Consumer Claims Tribunal

Clive May

Vs

Five Star Handyman Service

CCT 20/24/MM

Today, 9th September 2024

The Tribunal

Having seen the plaintiff's claim, filed on 20th January 2024, wherein he seeks the sum of two hundred thirty (€230).

Having seen the respondent's reply.

Having seen all the acts and documents of the case.

And having duly considered the testimonies given under oath.

Considers

That the claimant hired the respondent to carry out manual work in his house. That the works required were the repair of a broken window, changing a pane of glass and then painting the window. That the plaintiff explains that when the respondent came to his house

to work on the agreed day, he did not come prepared with the necessary tools, and specifies that he did not have a proper ladder long enough to enable the respondent to reach the whole window.

The claimant explained that the respondent broke the glass and damaged his toilet seat. The respondent left under the premise that he will return with a new glass and a new toilet seat. The claimant laments that the respondent took his time to come back and when he eventually returned to finish the job entrusted to him the respondent simply placed a new toilet seat on the toilet and placed a piece of plastic over the window. The respondent never returned to finish the job despite the claimant's several attempts to solicit him to return and finish the job entrusted to him.

The responded explained that he could not take a longer ladder because the bathroom was very small. He admitted that he damaged the toilet seat, but he immediately offered to replace it with a new one which in fact he did. With respect to the glass, he says that part of his job was to replace a broken glass and thus the glass was already broken before he visited the claimant's house. Respondent clarified that he was not paid for any of his work.

Considers

This Tribunal is confronted with conflicting evidence regarding the merits of the case, specifically concerning which party bears responsibility for the events in question. Article 562 of Cap. 12 of the Laws of Malta provides that "Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it" and Article 559 states "in all cases the court shall require the best evidence that the party may be able to produce".

Confronted with conflicting evidence, the Tribunal must determine which version is most credible. As outlined in the aforementioned legal principles, the Tribunal must evaluate whether one version logically excludes the other. In the matter of ''**Carmelo Farrguia -vs-Rokku Farrugia**", First Hall, Civil Court, per Judge Maurice Caruana Curran, 24 November 1966, it was stated that "il-konflitt fil-provi huma haga li l-Qrati jridu minn dejjem ikunu lesti ghaliha. Il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u specjalment dawk tal-konsistenza u verosimiljanza, ghandiex teskludi lill-ohra, anke fuq il-bilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f'kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant."

With respect to the damages, no evidence was presented to definitively show whether the glass was already broken before the respondent began the work. However, the quote provided by the respondent includes a line stating, ''old broken glass needs to be removed" which suggests that the glass was already broken at the time of the agreement. This wording implies that both parties were aware that the glass was in a broken state and that part of the respondent's job was to remove the existing broken glass and replace it with a new pane. Therefore, it can be inferred that the claimant was aware of the glass's condition before the respondent commenced work, and the respondent's responsibility was to replace the broken glass as part of the agreed-upon services.

With respect to the damaged toilet seat, the Tribunal considers this matter to be concluded because the respondent has already replaced the broken seat with a new seat.

On the merits, there is no evidence to show that payment was made to the respondent. The claimant is requesting reimbursement of the full amount quoted, yet he has not demonstrated that he actually made any payment to the respondent. The claimant explained that his insurance company was supposed to cover these expenses, but he failed to provide any documentary evidence or call an insurance representative as a witness to support this claim. Furthermore, it is customary for insurance companies to make payments only after the completion of a job. Therefore, the Tribunal is of the opinion that the respondent has indeed not received the €230 that was due to him following the successful completion of the contract of works.

After carefully considering the evidence and arguments presented by both parties, the Tribunal concludes that the claimant's request for the full amount of €230 is rejected.

For the reasons set out above, the Tribunal decides the case and rejects the claimant's request.

Costs to be supported by the claimant.

Avv. Dr Martha Mifsud LL.D.

Arbiter