



MALTA

Fit-Tribunal tal-Konsumatur

CCT/167/17/S

Anna Diehl
VS
Mecca Enterprises Limited

Today, *26th* of July, 2018.

The Tribunal,

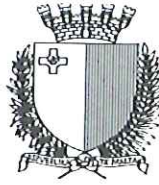
Took cognizance of the Claim filed by Anna Diehl on 25th September, 2017 as well as the Reply filed by Mecca Enterprises Limited on 17th October, 2017;

Examined all the documents that were filed, heard the parties' submissions as well as the evidence produced by them as well as the final oral submissions made during the sitting held on 31st of May, 2018.

Considered,

That the Claimant claimed the amount of two thousand and four hundred and ninety-nine Euros (€2,499) by way of refund. In support of her claim, she stated that:

- The trailer which was purchased on 15th July 2017 was not new as it had rust and its tyres showed at least two years of use. Moreover, the date of production was 2015; and
- The trailer could only take 1350 kilogrammes whereas the boat together with its engine, fuel and water weighed 1676 kilogrammes.



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That in its Reply, Respondent company submitted the following:

- With regard to the alleged rust, no damage was found except for two slight scratches which Respondent agreed to repaint;
- Respondent had agreed to replace the jockey wheel; and
- The trailer could support 1850 kilogrammes although the axle installed could only support 1350 kilogrammes. Nonetheless, Respondent was willing to replace axle with one which could take 1750 kilogrammes.

On 30th November 2017, Claimant testified that the trailer was not new as it had rust and was broken in many places. Furthermore, it was unsuitable as it could not take the relative weight of the boat. Claimant testified that she was willing to accept changing of the axle.

On the same date, Nichol Chetcuti testified that he accepted that the trailer had a wrong axle and should have been fitted with an axle which could take 1750 kilogrammes as opposed to one which could only support 1350 kilogrammes. He testified that what was thought to be rust was only grease. Furthermore, with regard to real rust which was found, Chetcuti testified that this was only one centimetre in size and was duly remedied with undercoat and paint. He stated that since the company only dealt in new items, not second-hand goods, each wheel could only take as much weight as the manufacturer specified. Chetcuti promised to carry out the necessary verifications and stated that if the factory recommended replacement, the company would duly replace the wheels.

As regards rust, Chetcuti also added that the metal could appear rusty as paint on cast iron did not hold.

By means of an affidavit drawn up on 11th January 2018 (erroneously indicated as having been drawn up on 11th January 2017), Paul Chetcuti declared on oath that the trailer was

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brand new, that it had been inspected by the Claimant and her son and that the specks of paint were due to anti-fouling paint which had been applied to the boat. Andre Chetcuti also filed an affidavit containing a sworn declaration identical to that filed by Paul Chetcuti.

Patrick Agius, who was employed at Mecca Marina Ltd, testified by means of an affidavit that he had personally assembled the trailer which was brand new. He also confirmed that the specks of paint found on the trailer were due to anti-fouling paint which had been applied to the boat.

Nichol Chetcuti testified again on 31st May 2018 and in his testimony, he restated the content of the three affidavits submitted (documents "NC1", "NC2" and "NC3").

The Tribunal observes that although Claimant asked for a refund of two thousand and four hundred and ninety-nine Euros (€2,499), she had testified that she was willing to accept replacement of the relative axle. Moreover, Respondent had agreed to repaint the scratches which Claimant referred to.

The Tribunal sees that according to Art. 74(2) of Chapter 378, in cases of non-conformity, the consumer is entitled to repair or replacement free of charge or to an appropriate reduction in price or even outright rescission of the contract. In the present case, the Tribunal observes that by accepting to replace the axle and repaint certain parts of the trailer, the Respondent essentially admitted non-conformity. In addition, Claimant made her views clear when she testified that she was ready to accept replacement of the axle. In view of this, the Tribunal observes that Claimant clearly opted for repair or replacement as opposed to a reduction in price or outright rescission.

In view of the fact that the affidavits filed were not contradicted as well as in view of Nichol Chetcuti's testimony, particularly his explanation that paint on cast iron could not hold and that if unrinsed using fresh water, a trailer could retain salt residue from the sea and appear rusty, the Tribunal does not find that Claimant's

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postulations alleging rust and second-handedness are well-founded. Lastly, the Tribunal observes that Claimant's claim that the trailer "had many places broken" is entirely unsupported by evidence.

Decision

Therefore, for the reasons explained hereinabove, after having seen Chapter 378 of the Laws of Malta and having taken account the circumstances of the case, the Tribunal accepts the Claimant's claim in part and orders Mecca Enterprises Limited to replace the axle with one which could take 1750 kilogrammes.

The Tribunal orders that Respondent company bear all costs of these proceedings.

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Richard Sladden Av.
Arbiter