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Fit-Tribunal tal-Konsumatur

David Lorenzo Alvarez

vs

Neil Tabone/ The Techrepair

CCT 73/18/MS

17th July 2019

The Tribunal

Having seen plaintiff's claim dated 15 May 2018 requesting the sum of €500.00, consisting in a deposit and other damages suffered after plaintiff entrusted his laptop with defendant for the latter to carry out repairs and subsequently realised that his lap-top had been damaged while in the possession of defendant .

Having seen defendant's reply dated 5th June 2018, refuting the claims made by plaintiff, in particular that deposit was never actually received by defendant; that lap-top had pre-existing damage which was the original cause of the fault, which damage was known to plaintiff and which is why he had sought defendant's help in the first place; that since lap top was later taken to another technician defendant can not be held responsible for damages before or after lap-top was returned to plaintiff and certainly not for any expenses incurred for diagnostic fees.

Having seen defendant's counter claim dated 5th June 2018 for the amount of €55.00 due to him as payment for diagnostic fees carried out on plaintiff's laptop, which deposit was never received by defendant since it was fraudulently cancelled by plaintiff; with costs.

Having seen plaintiff's reply to defendant's counterclaim, dated 18th June 2018 disputing the counterclaim for the following reasons:

That counterclaim was filed late, after the 18 days provided by law;

That the counterclaim was partially written in the Maltese language in violation of the principle of the right to a fair hearing;

That the deposit requested was illegal and in breach of art.11 of SL 378.17 which forbids the imposition of a deposit of more than 10 percent.

That the trader did not provide information on plaintiff's rights including the right to withdrawal and made him enter into and sign a contract when it was dark, allowing him no time to read it;

That there were no services rendered and therefore no monies due;

That the claim is vexatious;

That the damages claimed by defendant are inexistent.



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Having seen the acts of the case and heard the evidence tendered under oath.

Considers.

That this case concerns a damaged lap-top belonging to plaintiff which was taken to defendant company for repairs. Plaintiff is alleging that defendant caused further damage to laptop and is claiming the amount of €500.00 as compensation due to him for damages as well as a €55.00 deposit paid to defendant.

The Tribunal feels that it would be opportune to reproduce the emails exchanged between plaintiff and defendant in the order that they were sent.

23 November 2017 : 18:16

Dear David

Good afternoon.

Attached please find repair note for your Samsung Laptop. As per our conversation we will inspect your laptop and will inform you prior any repair.

23 November 2017 : 21:58

Hi Neil

Thank you for your email. I take note of it.

I've checked online and I found that the motherboard of my laptop should not be attached to the pin.

Looking forward to hearing from you.

David.

24 November 2017 : 09:26

Dear David

Good Morning.

We have inspected your laptop and the problem is coming because the DC PIN is damaged it could be because at the same exact place the laptop is broken. In order to fix it the DC PIN needs replacement and yes you are right it is not soldered to the motherboard so we need to order a replacement part.



MALTA

The price in order to replace the dc pin including labour charges is €110 (inc VAT). The parts needs to be ordered and usually it arrives between 1-2 weeks from date of order however due to the festive season approaching shipping time may vary because the logistics will be very busy and congested. If you would like to proceed with the order we require 50 % deposit before we order the part. Kindly let us know if you wish to proceed with the repair or not?

Best regards

24 November 2017: 12:20

Dear David

Thanks for your prompt reply, in regards to price we are sorry but that is the best price that we can give you because it should have been €150 but instead we are already charging you €110. Below please find the IBAN for your perusal.

24 November 2017: 18:43

Hi Neil

I would prefer to send you the money by transfer if you don't mind.

Yes, ok. I would like to collect the laptop while the part arrives, also I could give you the receipt of the transfer then. Can I collect it tomorrow or after tomorrow in San Gwann?

25 November 2017: 8.22

Dear David

Good Morning

If you like to send us the deposit via bank transfer it is not a problem for us, yes please kindly bring the receipt of the transfer with you upon collection.

Since we need to re-assemble the laptop we can meet on Monday pls? At what time are you available?

*Best regards
Neil Tabone.*



25 November 2017 : 14:11

Hi Neil, good afternoon

All right. Let's meet on Monday. I am available before noon, shall we meet in front of the Church of San Gwann

Thanks and regards

David

25 November 2017: 14:15

Dear David

Thanks for your email, we can meet near San Gwann church at 9.30am - 10.00am on Monday. Kindly let me know.

Best regards

Neil Tabone.

28 November 2017: 14:23

Dear David

Good afternoon.

