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In the Consumer Claims Tribunal.

Application No. CCT G 11/12 (JE).

Marshall Dixon.

vs

Homemart Domestic Appliances Ltd., Phoenix
Domestic Appliances Ltd. and Ventura General Gas
Ltd.

Today, 24 February 2014.

The Tribunal,

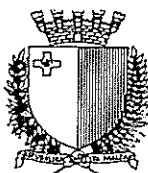
Having seen the claim of Marshall Dixon of 24 September 2012 wherein he stated that he had purchased a Phoenix gas cooker from Joseph Cremona, owner of defendant company Homemart Enterprises Ltd in July 2009 for the price of € 430 with the cooker being finally commissioned on 10 August 2009. Plaintiff claims that the cooker has since proven to be defective on several counts. Firstly, the clockwork timer had to be replaced because it was inaccurate. After a number of phone calls, it was replaced but the substitute was less accurate than the original timer. Plaintiff also complained that the glass lid over the hob does not sit in the vertical position and leans forward over the hob. After many calls, a technician from Phoenix Domestic Appliances Ltd came over to replace the hinges but he did not have the right hinges and left with a promise to return with the correct parts but never did so.

Plaintiff asserted that the most serious problem with the cooker was the oven thermostat which does not function and the oven does not maintain a "steady" temperature. There is only one level of temperature - maximum which renders the the cooker virtually useless. Plaintiff also stated that the insulation is also useless as when the oven is in use, the items kept in the drawer beneath become too hot to handle and in summer, the temperature in the kitchen becomes unbearable.

Plaintiff has had the cooker for three years but it hardly has been used and is not fit for the purpose that it was bought. There has been no attempt on the part of the suppliers to remedy the various shortcomings. Thus, plaintiff is seeking a full refund of the purchase price.

Having seen the pleas of defendant company, Phoenix Domestic Appliances Ltd. which after premising that it had ceased operations on 31 October 2009, stated that it had continued to service products that were still covered by a warranty and that on the door of its shop there was an indication how clients could make contact to obtain a service or in case they needed a spare part. It

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also stated that the Consumer Affairs Department had been duly informed of the foregoing in October 2009. However, plaintiff never contacted it to request the services of a technician during the warranty period. Said defendant company argued that just as it was served with the present claim, it could have been contacted for servicing. Thus, it contended that the present claim was made after the expiry of the warranty period and cannot be entertained.

Having seen the pleas of defendant company Ventura General Gas Ltd that it was non-suited as the cooker in question was sold by Phoenix Domestic Appliances Ltd which had also extended a warranty.

Having seen the pleas of Homemart Enterprises Ltd that :

(a) preliminarily, it is non-suited as it was just the retailer and did not extend a warranty on the sold product or services under said warranty, said warranty being granted by third parties which had supplied the product in question;

(b) without prejudice to the foregoing, the original warranty period was of two years and said period has long expired as plaintiff himself has recognized in his claim;

(c) without prejudice to the foregoing, once plaintiff is alleging latent defects in the cooker in question, the present action has been time-barred after the lapse of six months from the day such a defect was discovered or ought to have been discovered, which plaintiff himself acknowledged that it must have at least been in 2009;

(d) in any case, the present claim is legally unsustainable in line with extensive case-law which holds that a buyer cannot continue using the object that has been sold without returning it or depositing it under the authority of the court and at the same time, file the actio redhibitoria or the actio aestimatoria and

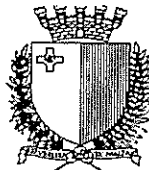
(e) without prejudice to the foregoing, defendant contested the facts alleged by plaintiff who has been using the cooker for three years but is now claiming full refund of the purchase price.

Having seen that plaintiff has ceded the case in respect of Ventura General Gas Ltd in the sitting of 6 December 2013.

Having seen the evidence produced by the parties and that the parties made aural submissions in the sitting of 6 December 2013.

Having considered.

