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Fit-Tribunal tal-Konsumatur

CCT/87/17/S

Charles Attard Bezzina

vs

Russell Franklin in in business as "Solo Optical"

Today, *the 12th* of April, 2018.

The Tribunal:

Took cognizance of the Notice of Claim filed by Charles Attard Bezzina on 12th May 2017 and of the Reply of Russell Franklin filed on 5th October 2017;

Examined the documentation filed, heard the parties and the relative submissions which took place;

Considered:

That through the Notice of Claim, the claimant claimed the amount of four hundred and fifty-four Euros (€454.00). The substance of his claim was the following:

- Claimant purchased two pairs of spectacles from Solo Optical in January 2016. After one year of normal use, both pairs had started to lose patches of paintwork;
- Upon filing a complaint with the shop manager, claimant was told that that was the result of normal wear and tear;
- That plaintiff claimed that he was was a careful user. In fact, the lenses were not scratched. Hence, the loss of paintwork was due to the poor quality of the frames.
- That Solo Optical should reimburse claimant for the defective frames.
- That the relative frames are identical in shape and only differ in colour.
- That claimant was told that if the paintwork were faulty, the paint would come off simply by rubbing.

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- That claimant rubbed the frame with his fingernail and the paint did indeed come off.
- That the placing of the spectacles on a hard surface (such as a bedside table) constitutes normal use, as does the use of clip-on sunshades.

That through his Reply, the defendant pleaded:

- That the frames were returned sixteen months after they were purchased and were in a heavily-worn state.
- That the damage sustained was due to distress and not due to faulty frames.
- That Solo Optical has a clear replacement policy if the frame is faulty.
- That the fact that the frames were of the same model but of a different colour indicates that they were not the same.
- That lenses are often stronger due to hard coatings and that one should avoid abrasive contact.
- That rubbing with a fingernail is a corruption of what was advised and was obviously symptomatic of further damage to the frame.
- That the line of questioning used to speak to the claimant was intended to help the shop manager identify the reason for damage.
- That it serves Solo Optical no purpose to deny a client's genuine claim since the supplier would replace the goods if asked.

That claimant confirmed the Notice of Claim on oath and stated that the shop manager had informed him that were the frames truly faulty, the paintwork would come off with rubbing. Upon returning home, claimant tried to do just that. The result of claimant's experiment was that some paint did indeed come off. Claimant further testified that he puts a piece of cloth between the spectacles and the bedside table at night and that the amount

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claimed covered frames as well as lenses as both of them were scratched.

That during the sitting of 22nd February 2018, claimant informed the Tribunal that he was reducing his claim to three hundred Euros (€300.00) and declared that he was willing to accept a frame in which the lenses could be installed and used.

That in spite of several opportunities to appear before the Tribunal to tender evidence or submit an affidavit, the defendant failed to appear to give evidence for the Reply filed on 5th October 2017.

That the Tribunal observes that although claimant's exercise in rubbing the frame to see if the paintwork would come off, is not normal and could constitute self-inflicted damage, it is also highly unusual for paintwork to come off upon simple rubbing.

That the Tribunal is not convinced that claimant's use of the spectacles involved particularly unusual distress and in this regard, observes that in its view, it is certainly abnormal for paintwork to come off even after simple rubbing of a fingernail on the paintwork.

That in the Tribunal's view, as particularly, once defendant failed to appear before the Tribunal or file written submissions in addition to the Reply, the claimant's claim deserves to be upheld but not in the amount requested.

Decision

Therefore, for the reasons hereinabove explained as well with due regard to Chapter 378 of the Laws of Malta as well as in the circumstances, the Tribunal upholds claimant's claim and condemns defendant to pay to plaintiff the amount of one hundred and fifty Euros established *ex aequo et bono* by this Tribunal.

In the circumstances, the Tribunal orders that the costs of the case be borne by the defendant.

A handwritten signature in blue ink, appearing to read 'Richard Sladden', with a long horizontal flourish extending to the right.

Richard Sladden Av.
Arbter