



MALTA

Fit-Tribunal tal-Konsumatur

CCT/99/16/S

Sophie Bay Mawby

vs

Ray Auto Dealer - J. Zammit Ltd.

Today, 25th of October, 2018.

The Tribunal:

Took cognizance of the Notice of Claim filed on 16th May 2016 as well as the Reply filed on 3rd June 2016;

Took note that although the Notice of Claim and the Reply are written in the Maltese language, the Claimant asked that the case be heard in the English language and during the sitting held on 22nd June 2016, the Tribunal granted Claimant's request;

Examined all the submissions and documentation filed;

Heard the parties and the witnesses and

Heard the final oral submissions delivered during the sitting of 30th August 2018.

Submissions filed and evidence produced

In these proceedings, the Claimant is claiming the amount of two thousand and two hundred and six Euros and thirty cents (€2,206.30) from Respondent following a deposit made regarding a Vauxhall Astra (CLV531) and other costs which the Claimant incurred relative to the vehicle. Claimant also claimed legal costs and interest relative to judicial letter 654/2016 filed against Respondent.

The Respondent's Reply stated that the vehicle was in good working order and that the relative defect was not of a serious nature such that it was remedied immediately.

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Respondent further stated that in any case, the defect did not render the vehicle unsuitable for use.

Claimant testified that she acquired the second-hand vehicle on 30th November 2015 on a hire-purchase basis. Only an hour after the vehicle came into Claimant's possession, it developed a fault in its alternator. Claimant paid the amount of one hundred and ninety Euros (€190) to a third party mechanic for the alternator to be repaired. An affidavit was filed by the mechanic (George Camilleri) who stated on oath that she had paid him €190 for repairing the alternator. Camilleri also stated (under oath) that from checks he conducted, it transpired that the car's exhaust system was not functioning correctly and the "check engine light" was not functioning at all. The Tribunal observed, however, that at no point did Camilleri state that the faults were particularly grave or that they rendered the vehicle unfit for use.

Claimant further testified that she returned the vehicle to Respondent on 9th December 2015 as she no longer wanted it. However, it seems that the Respondent interpreted this as a request to carry out further checks. Emanuel Sciberras (Respondent company's garage manager) testified on 14th March 2018 and stated that following the return of the vehicle, Respondent company conducted some repairs which were concluded by 24th December 2015. However, the Claimant never collected the vehicle again.

Article 73 of Chapter 378 stipulates that traders are obliged to deliver goods which are in conformity with the description and specifications in the contract of sale. One of the exceptions to this is when the consumer was aware or could not reasonably be unaware of the lack of conformity. In his testimony, Emanuel Sciberras testified that before a vehicle is sold, Respondent company normally sends the vehicle for servicing. This is also what happened regarding the vehicle in question.

Joseph Micallef (Head of Credit Control within Respondent company) testified on 12th October 2017 and pointed out that

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the contract which Claimant signed clearly stated that Respondent was not the manufacturer and that Claimant could have had the vehicle examined by a mechanic of her choice prior to the sale.

The Tribunal observes that Respondent admitted from the very start that notwithstanding the fact that the vehicle was serviced shortly before being handed over to the Claimant, the alternator developed a fault. In fact, Respondent's pleas simply emphasised that the fault did not render the vehicle unfit for use. It is clear to the Tribunal that following the fault which manifested itself on the same day the Claimant collected the vehicle for the first time. It is also clear that following this experience, Claimant resolved to return the vehicle as she no longer wanted it.

Article 74 of Chapter 378 states that in cases of non-conformity, the consumer may either choose to have the goods repaired or replaced or alternatively, may request an appropriate reduction in price or outright rescission of the contract. Article 76 further states that reduction in price or rescission are only possible:

- Where the consumer cannot obtain repair or replacement;
- If the trader has not repaired or replaced the goods within a reasonable time; or
- If repair or replacement are only possible at significant inconvenience to the consumer.

Although the Tribunal recognises that the Claimant may well have become rather disillusioned with a vehicle which manifested a fault on the day it was collected, the Tribunal cannot fail to observe that there is no evidence whatsoever that the fault relative to the alternator was particularly serious or that it rendered the vehicle unfit for use. According to the evidence tendered and the documentation submitted, the Tribunal cannot conclude that reduction in price or outright rescission of the contract are permitted by law in these circumstances. In fact, the fault relative to the alternator which gave rise to the dispute was repaired for the relatively low amount of €190 and was repaired within a short timeframe.



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On the basis of the evidence tendered, the Tribunal concludes that the Claimant's claim deserves to be partially upheld.

Decision

Therefore, for the reasons stated hereinabove, and after having seen Chapter 378 of the Laws of Malta as well as with due regard to the circumstances of the case, the Tribunal:

- i. Upholds Claimant's claim to the amount of one hundred and ninety Euros (€190) and orders Respondent to refund this amount to the Claimant;
- ii. Rejects the remainder of the Claimant's claims; and
- iii. In the circumstances, orders the Respondent to carry out final checks on the vehicle and orders Claimant to resume possession of the vehicle thereafter.

The Tribunal orders each party to bear its own costs.

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Richard Sladden Av.
Arbiter