



Suzana Darmanin

vs

International Trading Company Ltd.

Today 7th September 2016

The Tribunal

After taking into consideration the claim in the above-cited names presented on the 18th January 2016, whereby the Claimant asked for a refund in the amount of four hundred and sixty Euro (€460.00), in representation of the amount which she paid the Respondent Company for a fridge/freezer, which fridge/freezer resulted to be defective.

The Respondent Company 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 Company, and after having taken into consideration all the facts and circumstances pertaining to the case;

Considered the following:

The Claimant submitted in writing that:-

On the 11th May 2015, Claimant purchased a brand new built in fridge/freezer from the Respondent Company. After a week, the glass shelves were full of water drops, which were continuously dripping on the food, spoiling all the refrigerated items. Consequently, Claimant ended up throwing away most of the refrigerated food items. Claimant immediately contacted the local agent, namely the Respondent Company, and was advised to regulate the dial temperature on level 2 and wait for two to three weeks and to concurrently also check whether or not the fridge/freezer doors were closing properly. Nevertheless, the same problem persisted. Therefore, Respondent Company sent out their technician to test the said fridge/freezer and he stated that when the fridge is opened, hot air was getting trapped inside the fridge. He also stated that the hot weather could possibly be causing the said condensation, however, Claimant

had a similar built in fridge/freezer installed in the same place for sixteen years and it never manifested similar problems.

Following this saga, Claimant got an independent technician who concluded that during the manufacturing process, a fault occurred possibly during the injection of insulating foam, or that there wasn't the right amount of refrigerating gas within the system.

Claimant again contacted Respondent Company and informed it that the problem was persisting. Respondent Company suggested that its technician and Claimant's technician were to meet on site and come to a solution of the existing problem. After a heated discussion, Respondent Company's technician stated that the ambient room temperature in Claimant's kitchen was too high and suggested that fridge/freezer be removed from the built in cupboard and left near the yard door for a couple of weeks for better ventilation. However, notwithstanding the suggested action, which was implemented by Claimant, the same problem remained, so the conclusion according to Claimant's technician is that fridge/freezer is inherently faulty.

The Claimant exhibited accompanying documentation.

The Respondent Company submitted in writing that:-

On the 18th June 2015, its technician went on site after Claimant had complained about condensation in her fridge/freezer. No defect was found, however the cause of the condensation was found to be coming from the lack of ventilation in the room. It was agreed that the fridge/freezer was to be taken to Respondent Company's workshop to be checked on the basis of this condensation. Claimant had visited workshop many times and never found condensation in the said fridge/freezer.

The Tribunal notes that:-

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

The claimant exhibited a VAT receipt for the amount of four hundred and sixty Euro (€460.00), marked as Doc.SD1; two emails, marked as Doc.SD2 and Doc.SD3; together with a set of three photos, marked as Doc.SD4.

Simon Darmanin, as produced by the Claimant, testified under oath.

The Tribunal also takes into consideration, that the Respondent Company confirmed its written reply whilst testifying under oath.

The Respondent Company exhibited a document showing that fridge/freezer can be adequately used in the Maltese climate, marked as Doc.ITC1; together with a batch of correspondence, marked as Doc.ITC2.

Jack Francica, as produced by the Respondent Company, testified under oath.

The Tribunal, in accordance with Regulation Number 11.9 of Subsidiary Legislation 378.01, appointed Consultant Engineer Emmanuel Scerri as Technical Referee.

The Tribunal heard the parties' final submissions.

For the above reasons:

The Tribunal, after taking into consideration all of the above, chooses to rely on the findings in the appointed Technical Referee's report, wherein it was concluded that: "*...the high humidity and the water forming inside of the appliance is 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 the 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.*" The Tribunal thus concludes that the Respondent Company lacked the Claimant in the provision of its services, and thereby is accepting the Claimant's claim, and ordering the Respondent Company to take back the fridge/freezer in question and pay the Claimant the amount of four hundred and sixty Euro (€460.00), with the expenses of the case to be borne by the Respondent Company.



Avv. Gabrielle Buttigieg
Arbiter