



MALTA

Fit-Tribunal tal-Konsumatur

CCT/52/17/S

Gabrielle Talarico

vs

Paul Borg Jewellers

Today, the 19th day of April, 2018.

The Tribunal:

Took cognizance of the Notice of Claim filed by Gabrielle Talarico on 6th March 2017 and that the defendant never filed a Reply;

Examined the documentation filed, heard the parties and their witnesses as well as final oral submissions made during the sitting of 18th January 2018.

Considered:

That the Claimant explained that she had bought a ring from the defendant for the price of forty Euros (€40.00), which ring was adorned with a small, spherical white adornment which later fell off;

That the Tribunal considers it pertinent to refer to Rules 4.1 and 4.2 of Subsidiary Legislation (S.L.) 378.01 (*Consumer Claims Tribunal Rules*), which stipulate as follows:

"4.1. A defendant shall reply to a claim within eighteen days from the date when he is served with the Notice of Claim. If the defendant fails to do so the claimant may, in accordance with rule 6, apply to the Tribunal for a default order against the defendant.

4.2. A defendant shall, when replying, complete a Reply to a Claim (Form 2) following the instructions on the form. The Reply to a Claim shall then be filed in the Registry of the Tribunal where the Notice of Claim was originally filed."

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That the defendant failed to reply in spite of service, this service even being confirmed through the appearance of his legal counsel at the sitting held on 6th July 2017 (at which sitting it was also noted that the defendant had not yet replied);

That when she gave evidence during the sitting of 6th July 2017, the claimant testified that she was confirming the content of her claim on oath. She further testified that the ring cost forty Euros (€40.00) and that her complaint was due to the fact that the white stone adorning the ring came unstuck each time the ring was worn. The first time this happened, the claimant took the ring to the defendant, who said that the wrong kind of glue had been used, after which the defendant reattached the stone. However, the stone came off the ring once again. However, when the claimant revisited defendant's shop, he behaved in an uncivil manner and ordered her to leave his shop;

That in his testimony, defendant Paul Borg testified that the claimant had purchased the relative ring for forty Euros (€40.00). He stated that after nearly a year, she returned to the shop and complained that the pearl had come unstuck. Borg advised the claimant to take care not to hit the ring against any surface, since hitting the ring may result in the pearl falling off. He also told her that he did not normally repair items, but could repair the ring with what he had in the shop as it was not a complex piece of work. Around three weeks later, the defendant testified that the claimant returned to his shop stating that the pearl had fallen off again. In cross-examination, the defendant testified that the ring was fit to be worn and that once the claimant informed him that she was taking advice from the consumer authorities, he did not want to help her;

That the Tribunal saw that although the claimant presented no evidence of the purchase, the defendant never denied selling the ring to the claimant. In fact, he described his interactions with the claimant in considerable detail;

That furthermore, in spite of having testified and notwithstanding sittings at which either the defendant or his counsel were physically present or knew about, the defendant never filed a Reply in accordance with Rule 4.2 of S.L. 378.01;

That the Tribunal considers it unacceptable for a trader to expel a consumer from his premises once he learns that the consumer is

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exercising her rights at law and taking advice from the competent authorities;

That there is absolutely no evidence that the stone came off as a direct or indirect result of the claimant being careless with it. As a result, the part of the defendant's testimony in which he testified that the stone can fall off if the ring is hit against a surface or object does not constitute a statement of fact that such an occurrence took place, but simply general advice;

That following careful examination of the documents presented and evidence tendered, the Tribunal is convinced that the claimant's claim deserves to be upheld.

Decision

Therefore, for the reasons hereinabove explained, after having seen Chapter 378 of the Laws of Malta as well as in view of the circumstances of the case, the Tribunal decides to uphold the claimant's claim and orders defendant to arrange the ring to the claimant's satisfaction.

The Tribunal further orders that each party is to bear its own costs.

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Richard Sladden Av.
Arbiter