

MALTA

Fit-Tribunal tal-Konsumatur

CCT/168/17/S

Anna Diehl

vs

Mecca Enterprises Limited

Today, 22 of February, 2018.

The Tribunal,

Took cognizance of the Notice of Claim filed by Anna Diehl on the 25th of September, 2017 as well as the Reply filed by Mecca Enterprises Limited on the 17th of October, 2017;

Having examined the documentation filed by the parties, heard the parties and took cognizance of the relative witness statements;

Considered:

That in the Notice of Claim, the claimant essentially stated the following:

- That she paid nine hundred and ninety-five Euros (€995.00) for a new canopy for her boat;
- That two weeks after having installed the canopy on her boat (the boat being at sea), it developed rust;
- That the canopy was not new and had been treated with anti-rust acid prior to being sold to her;
- That the canopy was made of low-quality stainless steel which steel was not truly stainless and therefore, the canopy was unsuited to boats which operated in seawater; and
- That at speeds over four knots (equivalent to 7.4 kilometres per hour), the canopy flew off.

That in its Reply, the defendant company essentially stated the following:

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- That it had sold the boat and all other components to the claimant;
- That the claimant never informed them that there were any problems with the canopy;
- That the company inspected the boat and took pictures;
- That the company admitted that the stainless steel was not of good quality and for that reason, the company offered her a replacement canopy; and
- That in order to make up for the relative damage, the company supplied a canopy with stand-up supports worth two hundred and forty-five Euros (€245.00) free of charge.

That the claimant filed an *ex parte* report which she commissioned from Oceanus Marine Ltd to carry out. This report concluded that *"the material used for the frame was of a poor quality or of a non-marine type grade of stainless steel"*;

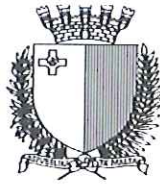
That the records of the case contain a document which appears to be the work of the claimant in which she asked for the eighty Euros (€80.00) which she paid Oceanus Marine Ltd to be refunded. This document is unsigned and undated;

That during the sitting held on 30th November 2017, the claimant confirmed her Notice of Claim on oath as well as that she had commissioned the company Oceanus Marine Ltd to draw up an *ex parte* report;

That during the same sitting, Mr Nikol Chetcuti testified on behalf of the defendant company wherein he confirmed that the relative canopy had been changed. He also testified that the company had regular contact with the claimant as she used to visit their shop almost every week;

That first of all, Mr Chetcuti's testimony regarding regular contact between the company and the claimant contradicts the company's own statement of defence in which it stated that the claimant never complained to them. If one is to believe Mr Chetcuti's testimony that the claimant visited their shop regularly, it is difficult for the Tribunal to believe that no complaint, even if merely verbal, was ever made;

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That essentially, the company failed to contradict the *ex parte* report in any way and also failed to contradict the claimant's allegation that the steel of the canopy was of low quality;

That with regard to the claimant's claim with regard to the eighty Euros (€80.00) allegedly paid for the *ex parte* report, the Tribunal observes that as this amount was not included in the original claim, it cannot be awarded should the Tribunal decide in the claimant's favour;

That although the claimant presented no evidence that she had sent a registered letter as required by Art. 79(2) of Cap. 378, her unchallenged testimony to this effect is being taken as sufficient evidence;

That although no evidence was presented to prove that the relative notification was served on the trader within two months as per Art. 79(1) of Cap. 378, the Tribunal observes that the defendant company raised no plea in this respect;

That therefore, the Tribunal is convinced that the claimant's claim deserves to be upheld.

Decision

Therefore, for the reasons explained hereinabove, after having seen the provisions of Chapter 378 of the Laws of Malta and with due regard to the circumstances of the case, the Tribunal upholds the claimant's claim and orders defendant company to change the canopy and provide claimant with a new as confirmed in the company's reply.

The Tribunal further orders that the parties are to bear their own respective expenses in connection with this case.

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Richard Sladden Av.
Arbiter