



CCT/225/15/S

Anna Galea
Vs
Mirage Holdings Ltd

Illum 20 t'Ottubru, 2016.

It-Tribunal,

Ra t-talba ta' Anna Galea pprezentata fit-18 ta'Novembru, 2015 u r-risposta tas-socjeta Mirage Holdings Ltd ipprezentata fit-30 ta'Novembru, 2015;

Ra d-dokumenti varji pprezentati inkluz ir-rapport tal-espert tekniku l-Inginier Emmanuel Scerri u sema' lill-partijiet;

Ikkunsidra

Illi fi ftit kliem din il-pendenza tirrigwarda 'fridge freezer' tat-tip Mercury li allegatament taghmel l-ilma filwaqt li s-socjeta intimata taghti bhala raguni ghal din is-sitwazzjoni l-umditata li skont hi hemm fejn tinsab din il-'fridge freezer';

Illi fil-mertu, jinghad mal-ewwel li jekk din il-'fridge freezer' taghmilx ilma jew le u jekk fl-affirmattiv, ghal liema raguni, hi materja teknika u kien ghalhekk li tqabbd l-espert l-Inginier Emmanuel Scerri ghal dan il-ghan;

Illi fid-decizjoni moghtija fid-19 ta'Novembru, 2001 fl-ismijiet "Calleja vs Mifsud" il-Qorti tal-Appell argumentat li :

"...Kemmm il-kostatazzjonijiet tal-perit tekniku nominat mill-Qorti kif ukoll il-konsiderazzjonijiet u opinjonijiet esperti tieghu jikkostitwixxu skond il-ligi prova ta'fatt li kellhom bhala tali jigu meqjusa mill-Qorti.

Il-Qorti ma kienitx obbligata li taccetta r-rapport tekniku bhala prova determinanti u kellha dritt li tiskartah kif setghet tiskarta kull prova ohra.

Mill-banda l-ohra pero, huwa ritenut minn dawn il-Qrati li kellu jinghata piz debitu lill-fehma teknika ta' l-espert nominat mill-Qorti billi l-Qorti ma kellhiex leggerment tinjora dik il-prova...";

Illi jigi sottolineat li dan it-Tribunal, kif obligat li jaghmel, gharbel minn lenti kritika r-rapport tal-espert pero ma ra ebda lok li jiskartah anzi jaghmlu tieghu in toto;

Illi l-espert tekniku nominat minn dan it-Tribunal kien car fil-konstatazzjonijiet tieghu u cioe li *"...the water droplets present inside the appliance has been witnessed by the undersigned on more than one occasion.*

Although the appliance is partly housed in the kitchen cupboard, good ventilation ways have been provided for air circulation around the appliance.

This, as already been indicated above in this report.

The ventilation provisions for this fridge have not been contested during the investigations by the engineer.



MALTA

It is the opinion of the undersigned that although the seller is claiming that there is high humidity at the location where refrigerator is placed at the residence of Mrs. Galea, to the best assessment of the undersigned made during the above specified visits, the appliance was located in a normal residential ambience, in a normal household.

In this respect the existing environment for the fridge should not affect the fridge performance..."¹

Illi skont l-espert tekniku, il-'fridge freezer' ma tistax tintuza' ghall-iskop li hi mahluqa fl-istat prezenti taghha;

Illi l-konkluzjonijiet tal-espert huma s-segwenti u cioe "the high humidity and the water forming inside of the appliance are not normal and effects negatively the fridge performance.

In this respect the fridge cannot be used successfully to store food.

This renders the appliance as not fit for purpose and required an immediate intervention to make it suitable, unfortunately this has not happened and the fridge cannot be used successfully in its present state";²

Illi l-Qrati taghna kemm-il darba esprimew rwiehhom li l-konkluzjoni ta' espert m'ghandhiex tigi skartata b'mod legger;

Illi fil-fatt il-Qrati taghna ma jistawx jinjoraw relazzjoni peritali sakemm ma jkunux konvinti li l-konkluzjoni ta'tali relazzjoni ma kinitx gusta u korretta u din il-konvinzjoni trid tkun wahda motivata minn gudizzju ben infurmat, anki fejn mehtieg mill-lat tekniku³;

Illi kif inghad mill-Qorti tal-Appell fid-decizjoni moghtija fit-23 ta' Gunju, 1967 fil-kawza fl-ismijiet "Bugeja et vs Muscat":

"...Il giudizio dell'arte espress mill-perit tekniku ma jistax u m'ghandux, aktar u aktar fejn il-parti interessata ma tkunx ipprevaliet ruhha mill-fakolta lilha moghtija ta'talba ghan-nomina ta' periti addizzjonali, jigi skartat facilment, ammenokke ma jkunx jidher sodisfacentement illi l-konkluzjonijiet peritali huma, fil-kumpless kollha tac-cirkostanzi, irragonevoli...";

Illi tenut kont tac-cirkostanzi tal-kaz, it-Tribunal jaghmel tieghu il-konkluzjonijiet milhuqa mill-espert mahtur minn dan it-Tribunal;

Illi konsegwentement fic-cirkostanzi tal-kaz, dan it-Tribunal ihoss li t-talba tar-rikorrenti ghandha tigi milqugha;

Ghaldaqstant ghar-ragunijiet fuq spjegati u fic-cirkostanzi tal-kaz u wara li ra l-Kap 378 tal-Ligijiet ta'Malta, it-Tribunal Jaqta' u Jiddeciedi billi Jilqa' t-talba ta' Anna Galea filwaqt li Jichad l-eccezzjonijiet tas-socjeta Mirage Holdings Ltd u Jordna lis-socjeta intimata sabiex fi zmien hmistax-il jum tikkonsenja minghajr hlas 'fridge freezer' gdida bl-istess specifikkazzjonijiet bhal dik fil-kaz in ezami u dan ghas-sodisfazzjoni tar-rikorrenti, bl-ispejjez

¹ Pagni 10 u 11 tar-rapport imhejji mill-espert tekniku l-Inginier Emmanuel Scerri.

² Pagna 11 tar-rapport imhejji mill-espert tekniku l-Inginier Emmanuel Scerri.

³ "Cauchi vs Mercieca" deciza mill-Qorti tal-Appell fis-6 t'Ottubru, 1999 u "Calleja noe vs Mifsud" deciza mill-Qorti tal-Appell fid-19 ta' Novembru, 2001.

TRIBUNAL GHAL TALBIET
TAL-KONSUMATUR



CONSUMER CLAIMS
TRIBUNAL

MALTA

kollha relattivi ghal dawn il-proceduri inkluz dawk tal-espert tekniku,
jithallsu mis-socjeta Mirage Holdings Ltd.

A handwritten signature in blue ink, appearing to be 'RS', written over a horizontal dashed line.

Richard Sladden Av.
Arbitru