



In the Consumer Claims.

Application No. CCT 199/11 (JE).

Michael Hill.

vs

Bonnie Ltd.

Today, 23 January 2012.

The Tribunal,

Having seen the application of Michael Hill of 25 October 2010 claiming the sum of € 2,170 for various shortcomings in an apartment that he had purchased from defendant company.

Having seen the pleas of defendant company.

Having seen its decree of 18th July 2011 when it decided that proceeding should be held in the English language and to limit its decision to the first preliminary plea of defendant company regarding the competence of the Tribunal.

Having seen the evidence produced by the parties regarding the first preliminary plea of defendant company.

Having considered.

The transaction which gave rise to this dispute is the sale of the penthouse internally numbered seven (7) in Block "A", Triq il-Gidwed, Marsascala and the lock-up garage internally numbered three (3) situated on basement level by means of a deed in the records of Notary Remigio Zammit Pace of 30th April 2008 that has been produced by defendant company as Doc. VB. Said deed states in para. 1 that "The Penthouse and the Garage are being sold in shell-form with the Ancillary Works." In the recitals to the deed, "Ancillary Works" are defined as :

1.12 "Ancillary Works" means the completion of the

- a. the Common Parts of the Block;
- b. the Common Parts of the Garage Complex;
- c. the front and rear facades of the Block;
- d. the supply and installation of the conduits, cables, pipes and drains which necessarily must be routed through the Common Parts, for the Apartment to be connected with the electricity supply, the water supply (both from the mains and the water tank), cable television, telephone service, the common satellite dish and the intercom system; and

the drainage system.

Clause 11 of aforementioned deed further makes it clear that Vendor had to construct the Penthouse and Garage in Shell Form. Thus, in spite of the evidence tendered by both parties, the deed in question did not cover the finishing of the transferred property and the works must have been the object of a contract of works outside the ambit of aforementioned deed. However, both parties



seem to agree that on the date of transfer, the penthouse was substantially finished and that there were only some minor finishing works still pending.

Section 16 of Cap. 378 states :

16. (1) There shall be two tribunals to be styled "the Consumer Claims Tribunal (Malta)" and "the Consumer Claims Tribunal (Gozo)" respectively.

(2) The Consumer Claims Tribunal (Malta) shall, subject to the provisions of subarticle (3), have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in Malta, and shall hold its sittings in such place or places in Malta as the Minister may by order in the Gazette determine.

(3) The Consumer Claims Tribunal (Gozo) shall have jurisdiction to hear and determine consumer claims where the transaction to which the claim refers has taken place in the Islands of Gozo or Comino, and shall hold its sittings in such place in the Islands of Gozo and Comino as the Minister, in consultation with the Minister responsible for Gozo Affairs, may by order in the Gazette determine.

(4) For the purposes of subarticles (2) and (3) a transaction shall be deemed to have taken place:

(a) in the case of a sale or a service which has been concluded or provided on the premises of the trader, in the island where those premises are situate;

(b) in the case of a sale or a service which has been concluded or provided outside the premises of the trader:

(i) where the sale or the service was contracted by telephone, fax, correspondence or by any mechanical or electronic means of communication, and the trader did not himself approach the consumer and offer the sale of the goods or the supply of the service, in the island where the premises of the trader are situate;

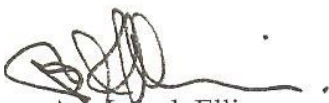
(ii) in all other cases in the island where the goods were delivered or the service provided; so however that where the goods were delivered or the service provided partly in the Island of Malta and partly in the Island of Gozo or in the Island of Comino, or has taken place during a voyage between the Island of Malta and the Island of Gozo or the Island of Comino, both tribunals shall have jurisdiction.

It is clear from the foregoing that the transaction relating to the finishing of the Penthouse cannot be deemed to be a sale but falls within the purview of a service which is defined in Cap. 378 as :

"services" includes the provision, in the course of or in furtherance of a trade, business, craft or profession, of any kind of educational, professional or instruction courses, facilities for entertainment, amusement, recreation, sports and cultural activities, beauty, health and nutrition-related programmes, hospital and nursing services, accommodation and analogous facilities, of any description, and the performance, in furtherance of a trade, business, craft or profession of any other type of work or action in return for a fee or reward;

From the wide-ranging definition of "services" in Cap. 378 and especially, the words "the performance, in furtherance of a trade, business, craft or profession of any other type of work or action in return for a fee or reward", the Tribunal feels that complaints relating to a contract of works fall within its competence.

In view of the foregoing, the Tribunal rejects the first plea of defendant company with costs.


Av. Joseph Ellis
Arbitrer.