Consumer Claims Tribunal

Ralph Jones

Vs

Kevin Borg – Borg Repairs & Spares

CCT 194/23/MM

Today, 5th November 2024

The Tribunal

Having seen the plaintiff's claim, filed on 30th October 2023, wherein he seeks the sum of two hundred forty-eight euro (€248) which he paid to the defendant for parts and labour of a faulty fridge/freezer.

Having seen that the respondent did not file a reply.

Having seen all the acts and documents of the case.

And having duly considered the testimony given under oath and the submission of the plaintiff.

Considers

The Tribunal notes that the defendnat failed to present a reply but appeared for the sitting of 14 May 2024. However, the defendant abruptly and arrogantly decided to leave the sitting. The

defendnat did not attempt to justify his state of contumacia and is therefore declated to be contumacious.

That from a legal aspect, the Court of Appeal in the matter of **Noel Calleja et v. Middle Sea Valletta Life Assurance**, decided on 29 January 2005 held *"L-istitut tal-kontumacja huwa msejjes fuq il-presuppost li l-imħarrek, bin-nuqqas tiegħu li jwieġeb għax-xilja u t-talba da parti tal-attriċi, ikun wera dispett lejn is-sejħa għall-Qorti biex jidher quddiemha, liema dispett il-liġi tħares lejh bħala għemil li jistħoqqlu piena – dik li ma jkunx jista' jindahal fit-tressiq ta' provi billi dan jammonta għal forma ta' diżordni soċjali. Maż-żmien il-qrati Maltin iddeċidew li r-rigorozita` tal-proċedura għandha tiġi mitigata fis-sens li fejn il-Qorti tkun sodisfatta li ma kien hemm ebda nuqqas volut min naħa tal-persuna mħarrka li jista' jammonta għall-ħtija, m'għandu jkun hemm l-ebda diffikulta` li l-kontumaċja titqies bħala waħda ġustifikata. Di fatti l-ġurisprudenza interpretattiva stabbiliet ċertu fatturi li jirrendu l-kontumaċja mhux ġustifikabbli. Dawn huma fil-każ li l-kontumacja: kienet volontarja jew kolpuża; jew priva minn kawża ġusta; jew mankanza ta' impediment legittimu da parti tal-imħarrek li kien poġġa lill-istess fl-impossibilita` jew f'diffikulta` gravi li jippreżenta n-nota tal-eċċezzjonijiet tiegħu; jew ma kienx każ ta'żball invinċibbli."*

That in the matter of **Market Handle Limited (C-49546) vs. Fahrenheit Freight Forwarders Co. Limited (C – 17421); Elaine Sant Galea u Alfa Company Limited** deċcided by the Civil Court, First Hall on 12 January 2012, held that *"Illi l-prinċipji li jirregolaw jekk il-kontumaċja hijiex bi ħtija jew le, ġew għadd ta' drabi mfissra u elenkati. Il-prinċipji huma li: (a) il-kontumaċja mhix ġustifikata jekk kienet volontarja; (b) jew jekk kienet kolpuża; (ċ) li jeħtieġ li biex tkun ġustifikata tiġi murija raġuni ġusta għas-sudisfazzjon tal-Qorti; (d) liema raġuni ġusta trid tissarraf f'impediment leġittimu; (e) li tali impediment irid ikun indipendenti mir-rieda tal-persuna kontumaċi; minbarra dan, (f) sabiex żball ikun meqjus bħala impediment leġittimu, irid ikun żball invinċibbli b'mod li (ġ) l-impediment leġittimu li jżomm lill-parti milli*

tressaq id-difiża tagħha jrid ikun dak li bnadi oħra ssejjaħ bħala una necessita' impellente di chiamata ad altri doveri imprescindibili; u (ħ) li l-impossibilita' li l-imħarrek jikkontesta t-talba jew li jidher għas-subizzjoni trid tkun gravi u fiżika jew, f'ċirkostanzi eċċezzjonali biss, waħda morali". (Ara wkoll App. Ċiv: 12.12.1975 fil-kawża fl-imsijiet **Paul Grixti vs Direttur tax-Xogħlijiet Pubbliċi**; u l-kawża fl-ismijiet **Joseph Naudi Montaldo noe vs Emmanuel Xuereb** deċiża mill-Prim Awla tal-Qorti Ċivili fis-27 ta' Frar 1995).

That in the matter of **Beacom vs Spiteri Staines** decided by the First Hall, Civil Court, on the 9 December 1993 (Kollez. Vol: LXXVII.iii.195) held *"Illi sa minn dejjem, il-Qrati tagħna qiesu li jagħmlu differenza bejn il-kontumaċja b'tort u dik ġustifikabbli. Huma ssoktaw b'din il-linja wkoll sa dawn l-aħħar żminijiet u għarfu u fissru bejn dik il-parti mħarrka li turi disinteress assolut u l-oħra li turi kull fehma li tikkontesta l-kawża u li ma laħqitx għamlet dan jew ma laħqitx użat il-mezzi li tagħtiha l-liġi għal raġuni li ma kinitx taħti għaliha.* (Ara wkoll il-kawża fl-ismijiet **Francis Cutajar et vs Mariano Farruġia et** deċiża mill-Prim Awla tal-Qorti Ċivili tal-5 ta' Mejju 2011).

Considers

The claimant filed a complaint with this Tribunal, alleging that he paid the defendant two hundred forty-eight euros (€248) for parts and labour, yet his fridge/freezer appliance remained unrepaired. He explained that he initially paid the defendant fifty euro (€50) on 6 March 2023 to cover the cost of a component which needed replacement. The defendant returned on 10 March 2023, replaced the component and the demanded one hundred ninety eight euro (€198).

On 15 March 2023, the plaintiff called the defendant and told him that the appliance was once again working intermittently and the defendant agreed to take the appliance to his workshop for additional repairs. The defendant returned the appliance on 8 April 2023. However, on 15 April 2023, the plaintiff once again called the defendant to inform him that the appliance was still faulty. The defendant took his time to decide on a course of action and eventually on 10 July

2023 the defendant took the applaie to his workshop for a second time, where it has remained ever since. Subsequently, the defendant refused to return the appliance and nor issue a refund and instead asked for additional payments for his labour.

Considers

The Tribunal notes that the plaintiff is credible and has presented documents ossia screenshots of conversations with the defendant and explained in detail the timeline and history of the faults that he experienced.

In the Tribunal's view, the claimant is credible and has successfully substantiated the claim to the degree required by law. Therefore, on the merits, the Tribunal will proceed to rule in favour of the claimant.

Decide

After evaluating the evidence and the legal provisions applicable to consumer rights in Malta, the tribunal finds in favour of the plaintiff. For the reasons set out above, the Tribunal decides and definitively resolves to uphold and accede the plaintiff's request and order the defendant to refund the plaintiff the sum of two hundred forty-eight euro (€248) within two weeks.

Costs to be supported by defendant.

Dr Martha Mifsud LL.D.

Arbiter