TRIBUNAL GHAL TALBIET
TAL-KONSUMATUR

CONSUMER CLAIMS
TRIBUNAL

MALTA

Fit-Tribunal tal-Konsumatur

Brian Bailey

vs

Hayden Vella - Hayden Auto Mechanic

CCT 33/18/MS

29th May 2019

The Tribunal

Having seen plaintiff's claim presented on the 28 February 2018 requesting the sum of €2504.64 for damages suffered as a result of defendant's breach of contract and failure to carry out works on plaintiff's vehicle and ensuing damages;

Having seen defendant's reply dated 23rd March 2018 whereby by way of a preliminary plea he stated that the filing of plaintiff's claim was not preceded by the procedure outlined in Art. 79 of Chapter 378; and further that there existed no contractual relationship between the Parties;

Having seen the documents presented and heard the evidence tendered under oath.

Having seen that plaintiff reduced his original claim to that of €2,461 and then to €2,426.

Considers

That the plaintiff contends that the parties had a verbal contract where plaintiff had asked defendant to carry out specific works on his vehicle for a specified sum of money within a reasonable time-frame. Plaintiff contends that the parties had a commercial relationship and that he had worked with defendant several times before and was in the habit of always requesting a quote beforehand. Moreover that defendant had provided a quote of what he thought was necessary and plaintiff reverted with a summary of what they had agreed upon and returned it to the defendant for him to carry out the job. (Dok BB).

Plaintiff claims that these works were going to cost €600 and to this end he set aside €700 and that on defendant's instructions, he had taken the car to defendant in a tow truck and was requested by defendant to call after two days , whereupon defendant told him that he hadn't managed to get the

job done. Approximately seven weeks later, the defendant told him to come for the car whereupon defendant returned the key and the relative documentation.

Plaintiff is claiming that no work was done on his car. As a result he suffered breach of contract and ensuing inconvenience and damages . Plaintiff also contends that after the key was returned to him he left the car in the vicinity of the garage because he needed to find another mechanic and during this time his number plates were stolen. Eventually plaintiff hired a tow truck and brought the car back to his house. Plaintiff's claim is based upon what he estimates were the direct costs for alternative vehicle use, four months of wasted vehicle insurance and registration costs, fines and the result of a vandalised number plate . Plaintiff contends that defendant's false promises were the cause of damages suffered. He also factors in the money that he had to spend on account of not being able to use his car, including cost of petrol spent when using another car.

That defendant confirmed that the plaintiff was indeed his client on at least two prior occasions. He confirmed that plaintiff had called him some time before the 6th November because of some problems he had with his car (a Volvo) and that one day, unannounced, he brought the car to defendant. Defendant testified to the effect that he had told the plaintiff that he was not expecting it at that particular time and that the vehicle had to be parked somewhere else since there was no space in the garage. Plaintiff parked the car and handed a paper over to defendant with a list of works that needed to be carried out, requesting defendant to provide him with an individual estimate beforehand for each and every job since he could not afford to do everything at the same time. Defendant points out that the Volvo in question was an early 1990's model so sourcing parts was a problem and that to provide an estimate one has to be very clear about prices. Defendant confirms that plaintiff called him several times because the latter needed the car and that defendant told him that *it was beyond his control.* He even invited plaintiff to come for the car but plaintiff refused until one day the plaintiff came for the key and told defendant that he ought to be ashamed of himself. Defendant was later confronted by plaintiff with a bill for €1,000, but subsequently told him that he would settle for €200.00 Defendant confirms that the car was brought over on the 6th November 2017. He also confirms that car was left outside until January but that plaintiff had possession of the key for some time before that.

Considers

That before entering into the merits of the case, the Tribunal must first consider defendant's plea - that the action was not preceded by the required procedure as set out in Art. 79 of Chapter 378. This section provides that *"in order to benefit from the remedies available* ***under this Part,*** *a consumer must inform the trader of any lack of conformity in writing within two months from the date on which the consumer detected such lack of conformity."* The operative word here is that it applies to situations **"under this Part".** This Part, in fact, deals with **Sale of goods to Consumers** which is clearly not the case here. There was no sale involved and plaintiff is claiming breach of contract and damages. In any case this issue has already been dealt with by this Tribunal in another case decided on the 3rd April 2019 in the names Maria Agius vs Lawrence Fenech Limited 89/18. The Tribunal refers to this case and the arguments therein and is therefore dismissing this preliminary plea as raised by defendant.

Having disposed of the preliminary plea, the Tribunal will now consider the merits of the case.

