



**Fit-Tribunal tal-Konsumatur**

CCT/194/17

Anna Diehl

vs

Mecca Enterprises Limited

Today, the 7<sup>th</sup> of March, 2019.

The Tribunal:

Took cognizance of the Notice of Claim filed on the 31<sup>st</sup> of October, 2017 as well as the Reply filed on the 20<sup>th</sup> of November, 2017 and

Heard the testimony of the witnesses, heard the parties themselves, and noted that during the sitting of the 8<sup>th</sup> of January, 2019, the parties were authorised to file final written submissions. During the same sitting, the case was put off for judgment.

Submissions filed, evidence produced and considerations

Claimant is claiming the amount of two thousand, six hundred and sixty-five Euros and sixteen cents (€2,665.16) and has stated that she had paid the respondent the following amounts:

- On 21<sup>st</sup> February 2017, she paid two thousand and five hundred Euros (€2,500.00);
- On 22<sup>nd</sup> February 2017, she paid ten thousand Euros (€10,000.00); and
- On 8<sup>th</sup> May 2017, she paid twenty-six thousand, five hundred and fifty Euros (€26,550.00);

And thus she claims to have paid a total of thirty-nine thousand and fifty Euros (€39,050.00).

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However, according to Claimant, on the 25<sup>th</sup> of May, 2017, she received Value Added Tax (VAT) bills amounting to the following amounts:

- Twenty-three thousand, nine hundred and thirty-five Euros and twelve cents (€23,935.12) for a *Ranieri Voyager 21S* boat;
- Ten thousand and two hundred Euros and fifty-one cents (€10,200.51) for a *Mercury 150HP* engine; and
- Two thousand, two hundred and forty-nine Euros and twenty-one cents (€2,249.21) for a trailer;

Thus she claims that the bills she received amounted to thirty-six thousand, three hundred and eighty-four Euros and eighty four cents (€36,384.84).

Claimant is stating that the discrepancy between the amount paid and the amounts shown on the bills received amounts to two thousand, six hundred and sixty-five Euros and sixteen cents (€2,665.16). As a result, she is asking that this amount be refunded to her.

Respondent's Reply confirmed that the receipts in hand amounted to thirty-six thousand, three hundred and eighty-four Euros and eighty four cents (€36,384.84) and also clearly labelled the amount claimed by Claimant as "*Discrepancy*". Respondent also stated that he was attaching a receipt for two thousand and five hundred Euros (€2,500.00) and stated that Claimant was in possession of a cash register receipt amounting to one hundred and fifteen Euros (€115.00).

During the sitting held on the 1<sup>st</sup> of March, 2018, Claimant presented documents "A", "B" and "C". Document "A" is a copy of a Bank of Valletta p.l.c. statement of account which confirms that on the 22<sup>nd</sup> of February, 2017, Claimant transferred ten thousand Euros (€10,000.00) to Respondent. Document "B" is a copy of a Bank of Valletta p.l.c. statement of account which confirms that on the 8<sup>th</sup> of May, 2017, Claimant transferred twenty-six thousand and five hundred and fifty Euros (€26,550.00) to Respondent. Document "C" is a copy of a fiscal receipt issued by Respondent which confirms that on the 21<sup>st</sup> of February, 2017, Claimant paid two thousand and five hundred Euros (€2,500.00) to Respondent.

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The Tribunal thus observes that according to this documentation, Claimant paid a total of thirty-nine thousand and fifty Euros (€39,050.00) to Respondent.

The Tribunal observes that Claimant testified that the amount described as a discrepancy (two thousand, six hundred and sixty-five Euros and sixteen cents [€2,665.16]) was paid by her to Respondent in cash on the 21<sup>st</sup> of February, 2017. Claimant, in fact, testified as follows: *"The discrepancy is €2,665.16 because I gave it on the 21<sup>st</sup> February in cash."*

Claimant is admitting that the amount being claimed is an amount she actually paid to Respondent but she is now claiming it back as the bills she received from the Respondent do not correspond to the amounts she paid.

The Tribunal refers to documents "AA1" and "AA2" submitted by Respondent and observes that these are fiscal receipts accompanied by invoices relative to the amounts of four hundred and ninety Euros (€490.00) and two thousand and five hundred Euros (€2,500). However, owing to the poor quality of the copies, the Tribunal cannot know the date on which the receipt for four hundred and ninety Euros (€490.00) was issued. However, the copy of the receipt for two thousand and five hundred Euros (€2,500) clearly shows that that this was issued to Claimant on the 21<sup>st</sup> of February, 2017. It is however noted that neither Claimant nor Respondent filed any evidence relative to the amount of one hundred and fifteen Euros (€115.00), which amount was described in the Reply as being the subject of a fiscal receipt already in

Claimant's possession.

After examining the documentation produced and the testimonies of the witnesses, the Tribunal concludes that the amount being claimed by the Claimant was indeed paid to Respondent. However, Claimant herself never claimed that this amount was wrongfully charged by Respondent or was paid in vain (for goods not delivered or services not rendered). In essence, Claimant's argument is that as there is a discrepancy between the invoices issued to her and the amounts paid by her, the discrepancy should be refunded to her.

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The Tribunal rejects this argument as in its view, a discrepancy on its own is not sufficient reason for a refund to take place.

Decision

Therefore, after having seen the provisions of Chapter 378 of the Laws of Malta, after having heard all the evidence and in view of the circumstances of the case, the Tribunal rejects Claimant's claims.

In view of the circumstances of the case, the Tribunal orders that each party bears one's own costs.

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Richard Sladden Av.  
ARBITER