



Fit-Tribunal tal-Konsumatur

CCT/40/18/S

Richard Clarson and Linda Clarson

VS

Robert Tabone trading as "Top Choice"

Today, 25th of October, 2018.

The Tribunal,

Took cognizance of the Notice of Claim filed on 7th March 2018 as well as the Reply filed on 20th July 2018; and
Examined all the documentation filed and heard the parties;
Heard the witnesses produced by the parties, and
Heard final oral submissions which took place during the sitting of 26th July 2018.

Considered that,

Claimants were claiming the amount of three hundred and eighty-nine Euros (€389.00). They explained that the dispute regarded a microwave purchased from Respondent on 9th January 2017 which stopped functioning a number of times. Claimants contended that they deserved a full refund as the microwave was unusable for fourteen weeks of its first year of life.

Respondent contended that the microwave required repair on three occasions. However, Respondent added that for such a major component as the magnetron to suffer damage so soon after purchase, there had to be some major misuse of the appliance. Respondent also stated that on several occasions where the microwave had to be collected or returned, Claimant/s failed to keep their appointments.

The Claimants' principal complaint was that the microwave malfunctioned at least three times. The first time repairs were needed, was when there was a problem regarding the switches forming part of the microwave's door. Respondent agreed that this was in fact the nature of the first complaint. However, the parties' submissions seem to agree that this complaint was somehow satisfactorily resolved. In fact, Mr John Micallef (testifying for



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Respondent) testified that through the relative job cards, he could confirm that the microwave's door had been replaced.

The parties also agreed that the second and third malfunctions related to the microwave's magnetron, which Respondent described as a major component of a microwave. Mr Micallef testified that the firm never received any complaints regarding the magnetrons of microwaves belonging to the *Whirlpool* brand. Moreover, Mr Micallef stated that the magnetron of the microwave in question cost around seventy Euros (€70.00) and was replaced twice at the expense of the Respondent. Mr Clarson confirmed on oath that the replacement was at Respondent's expense. Lastly, Mr Micallef testified that the fact that the magnetron had to be replaced twice warranted concern.

The Tribunal noted that in its Reply, Respondent stated that from experience, they knew that in order for the magnetron to malfunction so early on in the microwave's life, there had to be some misuse in the sense that the microwave was either switched on when it was empty or perhaps some metal object had been put inside it. Claimant replied to this when he stated in his testimony that he knew how to operate a microwave and had used microwaves for years.

The Tribunal observed that the Claimants never seemed to express dissatisfaction with the quality of the repairs. Rather, their testimony indicates that they were exasperated that their microwave seemed to require one repair after another. The Tribunal also noted that Claimants repeatedly referred to the repairs having taken a great deal of time to complete.

In view of Mr Micallef's testimony regarding the firm having had no complaints pertaining to *Whirlpool* microwaves as well as in view of the fact that the magnetron needing replacement twice, the Tribunal finds it hard to believe that this microwave was not somewhat defective from the start. In stating this, the Tribunal is cognizant of the fact that microwaves are common household appliances which most ordinary people operate without needing some form of technical expertise.

It seems that Claimants' initially asked for the microwave to be replaced but the request was rejected by Respondent. After the third fault arose, Claimants' changed tune and asked for a full refund. This request was also refused. However, in January 2018,

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Respondent apparently changed his mind and offered to replace the microwave.

In view of the evidence tendered, the Tribunal concludes that the claim merits to be partially upheld.

The Tribunal also clarifies that although according to Chapter 378 of the Laws of Malta, the consumer may choose between replacement of the defective item and a refund, Claimant indicated in his testimony that he is opting for a refund. Therefore, the Tribunal shall not provide for the possibility of replacement of the microwave in the dispositive part. The Tribunal is taking into account that the item was used by Claimants.

Decision

Therefore, for the reasons stated hereinabove, after having seen Chapter 378 of the Laws of Malta as well as after having taken cognizance of the circumstances of the case, the Tribunal decides to partially uphold the Claimants' claim and liquidates the sum of two hundred Euros (€200.00) established *ex aequo et bono* which sum is to be paid by respondent to Claimants who in turn shall return the microwave to Respondent.

The Tribunal orders that the costs of the case are to be borne by Respondent.

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by a long horizontal stroke.

Richard Sladden Av.
Arbiter