Considers

That the plaintiff exhibited a number of documents which pre-date the issue in question. Docs BB2, BB3 refer to invoices for works carried out prior to November 2017 and are therefore extraneous to the issue. There is no doubt that the parties had a commercial relationship and that defendant had worked on plaintiff's car before and this has been confirmed by both parties. Doc BB is a list compiled by plaintiff of **"Current issues with Volvo"**. It bears no date but it refers to a certain Robbie, and also indicates what appear to be plaintiff's mobile and landline number. Defendant doesn't seem to feature at all in this document. Dok A are diary note extracts drawn up by plaintiff, which were then retyped by him. For the purposes of the matter in issue, the relevant pages are 4, 5, 6 and 7. Dok BB1 is a revised list of costs & losses dated 3 October 2018.

Considers

That in a letter exhibited in the acts of the case dated 2 January 2018, plaintiff contends as follows:

My Vella, you have been deliberately leaving my family without our very necessary transport despite my advice to you of all the areas of inconvenience and hardship your delays were creating. Accordingly I hold you entirely responsible for our costs, losses, actual damages, inconveniences, humiliation and basic destruction of our Christmas activities. You breached our contract through you rintentional and highly unethical abandonment of the work you agreed to do for us, in a reasonable time ...

On 14th December 2017 I came over to check your last promise my car would be on a hoist, but as it was still in the backstreet, I took my key back so I could get at the spare to change over one flat .... Sadly by car now also has a totally flat battery from standing for almost 10 weeks. ....

Currently being far more generous than I think you deserve, I believe you should refund what we have expended using a friends car ...

Car borrowing until 3 December 68 trips - 680 Euro
Estimate Call Costs to you - 50 Euro
Trips to you, fares and time - 60 Euro
Local Shopping trips - 100 Euro (time and discount costs)
Delivery towing costs - 35 Euro
Total - Eu 925 + a further €122.32 for Reg and Insurance = Eu1047.32

I would propose that to a guaranteed penalty time schedule you repair my Volvo as per contract & pay me EU 240 (unless extra work is discovered), or .. you could simply pay me the Eu925.00 you have made me waste and I will tow the car to Gasan Zammit for repairs.

That the parties agree that the vehicle in question was not in working condition and had to be towed to defendant's garage. Having considered all the evidence tendered, the Tribunal is satisfied that it was indeed the defendant who told plaintiff to bring the car over in the first week of November, and this after plaintiff's incessant requests. That the vehicle in question spent approximately 5 weeks there (7th November until 14th December) until plaintiff resumed possession of the car on the 14th December. After such time, defendant surely could not be held responsible for any damages or inconvenience caused to plaintiff.

Considers

That in the absence of a written agreement signed by both parties it is difficult to state what kind of agreement was entered into. But there seems to be agreement that the car needed some remedial works and that it was taken to defendant's garage for these works to be carried out. There is no evidence that a time-line was ever given by defendant for the completion of these works, apart from plaintiff's diary extracts which can only be considered as ex parte evidence. Still, the extracts corroborate defendant's version in most parts, with the difference that defendant is not specific on dates.

Evidently defendant encountered some difficulties with sourcing parts for the works to be carried out and this coupled with plaintiff's insistence that every job should be preceded by an estimate made it harder for defendant to carry out the works in a serene, spontaneous and expeditious manner. Still, a period of five works for no works to be carried out can be considered excessive. When defendant realised that he would not be able to complete the works in a reasonable time, he ought to have insisted that plaintiff takes back the key. Defendant did try to suggest this, but perhaps far too late in the day, when a month had already lapsed. (Diary entry 11 December 2017).

Still the Tribunal does not feel that the plaintiff's claim is reasonable and should not be met in full. Under cross examination plaintiff admitted that most of the claims indicated by him on Doc BB1 were not actually spent - (items 4,5,6, 7). With regard to items 2 and 3, the Tribunal feels that these should not be awarded and are consequently being dismissed. The same may be said for Personal shopping costs/ losses, car borrowing costs, call cost estimates and Travel to and from HV garage.

As for the tow truck charges, it was plaintiff's responsibility to deliver the vehicle to the mechanic's garage and the mechanic can't be held responsible for the price of the tow truck. However, a car delivered to a mechanic is expected to be able to be driven home on its own steam and therefore the Tribunal feels it is only right that plaintiff be compensated for the price of recovery tow truck to take the car back home. There is also no doubt that this incident caused plaintiff stress and anxiety and therefore the Tribunal is ready to award the sum of 175 Euro to cover moral damages.

For these reasons, the Tribunal decides to accept part of plaintiff's claim and award him the sum of €210.00. Each party shall bear its own costs.

Michela Spiteri LL.D
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