ARBITER

Dr. Deborah Schembri

Sitting held on Tuesday the 19th of November, 2024

Claim No: CCT45/23/DS

Olusegun Jacob Akanji

Vs

Luxury Living Technologies Ltd.

The Tribunal

Saw the notice of claim presented by claimant on the 9th of March, 2023 where he asked for the sum of five hundred Euro (€500) refund for the deposit made on the 30th of August, 2022 with regards to the purchase of solar panels and additional expenses incurred as well as for the rescission of the agreement entered into with defendant company.

Saw that the defendant company, duly notified with the notice of hearing as well as the notice of claim, filed a reply on the 11th of May, 2023;

Saw all the acts of this case;

Heard the evidence given by the witnesses under oath.

Heard the final pleadings by the parties.

Considered

That from the evidence it appears that the claimant confirmed the details of his claim under oath and added to the information given in the same as well as presented documentary evidence.

Defendant company filed a reply where it explained that the claim was unfounded in law and in fact and that therefore it should be rejected in toto.
The facts of the case are briefly as follows. Claimant ordered a set of solar panels from defendant company and paid what he claims to have been a five hundred Euro (€500) deposit. A receipt was given to him which indicated the said five hundred Euro (€500) as being money paid for 'Audit Fee for PV Panels', a detail claimant states escaped him when he first got the receipt. He states that he was never informed there would be an audit and that such an audit would cost him money and that he was always led to believe that what he paid for was a deposit for the PV Panels. He states that he had decided to get the PV Panels because they were going to be subsidised by government and in fact he had been sent an explanatory email by a certain Mr Daniel Sullivan on behalf of the company on the 7/8/2022 stating that *"Your deposit is a minimum of Euro 500 and the government grant will be Euro 3,000. Lastly your monthly payment will be Euro 150 over a period of 36 months"*.

Claimant started communicating with various people on behalf of the company amongst whom Mr Jean Paul Busuttil, Mr David Melino and Ms Laura Vassallo after that as Mr Sullivan was no longer in contact with him. Claimant states that he was at first informed that government had not issued the grant only to let him know at a later stage that the grant was actually available but was not an option for him since he chose to pay by installments. This perplexed him because he had never consided any other option but payment by installments. It seems that he has been given different payment options by different people at different stages, none of which resulted in what he believed he negotiated initially, which was subsidised PV Panels. He also states that *"although the solar panel had been approved in terms of eligibility of a Feed -in Tariff, no application had been made on my behalf for the government grant."*

Mr Carlo Mifsud, director of defendant company took the stand and explained the difference between the different available government schemes stating that claimant at first opted for the 'grant for PV' which does not allow for payments by installments and later changed his mind. Asked by the Tribunal why was a new contract not drawn up when there was an agreement to change schemes he stated that there was no need as all that needed doing was payment by instalments. Mr Mifsud was also questioned about payment of installments as these did not tally with the amount put down in the quotation which required payment in cash, Mr Mifsud was unable to answer and resorted to stating that '*the whole point remains that the audit fee was paid for an audit which happened and needs to be paid for.*'

Mr Mifsud interestingly stated the following with reference to the Quotation dated 14th July, 2022 which he presented in evidence:

"there is refernce to the fact that a deposit cannot be made in favour of the company before the acceptance of the application by REWS.

As far as I know Mr Akanji did not want to continue with the installation but although we have not asked for the balance to be paid or insisted on the installation of the panels or in general with the execution of the contract, the company has been sued for the €500 audit fee."

Under cross examination claimant also stated that he got to know that payment by installments did not exclude him from benefitting from the government grant because his application could have been done under 'domestic' as it was single fase and therefore the payment by installments exclusion would not have applied.

Given the above claimant is asking for the five hundred Euro (€500) he paid as 'deposit' and has asked this Tribunal to rescind the contract.

