



MALTA

**Fit-Tribunal tal-Konsumatur**

CCT/76/17/S

Pilar Alvarez Lopez  
vs  
Paul Micallef

Today, the 14<sup>th</sup> day of February, 2019.

The Tribunal:

Took cognizance of the Notice of Claim filed on 5<sup>th</sup> May 2017 as well as the Reply filed on 26<sup>th</sup> May 2017; and  
Heard the testimony of witnesses, of the parties themselves and the final oral submissions during the sitting of the 29<sup>th</sup> November, 2018 and during which sitting, the case was put off for judgment.

Considerations

Claimant is claiming the amount of three thousand and five hundred Euros (€3,500) relative to faults suffered by the electronic control unit (ECU) of her caravan as well as the required repairs and ultimately, a new ECU. Claimant contends that it repairs carried out by Paul Micallef ended up causing more damage and ultimately necessitated an entirely new ECU.

Respondent's Reply, in essence, stated the following:

- Claimant had to prove that the caravan was undamaged when it was first delivered to Respondent and that its ECU was fully functional;
- Claimant had to prove the existence of a link between the damage alleged and Respondent's actions;
- Claimant had to explain how the Respondent damaged the ECU when in fact, he never even tried to conduct repairs thereupon;



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- Respondent rejected Claimant's claims as he only carried out tests on the ECU (in the presence of the Claimant) and never attempted any repairs;
- Respondent was not responsible for damage which arose through use and wear and tear relative to the caravan; and
- The amount claimed was excessive, particularly as her initial claim for an "Electroblok" amounted to only eight hundred Euros (€800).

Amongst the documentation filed in support of the claim, Claimant submitted documents "PL1", "PL5", "PL6" and "PL7". The Tribunal observed that these documents, or great parts of them, were written in the German language and no translation was provided and consequently, the Tribunal could not take them into account during the adjudication of this case.

It was observed that during the sitting held on 11<sup>th</sup> January 2018, Claimant presented seven photographs. Although the Tribunal could see that these related to electrical equipment and wires, the Claimant did not explain what was depicted in those photographs and what she wished to prove through submission of the relative photographs.

Relative to the amount claimed (three thousand and five hundred Euros [€3,500]), the Tribunal observes that it examined the entirety of the documentation filed by the Claimant as well as her sworn testimony but found that at no point did the Claimant explain how or why she was claiming that particular amount. The Tribunal does not know, for example, whether that is the amount which had to be paid to purchase a new ECU or whether she had spent that amount on repairs.

During defendant's testimony, Frankie Micallef stated that at a certain point "more than a year" after 2015, Claimant informed him that the part of the ECU relative to alternating current was not working. Micallef checked the cable and instructed Claimant to find a technician to repair it, as he only worked on matters relating to direct current, not alternating current. Two or three months later, Claimant returned to Mr Micallef and asked him to conduct further checks as she was still having problems. Micallef continued to testify that someone had opened the box situated under the driver's seat, left the box exposed, placed a piece of

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wire with two clips and bypassed the entire system. This was not a normal arrangement.

Relative to the box left exposed under the driver's seat, Micallef testified that it was dangerous to leave the box exposed in that manner as the wire which was used to bypass the box could easily have touched some other component.

On his part, the technician Christopher Pace, who had also worked on Claimant's caravan, testified that the first time the caravan was taken to him, he repaired a charging unit for the caravan's battery. Pace informed Claimant that he did not have the competence to dismantle a caravan in order to follow a wire to its source in order to find some fuse which may have malfunctioned or a wire which might have snapped and which may in turn, have led to other malfunctions within the caravan's electrical systems.

Pace added that the second time Claimant took the caravan to him, no electrical system within the caravan was working. Claimant had told him she had taken she caravan to another person who checked it for her and found something wrong with the "board" of the control unit. However, the end result seems to have been that the caravan was not working at all.

Claimant testified that following all trouble which arose relative to the ECU, it was decided it would be better to return the whole ECU to the manufacturer in Germany. However, it seemed that the ECU was lost by the courier firm (DHL) on its way to the manufacturer. Resultantly, the manufacturer could not even see the ECU, let alone repair it. However, manufacturer did apparently tell the Claimant that the ECU was around ten years old and was in "very bad condition". Claimant stated that she was constrained to purchase a new ECU as during that time, she was living in her caravan.

The Tribunal observes that in such a case as this, the Claimant must necessarily prove not only that damage to an object took place, but that the Respondent is directly and clearly responsible for such damage. The evidence produced before the Tribunal does not confirm that it was Paul Micallef who caused such damage.

The Tribunal also agrees with one of the pleas raised by the Respondent - this being that Claimant had to prove (at least) that when the ECU was first examined by Respondent, it was undamaged. Claimant did not prove this at all.



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It is also being noted that the amount being claimed by the Claimant is probably motivated by the multitude of misfortunes she endured, which include not only the loss of the ECU *en route* to the manufacturer abroad, but also her being forced to rent an apartment (according to the Notice of Claim) and to buy a new ECU for her caravan. This having been stated, however, the Tribunal observes that Claimant failed to submit any indication of the cost of a new ECU.

Decision

Therefore, after having seen the provisions of Chapter 378 of the Laws of Malta, after having heard the parties' submissions and the evidence tendered by the witnesses and in view of the circumstances and for the abovementioned reasons, the Tribunal accepts Respondent's pleas and rejects Claimant's claims. The Tribunal orders each party to bear its own costs.

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

Richard Sladden Av.  
ARBITER