

MALTA

In the Consumer Claims Tribunal

Adalberto Goncalves Amorim et

vs

Zekka Enterprises

CCT 56/16/MS

17th April 2017

The Tribunal

Having seen the application filed by applicants on the 10th March 2016 claiming the sum of four hundred Euro (€400.00) in respect of a watch sold by defendant company, which applicant claims is defective and does not keep proper time.

Having seen the reply filed by defendant company on the 22nd March 2016 whereby it refuted applicants' claim as unfounded in fact and at law and claimed that the watch was sold in a good working condition.

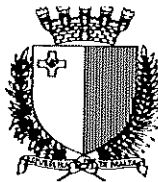
Having seen the note verbal of the 24th January 2017, whereby the Tribunal felt that in the best interest of justice, an independent technical expert should be appointed to examine the watch in question.

Having seen that in spite of all its efforts, no expert was prepared to take on the brief.

Having seen the Tribunal's decree of the 7th March 2017 inviting the Parties to suggest an expert of their choice and informing them that in the absence of such, it would have no alternative but decide the case according the evidence tendered so far.

Having seen that no expert/s were brought forward by the Parties.

Having seen the records of the case and heard the evidence.



Considers.

That on 17 August 2015 plaintiffs purchased a Bulova watch from defendant company for the sum of four hundred Euro (€400.00) Plaintiff Lilian Mendes claims that after her husband used the watch for a few days, he noticed it was not working properly and was running an hour late. The watch was returned to the shop for inspection on the 24th September (Dok BRC) for repairs and the comment 'one hour slow' is noted. The watch was returned to plaintiffs with defendant claiming that it was in perfect working order.

Plaintiffs claim that the problem persisted and the watch was once again returned to defendant on the 22nd October 2015 for repairs and the note '30 minutes slow every day' can be observed. (Dok BRC). Plaintiffs insisted that the watch was to be inspected by a technician and approximately two weeks later it was returned to them. The problem recurred and the watch was returned to defendant on 13th November 2015, with the note '15 minute backwards'. (Doc BRC). Defendant company still could not find anything wrong with the watch. By the fourth time the watch was returned, patience on the part of both parties was wearing thin and the police were eventually called in. Further attempts to resolve the matter proved futile.

Considers

That although the watch was purchased in mid-August, it was not until the end of September that it was returned to the defendant company for repair. This conflicts somewhat with plaintiff Lilian Mendes' testimony that the watch started to malfunction a few days after purchase and was returned.

"It was brand new when we bought it. After a few days he was using the watch and noticed that the watch was not working properly and was running late. We returned to the shop to see what was going on ..."  
(Testimony: 23rd May 2016)

If the watch was not working properly a few days after purchase, why wait over a month to return to the shop?

The Tribunal is more inclined to believe the timeline and chronology suggested by defendant - namely that plaintiff purchased the watch and then returned 'sometime after' asking to change the watch to a different model (without complaining about the watch then) and subsequently returned about a week later complaining that the watch was not keeping good time.

That, quite apart from the fact that there seems to have been a communication breakdown between the parties which the Tribunal will not enter into, after having considered the testimony carefully, the Tribunal feels that not enough evidence was brought forward by plaintiff to prove that there was something intrinsically wrong with the watch. The free lance (and only technician) called upon by defendant company, Clifton Friggieri, examined the watch three times during the period October/ November 2015.



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The watch was even put through a simulator and, according to him, continued working well. No evidence of any malfunction was ever found by defendant company.

In spite of this, plaintiffs insisted that the watch was not keeping proper time. The Tribunal unfortunately has only their word for it and if as they claim, it was not keeping proper time, there is no evidence that this was due to a malfunction. The Tribunal refers particularly to the evidence tendered by plaintiff Alberto Amorim, who, under cross examination, stated:

“I would also like to point out that when I was not wearing the watch, it would run properly, but when I wore it, it didn't.” (Testimony 23rd May 2016)

This would explain why the technician never found any fault with the watch in question. This statement also suggests that there was nothing intrinsically wrong with the watch and it was therefore incumbent on the plaintiffs to prove the source of the malfunction. Unfortunately this was never done.

The Tribunal also refers to its decree of the 7th March 2017 where it gave both parties the opportunity to suggest the name of an independent expert, which opportunity was not taken up by plaintiffs. It appears that two or more attempts to notify plaintiffs proved futile. The Tribunal has no way of knowing whether plaintiffs are still in Malta or whether they have simply moved premises or whether they ignored the notice. It is in the interest of plaintiffs to follow their case assiduously, inform the Tribunal of any changes to their home address and to make the necessary enquiries regarding their case either directly or through a lawyer of their choice.

The Tribunal feels that plaintiffs did not reach the level of proof required by law for a successful conclusion of their claim. No evidence was brought forward to prove on a balance of probability that there was anything wrong with the watch in question.

For these reasons, the Tribunal rejects plaintiffs claim.

With costs.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

Michela Spiteri LL.D  
Arbiter