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Fit-Tribunal tal-Konsumatur

Thomas Allendeorfer

vs

Goldcar Rental/ Rhodium Car Rental

CCT 154/17/MS

17th October 2018

The Tribunal

Having seen plaintiff's application filed on the 7th September 2017 wherein he requested a refund of €1466.74 being the price of repairs plaintiff was asked to pay for damage to the clutch of a hired car, property of defendant company that was being driven by plaintiff, which damage/ amount was being contested.

Having seen defendant company's reply of the 27th September 2017 whereby plaintiff's claim was rejected in fact and at law since the damage was caused by plaintiff through negligent use of the car's clutch system, and in any case plaintiff had agreed to pay all costs for any damage incurred when signing the relevant exhibited documentation.

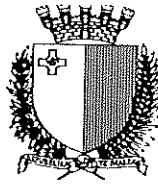
Having seen the note-verbal of the 14th May 2018 from where it results that plaintiff objected to the appointment of an technical expert on the basis that the car had already been repaired.

Having seen plaintiff's declaration in the same note-verbal that "he is not contesting the fact that a car of such low mileage should sustain a burnt clutch but is only contesting the excessive amount he is being made to pay."

Having seen the acts of the case and heard the evidence on oath.

Considers

That the parties are not contesting the fact that on the 1st June 2017 plaintiff rented from defendant company a Citroen C4 Cactus 1.2 Automatic (Reg. IQZ 769). Plaintiff reports



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that after having driven the car for about 30 - 40 Km a fault developed in the clutch that necessitated the direct intervention of a mechanic to solve the problem.

The mechanic Lukic Radoslav who worked on the damaged car and who testified in these proceedings stated under oath that the car broke down because of the incorrect use of the clutch system. Radoslav, who has 30 years of experience in this line of work, explained that the car is equipped with a particular semi-automatic system having only two pedals with the accelerator pedal also operating the clutch. He explained that although unusual for a clutch to burn out after 10,000 km (a clutch is meant to have a run of at least 100,000), had the damage existed prior to plaintiff taking possession of the car, plaintiff would have felt it as soon as he started the car - i.e. before driving for 40km - and would not have been able to drive it. This led him to conclude with a degree of certainty that the damage was a result of plaintiff's excessive use of the accelerator pedal which wore out the clutch in a relatively short time.

Lorry Caruana, Operations Manager at Gold Car explained that the car was three months old and one of a fleet of about 800 cars. The plaintiff was charged according to the price list which the plaintiff had agreed to and signed for. Asked whether it was possible that the car/clutch had a latent defect, Caruana stated that had this been the case, the car would have been changed immediately as it was still under warranty - in fact the car was first taken to the agents who found that there were no such defects. The car had to be repaired at a cost. Defendant company filed documentation showing that the cost of the repair amounted to €1,466.74.

Although plaintiff started off by contesting the fact that the damage was caused by himself, insisting rather that it might have been wear and tear, in the note-verbal of the 14th May 2018, plaintiff seemed to be less concerned with how and who caused the damage and more concerned with the excessive amount that the defendant company had charged him for the repairs carried out. Plaintiff also submitted various internet print-outs showing reduced prices for similar clutch kits to substantiate his argument that the charges he was made to pay were excessive. These documents, which were never confirmed on oath by their 'author', apparently show parts as sold in the United Kingdom or elsewhere (not in Malta) and certainly do not form part of any prior agreement entered into between the parties.

Defendant company, on the other hand, filed all relevant documentation concerning the case, including documentation showing that plaintiff had signed various documents declining the option of a special Insurance cover (GoldCar Super Relax Insurance) and accepting responsibility for any "damage/ engine failures/ burnt clutches/ breakdowns or theft of the vehicle." Plaintiff explained that he had refused to take out this special insurance cover because he thought that he would be covered by his own insurance for the cost of any repair/ damage if any. In fact plaintiff signed all documentation including the



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invoice for the cost of the repair and even authorised defendant company to charge his "debit/credit card the price for damage not noted in the collection report form." When in fact the damages were sustained and plaintiff's insurance company refused to cover his claim, he turned on defendant company claiming that he had been overcharged and that the amounts he had paid were excessive.

That having heard the evidence of all parties, the Tribunal is satisfied that the vehicle in question was relatively brand new with very low mileage; damage was sustained to the clutch which damage had not existed prior to plaintiff driving it; plaintiff entered into an agreement with defendant company regarding the mode of payment for damages.

That the plaintiff did not prove to the satisfaction of this Tribunal that the damage was not caused by himself or that they were caused by wear and tear or prior use. On the contrary, the Tribunal is satisfied that the damages sustained to the clutch were very probably caused by plaintiff and were not a result of previous wear and tear or prior use. Therefore the only question that remains is whether the amount being claimed for repairs is indeed excessive.

It is not within the Tribunal's remit to interfere with or change an agreement freely entered into between the parties. The fact remains that plaintiff opted to use the services of Gold Car and further opted not to take out an insurance cover and instead chose to take responsibility for any damages incurred. He also authorised Gold Car to charge his credit/debit card with the amount, which until then, he did not query. It was only upon realising that his own Insurance Company would not foot the bill that plaintiff contested the matter, particularly that the charges were excessive. It appears therefore, that the plaintiff did not read the fine print/ do his homework properly and may have misunderstood the terms of his own insurance cover. Still, this can't exonerate him or in any way let him off the hook. The Tribunal's hands are tied. What the parties agree upon has got to be observed: *pacta sunt servanda*.

For these reasons, the Tribunal dismisses the plaintiffs claim. With costs.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

Michela Spiteri LL.D
Arbitru