



Shannon Elizabeth Farrell

vs

Jos. Camilleri Optician

Today 13th April 2016

The Tribunal

After taking into consideration the claim in the above-cited names presented on the 17th November 2015, whereby the claimant asked for a refund in the amount of one hundred and forty three Euro (€143.00), in representation of the amount which she paid the respondent for a pair of spectacles, the lenses of which were not made in accordance with the relevant prescription.

The respondent presented a reply in writing to the claim at hand, and attended the sitting.

That after having heard the testimony on oath of the claimant, who testified in person, and after having heard the testimony on oath of the respondent, and after having taken into consideration all the facts and circumstances pertaining to the case;

Considered the following:

The claimant submitted in writing that:-

What is being claimed is the amount of one hundred and forty three Euro (€143.00), and the facts of the case are as follows:

1. Spectacle prescription resulting from examinations by Dr Amy Sara Camilleri and Mr Martin Camilleri;
2. At the request of Mr Camilleri a further examination by Dr Martin Francalanza of the Orthoptics Clinic, Mater Dei. Dr Francalanza's revision of the Camilleri prescription;
3. To claimant's knowledge, long-vision spectacles were ordered by 'Jos. Camilleri Optician' after Dr Francalanza's revision had been received by the optician. However, immediately upon the first day of wearing the new spectacles, claimant started having

problems such as dizziness and eye fatigue. Claimant reported these problems to Mr Martin Camilleri who claimed that her brain just needed time to adjust to the new spectacles. However, the problems did not disappear. Upon returning to Canada, claimant experienced such difficulty driving her car that she was obliged to visit another optician. Mr Luke Orsini studied both the revised prescription and the Maltese spectacles. He then ordered another pair of long-vision spectacles in keeping exactly with Dr Francalanza's instructions. This 'Canadian version' of the Maltese prescription has proven excellent.

In conclusion, the Maltese spectacles bought in Malta cost claimant one hundred and forty three Euro (€143.00). Those bought in Canada cost her the equivalent of two hundred and five Euro and ninety cents (€205.90). Claimant believes that the least respondent could do would be to reimburse her for spectacles which caused her much trouble and suffering before she finally realised that she cannot wear them.

The claimant exhibited accompanying documentation.

The respondent submitted in writing that:-

He is disputing the claim being made against his firm as regards the refund of one hundred and forty three Euro (€143.00) to the claimant. He is not contesting the price of one hundred and forty three (€143.00) for the spectacles in question, however he is contesting the request to reimburse such amount on the claim that the spectacles are not according to Mr Francalanza's Rx, for the following reasons:

1. Adjustment period advised in view of large changes to claimant's old spectacles;
2. No complaints of "dizziness and eye fatigue" prior to claim to board nearly two years ago;
3. First attempted claim for refund: Glare mistakenly attributed to absence of Anti-Reflection Coating (ARC). Canadian spectacles also without ARC;
4. Claimant comparing semi-IPDs, indirectly confirming correctness of spectacles dispensed by respondent.

The respondent exhibited accompanying documentation.

The Tribunal notes that:-

After hearing the parties, the Tribunal takes into consideration that in her testimony under oath, the applicant confirmed her written claim.

The claimant exhibited an affidavit of Albert Azzopardi, marked as Doc.AA1; a report by Canadian optician, Luke Orsini, marked as Doc.LO1; two documents which she used to help her in her testimony *viva voce*, marked as Doc.SF1 and Doc.SF2; as well as a copy of receipt, marked as Doc.SF3.

The claimant exhibited the spectacles in question *animo ritirandi* during the sitting.

The Tribunal also takes into consideration, that the respondent confirmed his written reply whilst testifying under oath.

The respondent exhibited a letter signed by Mr Martin Francalanza, marked as Doc.JC1; a document representing the British Standard, marked as Doc.JC2; an operation instruction document regarding the Pupilometer, marked as Doc.JC3; a letter dated 31st July as sent by the claimant, marked as Doc.JC4; as well as written notes which he used to help him in his testimony *viva voce*, marked as Doc.JC5.

The Tribunal notes that notwithstanding the fact that during claimant's testimony under cross-examination it resulted that she has already been refunded the amount of sixty five Euro (€65.00) by her insurance company for the spectacles in question, claimant refused to amend her claim by reducing such claim to read seventy eight Euro (€78.00) rather than one hundred and forty three Euro (€143.00).

The Tribunal heard the parties' final submissions.

For the above reasons:

The Tribunal, after taking into consideration all of the above, concludes that notwithstanding claimant's original claim, absolutely no evidence was brought forward to substantiate the like. In both her written claim, and her testimony *viva voce*, claimant made reference to various third parties, who she however, made no attempt to summon so as to testify under oath – thus amounting to hearsay evidence at best. It is clear, that the only evidence presented by the claimant was the fact that after a substantially long period of time, her eye condition worsened, thus giving rise to the necessity of a new eye examination and corresponding prescription. With all due respect, such evidence holds no bearing on the claim at hand, seeing as the said claim is one regarding the fact that the spectacles in question were not made in accordance with the prescription as issued by a third party. The Tribunal concludes that the respondent in no way lacked the claimant in the provision of his services. The Tribunal is thus rejecting the claimant's claim, due to lack of evidence, with the expenses of the case to be borne by said claimant.



Avv. Gabrielle Buttigieg
Arbiter