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That plaintiff has bought a cooker from defendant company Homemart Enterprises Ltd. which was acting as sub-agent of the other defendant company, Phoenix Domestic Appliances Ltd.;

That upon the sale of said cooker, plaintiff had entered into a warranty agreement for parts and labour for a two year period commencing on 10 August 2009 with said defendant company, Phoenix Domestic Appliances Ltd. (Doc. MD1).

That the existence of said warranty agreement puts the beneficiary in a more advantageous position than that established at law (section 82 of Cap.378). Said guarantee also imposes on the trader the duty to observe the terms and conditions of the commercial guarantee "as if he were the guarantor" (section 84 of Cap. 378) and this to the exclusion of other parties. Thus, the other defendant company Homemart Enterprises Ltd has no liability towards plaintiff once the exclusive liability for shortcomings in the product has been assumed by the other defendant company, Phoenix Domestic Appliances Ltd.;

That it has to be established whether plaintiff availed himself of the remedies available under the warranty agreement within the agreed two year period or not;

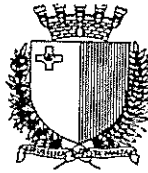
That defendant company, Phoenix Domestic Appliances Ltd. is disputing plaintiff's claim as it was filed beyond the period of application of the warranty agreement. However, it is not disputing that the cooker in question indeed experienced problems and shortcomings. In her testimony in the sitting of 6 December 2013, Ann Petroni acknowledged that "We could not address the complaint regarding the hinges as the parts sent by the manufacturer did not match and no replacement was available." She also acknowledged that the timer of the oven had to be replaced during the guarantee period. This statement corroborated the claim made by plaintiff in the sitting of 23 August 2013.

Plaintiff has made various other complaints in respect of the cooker in question and specifically, an unreliable timer, a non-functioning thermostat and the inability to vary the temperature of the oven. Defendant company Phoenix Domestic Appliances Ltd. is claiming that plaintiff failed to submit his claim for a remedy within the agreed two-year period. Plaintiff stated that he made several attempts to contact defendant company, Phoenix Domestic Appliances Ltd. but was unsuccessful as it had folded operations.

The Tribunal is not convinced that plaintiff did all he could possibly have done to contact defendant companies. It is not clear to whom the letters that have been exhibited as Doc. "MD4" and "MD5" are addressed but Doc. "MD5" was written during the warranty period. However, in said letter, plaintiff does not mention that he has ever contacted defendant company, Phoenix Domestic Appliances Ltd. with regards to his complaints on the cooker other than that regarding the hinges. It is also not clear why such grave shortcomings were not brought to the attention of the defendant

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company, Phoenix Domestic Appliances Ltd. after it had replaced the timer and before its attempt to replace the hinges or even subsequent to such attempt.


Thus, the Tribunal cannot conclude that plaintiff has availed himself of the remedies available to him under aforementioned guarantee within the prescribed period except in so far as the hinges are concerned as defendant company, Phoenix Domestic Appliances Ltd. itself has acknowledged that it has failed to replace.

It must also be stated that plaintiff is still in possession of the cooker in question and he has the possibility of effecting repairs to it. Thus, in view of the foregoing, it is not appropriate to rescind the contract of sale of said cooker at this stage, that is, more than three years after its purchase.

Thus, in view of the foregoing, the Tribunal is accepting the first plea of defendant company Homemart Enterprises Ltd. and is declaring it as non-suited as it did not issue the guarantee in question and is exonerating it from any liability towards plaintiff. In view of the foregoing, the Tribunal does not need to address the other pleas of said company.

On the other hand, the Tribunal is ordering a partial reduction of the purchase price in view of the fact that it has been proven that the lid of the cooker cannot sit in a vertical position as it has defective hinges which have never been replaced by defendant company, Phoenix Domestic Appliances Ltd. and orders said defendant company, Phoenix Domestic Appliances Ltd. to pay the sum of € 100 to plaintiff.

Costs to be supported by defendant company, Phoenix Domestic Appliances Ltd. except those of the other defendant company, Homemart Enterprises Ltd. which has to bear its own costs.



Av. Joseph Ellis
Arbiter