ARBITER

Dr. Deborah Schembri

Sitting held on Monday the 17th of June, 2024

Claim Number: CCT89/23/DS

John Snell

Vs

Buena Vista Holidays – Mr Andrew Xuereb as amended to Buena Vista Holidays Ltd.(C76834) – Mr Aaron Xuereb on the 25th of March, 2024.

The Tribunal

Saw the notice of claim presented by claimant on the 2nd of June, 2023 where he asked for compensation to the amount of one thousand one hundred Euro (€1,100) for fraudulent misrepresentation in pictures and description of an apartment he rented during a stay in Malta between the 30th of August, 2022 and the 13th of September, 2022.

Saw that defendant and defendant company originally mentioned in the notice of claim, were notified with the notice of hearing as well as the notice of claim but did not file a reply within the legal time limit;

Saw that, however, after defendant Aaron Xuereb, present at the Tribunal, brought to the Tribunal's attention that the defendant company was wrongly identified on both the notice of claim and the notice of hearing, as was it's representative and after having being reassured that the company was not legally represented by a person with the original defendant's name – Andrew Xuereb, proceeded to reissue the notice of complaint to defendant Aaron Xuereb, who was given the right to reply within the statutory period and in fact replied on the 9th of April, 2024 within the peremptory period of eighteen (18) days;

Saw all the acts of this case;

Heard the evidence given by the claimant and defendant under oath;

Heard the oral pleadings of both parties and/or legal representatives.

Considered

That the claimant confirmed the details of his claim under oath and presented documentary evidence to aid him in his attempt to prove his case to the Tribunal, however, the Tribunal noticed and took under consideration the following issues:

1. Although plaintiff relied on documentary evidence to show the Tribunal pictures from a website representing the rented apartment (Exhibit J), plaintiff also admitted that this website was not the same website on which he had placed his reservation;

2. Plaintiff also admitted that pictures of websites presented as evidence during the proceedings were looked up by himself "*after the holiday*";

3. The only picture of the apartment which can be taken as a representation of what was presented on the website where plaintiff had placed his reservation, **at the time such reservation was placed**, is found in a print out made before the holiday, which was that exhibited as Exhibit A by plaintiff. This shows a picture of a sitting room with closed curtains and a description of the apartment as "Sliema, Central Region, Malta". **This is the only reliable piece of evidence that plaintiff presented when it comes to pictures and description**;

4. No other pictures of the apartment or of its description were presented in the acts except ones from unidentifiable sources or from third party websites downloaded after the holiday ended. The said Exhibits cannot therefore be taken as reliable sources of evidence;

5. From Exhibit A, no description of a seaview apartment can be noticed. This Tribunal has, therefore, not been presented with convincing evidence of misrepresentation given that the view from the balcony was not any different to anything written down in the description of the advertised apartment;

6. Defendant rebutted that the word "seaview" had in fact been removed when construction restricted the seaview and with the removal of the word, so were the pictures showing the seaview removed from the website "VRBO" which is the website the reservation was made on. No proof brought by plaintiff contradicts this statement;

7. Plaintiff complained about numerous issues through emails directly with defendant and/or his company. All such complaints were dealt with expediently as can be noticed from the time stamp of the respective replies. Defendant also seems to have gone out of his way to deal with the TV issue even though this was a self catering apartment and this was seemingly a matter of plaintiff not being able to operate the same;

8. It must be noticed that the most important complaint under scrutiny by this Tribunal regarding the view is conspicuous by its absence in the complaint emails sent to defendant during plaintiff's stay. It is only after plaintiff returned home that any such complaint was put forward, giving this Tribunal reason to believe that had plaintiff truly had expectations of a seaview from the balcony, this would have been at the top of his list of complaints. Such complaint being missing, gives more credibility to defendant's thesis that no such description of a seaview was found in the advertised property on the website the reservation was placed on;

9. Besides the seaview issue, misrepresentation was also claimed with regards to "bedding decorations, colouring, carpets, drapes and hanging lights" however, no evidence, such as pictures of the said items, was presented to this Tribunal showing that the said items were factually different in the apartment they stayed in to the picture shown in Exhibit A, which is, as has been stated before, the only reliable piece of evidence provided by plaintiff. Given that such evidence, which would have been the best evidence in these circumstances, was not presented, this Tribunal has no comparator on which to decide if misrepresentation has indeed occured;

10. Issues such as not having enough pegs, oven mittens not being provided and informative leaflets not being left in the apartment, although possibly being items that were expected by plaintiff, have nothing to do with 'fraud' which is what plaintiff chose to base his case upon as can clearly be seen in his notice of claim which *verbatim* states "we feel that our claim for €1,100 is reasonable in view of the fraud and the considerable time and effort we have spent trying to resolve this issue";

11. Plaintiff has also not provided this Tribunal with a breakdown of calculations for the amount claimed;

12. The Tribunal notes that defendant and/or defendant company have tried their best to ensure that plaintiff's complaints be seen to in a timely manner and helped out even when they were not necessarily expected to, such as with the

TV issues and changing the toaster which was functioning though it had apparent and expected wear and tear;

Decision

Therefore, for all the reasons mentioned above, after having analysed the documents, after having consulted Chapter 378 of the Laws of Malta, and after having considered all the circumstances of the case, this Tribunal considers that the applicant did not prove his case sufficiently and to the degree required by the law and therefore according to merit and substantive justice as well as according to equity feels that his request should be not acceded to.

For these reasons, the Tribunal decides this case by rejecting the request of the claimant *in toto*.

Costs are to be borne by the plaintiff.

Deborah Schembri
B.A. (Leg. & Hum. St.) (Melit.),
P.G. Cert. (Parental Alienation)(IFT-Malta),
M.A. (Bioethics) (Melit.), LL.D. (Melit.),
Adv. Trib. Eccl. Melit.

Arbiter