Further Considered

That in the case in question one thing is amply clear and that is that at no point in time did clarity about anything regarding this agreement prevail. This Tribunal has listened attentively and examined the evidence produced by both parties and hold the following the be the salient legal aspects on which the decision needs to be taken.

First of all it has been made clear from the start that claimant was pursuing the sale on the basis of payment by installments. He was also told that there would be a five hundred Euro (€500) deposit which later transpires could not have been asked for without going against the Conditions Regulating Sale, that is, the clauses in small print on the bottom of the quotation which read '*I confirm that NO deposit will be accepted prior to the issue of grant offer, and that payment in cash or other untraceable means will not be accepted.*' This Tribunal is convinced beyond reasonable doubt, which is a standard of conviction higher than that required in civil matters, that in order to bypass this condition, defendent company not so cleverly termed what was effectively a deposit an 'Audit Fee for PV Panels'. This audit fee does not in fact feature in the quotation presented as evidence by the very company in question and the Tribunal is convinced that it was never mentioned to the client either since he was given the impression (in writing) that the five hundred Euro (€500) to be paid was a deposit.

On inspection of the '*Application for the authorisation/ notification to construct a photovoltaic installation of capacity greater or equal to 1kWp but less than 40 kWp and to request operating aid'* which was submitted by the company on behalf of the client there is in fact stipulated under clause 4.1(e) that there has not been any start of works prior to submission of the application. In this context '*start of works'* includes '*the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible*.' This explains why the company felt the need to put down in the quotation document that 'no' deposit will be accepted prior to issue of grant offer and also why the said company tried to secure a deposit, without calling it so, under the pretence that it was payment for an Audit Fee.

To add to the Tribunal's conviction, Mr Mifsud also stated that "*It was made clear that the audit fee would eventually be deducted from the final price assuming that the contract would be followed through.*" This confirms that although the VAT receipt read 'Audit Fee for PV Panels' the payment made was part payment of the whole amount due as per quotation mentioned, which quotation did not mention any audit fee at all. The Tribunal will therefore, going forth consider the said payment as a deposit.

This payment was made on the 30th of August 2022 vis a vis the agreement evidenced by the quotation dated 14th July, 2022. It is abundatly clear from the evidence presented that this agreement was made redundant by the parties who explored various other options of payment. Most certainly it cannot be held binding by the defendant company since it was agreed on the premise that a grant could be obtained when in fact it could not, according to the deposition of the director of the said company. The reason for this exclusion was based on payment by installments, when it has been proven that payment by installments is what was always intended to be the preferred payment method by the complainant, information the company was well aware of.

Given all of the above, the fact that there has not been clarity regarding payment terms for offers made after the quotation was given, given that not even the director of the company could explain such payment terms and how they tallied with the amounts quoted and the fact that goal posts kept unilaterally being changed at each point putting the claimant in a more vulnerable position and given that the Tribunal also took into consideration that the very director Mr Mifsud implied that the company had no intention of pursuing enforcing the agreement's execution it is the opinion of this Tribunal that there is no binding agreement to date between the two parties to this case.

Given that a deposit is part payment of the whole amount and is only non-refundable when the payment for the whole amount is due, this Tribunal is of the opinion that

such deposit deceptively termed 'Audit Fee for PV Panels' is to be returned to the claimant.

Decision

Therefore, for all the reasons mentioned above, after seeing the documents, seeing Chapter 378 of the Laws of Malta, and after considering all the circumstances of the case, this Tribunal considers that the applicant proved 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 accepted in its entirety.

For these reasons, the Tribunal decides this case by accepting the request of the claimant and by condemning the respondent company to reimburse claimant the amount of five hundred Euro (€500) as well as by condemning the same company to pay the sum of fifty Euro (€50) to the said plaintiff as moral damages for the inconvenience caused to him by the whole ordeal. The Tribunal further decides that any agrement between the two parties is to be taken as having been rescinded.

With costs to be borne by respondent company.

Deborah Schembri
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Arbiter