the value of the destroyed chandelier itself, the plea of prescription as formulated in the Reply is legally unfounded. *Obiter*, it must be said that the period of limitation in this case would have been that of two (2) years as contemplated under Article 78(1) of the Consumer Affairs Act in conjunction with Article 73(7). That established for correctness' sake; however, the Tribunal cannot declare the Claim time-barred under the quoted provisions of law failing a formal plea in that sense raised by defendants. Therefore, the plea of prescription is being rejected, and the Tribunal will proceed to consider the Claim on its merits.

Whereas the applicants contend that "delivery and installation were part of the agreement" with the defendants. The Tribunal notes that there is controversy between the parties as to what the installation process allegedly agreed upon actually consisted of. On the one hand, the applicants imply that the defendants were responsible for all the installation process including the hanging chain of the chandelier whilst the defendants contend that they were solely responsible for the attachment of the chandelier to the existing chain and assembly of the multiple glass components.

Whereas Perit Ruben Sciortino, produced as an *ex-parte* expert by the applicants concluded that "it is our opinion that the failure of the said chain, holding the chandelier must have been due to the various wire connections which were used within the chain". During his evidence before the Tribunal, Perit Sciortino declared that he was not aware whether the chain was supplied together with the chandelier or whether it was present at the applicants' property.

Whereas the applicants state that Frank Jenkins was simply present during the hanging of the chandelier whilst the defendants state that the actual hanging procedure of the central part of the chandelier was conducted solely by Frank Jenkins. Jenkins was produced as a witness before the Tribunal and he states under oath that the chandelier was supplied by the defendants without a chain and that the chain effectively used as well as the hold-down bolt were already present at the property. He also declares that the defendants had inspected the chain and deemed it fine to hang the chandelier and denies that the central part of the chandelier was attached to the chain by him. Under cross-examination, applicant Milena Dabic-Dakin states that "I believe that a previously existing chain was re-used to hang the chandelier [...] I don't believe that any checks were made to the chain before it was re-used".

Whereas from the above, primarily it results beyond any doubt that the hanging chain used to suspend the chandelier (or at least part thereof) was not supplied by the defendants but was present at the applicants' property. Secondly, after a comprehensive review of the acts of the Claim, the Tribunal is not convinced that the defendants were contractually bound for supplying or coordinating the infrastructure necessary for hanging the chandelier. It is also probable that the wire linkages in the chain mentioned by Perit Sciortino were already present as neither the applicants nor Frank Jenkins, who were both present during installation, mention seeing defendants joining parts of the chain with metal wire.

Whereas in addition to the above, the Tribunal considers that since the chandelier in question was considerably heavy and of a high artistic value, the applicants should have acted with utmost caution and opted to the have a new, heavy-duty chain put in place. Ultimately, as owners of the property and owners of the chandelier, it was completely and exclusively within their remit to ensure than an adequate chain is in place to hang the chandelier. Neither did they in any manner prevent use of the existing chain. The fact that Frank

Jenkins, a technical person of the applicants' trust, was present throughout the installation process adds weight to this conclusion. It has been stated that "one who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong" (*Smith vs Baker* [1891] A.C. 325 at 360, *per* Lord Herschell), which essentially translates to the principle of *volenti non fit injuria*. As a parenthesis, it must also be said that the existing chain held and supported the chandelier for approximately eighteen (18) months before failing, thus it is a possibility that any visual inspection which might have been conducted by the defendants might not have revealed any particular concerns at that stage.

Whereas the Tribunal considers that the defendants' plea that there is no nexus between the damage suffered and any act or omission attributable to them has been successfully established and will thus proceed to reject this Claim in its entirety.

Decision:

For the above reasons, after having seen Chapter 378 of the Laws of Malta, the Tribunal rejects the plea of prescription raised by the defendants and proceeds to decide the applicants' Claim by rejecting it.

Each party shall bear own costs.

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