We are sending you this email to inform you that the transaction has not yet been processed. In view of this we cannot order the part. As soon as the transaction gets through we will order the part and will send you another email to confirm.

Best regards

30 November 2017: 13:28

Dear Neil,

I had made the transfer on Sunday. However on Monday after you gave me back my laptop, I noticed that the problem with the DC pin had worsened, there were screws missing and I could notice that in the inside there were pieces that were not matching as they should.

For that reason I asked my bank to cancel the transfer's order and I brought the lap top to a real



MALTA

professional. His words were literally "the guy who did this completely destroyed parts of the laptop and worsened the issue with the initial electric problem."

Now even if I contacted you convinced that you were representing a company and were a professional, I have noticed that you are not, and verify that your 'services' are quite less than standard.

Now, as I see it, you have to restore the damages you have done. I give you two options now:

Going good: you pay for the part you have destroyed.

Going bad: If I do not hear from you or you refuse the above:

I will denounce you to the police, asking you to repair for the damages and for fraud ...

I will present a complaint before the Malta Consumers Affairs and Competition Authority against you, for unfair competition, since you are not registered as a company, are trying to provide services as such. In case, you were acting as a commercial activity, please be aware of this email as first notice of complaint under MCCA's rules.

Indland Revenue Department, since you are giving invoices and claiming to support VAT when you do not.

I will think about to start a legal action before a court for damages, fraud, unfair competition and acting as a representative of a fiction company.

I am asking you €150.

Please do not hesitate to contact me at 999290007 or at this email address. If you do not contact me today, or you refuse this, I will be filing everything tomorrow.

Considers

From the emails and documents exhibited and the testimony tendered, the Tribunal observes the following:

1. Plaintiff's laptop was delivered to defendant on the 23rd November 2017 and returned back to plaintiff four days later, on 27th November 2017.
2. Communications between plaintiff and defendant were cordial and constant up until the parties agreed to meet for the delivery of the lap-top.
3. The original issue complained of was that the DC PIN was not charging (Doc NT). In fact it transpired that the DC PIN was damaged and needed replacing. In an email dated 24 November 2017, defendant informs plaintiff about the problem and also tells him that the laptop is broken in the exact same place and informs him of the cost to fix it. At no stage does plaintiff dispute this. In a subsequent email sent by defendant on the same day, defendant informs plaintiff that a



MALTA

discounted price for the repair and cost of the replacement part would be €110.00 and requests a 50 percent deposit. In a subsequent email also sent on 24th November 2017, plaintiff accepts to pay the deposit, requests that this be done via bank transfer and asks that lap-top be returned to him until the part arrives. He also promises to provide defendant with a receipt of transfer. (Doc NT3).

4. On the 25th November 2017 plaintiff and defendant agree to meet the following Monday (27th November) in front of San Gwann church. Defendant reminds plaintiff to bring proof of online transfer.

5. No emails are exchanged on November 27th - the day the lap-top is returned back to plaintiff.

6. On November 28 2017 defendant sends an email to plaintiff informing him that the bank transaction was not processed and that the transfer of the deposit did not take place as promised and that the part can't be ordered until the payment is effected.

7. On November 30, plaintiff replies at length, saying he noticed further damage to computer and threatens court / police action.

The Tribunal further notes:

1. That the email sent by Arthur Briffa of Techpoint (who did not testify in these proceedings) informing defendant that the laptop was examined by him, is dated 4 January 2018.(Dok DLA1) - i.e. more than one month after the laptop was returned to plaintiff by defendant.

2. That the payment transaction of €260.00 which plaintiff is claiming as reimbursement for the money paid to Techpoint for the lap-top's repair is dated 9th January 2018.

Considers

That after carefully considering all the documents exhibited and the testimony tendered, the Tribunal feels that the plaintiff did not act in good faith when he requested defendant to pay online and promised to provide defendant with 'receipt of the transfer'. Doc NT3 is not proof of transfer of payment. It is simply the preliminary phase of an online transaction which was never actually completed and until that point, plaintiff had not effected any payment whatsoever. Had plaintiff really asked his bank to cancel the payment, he would have been in a position to bring both proof of payment and proof of cancellation, but he brought neither. In fact there was no payment to cancel, since this had never been effected. Doc DLA on the other hand is a document which provides clear evidence of payment and the Tribunal can readily tell the difference between one document and another. On the 4th January 2018, approximately 6 weeks after plaintiff's laptop was returned to him by defendant company, plaintiff sought the services of another company (Techpoint) and effected a €260 payment a few days later.



That plaintiff's bad faith is further demonstrated in the way that he did not immediately by sending an email to plaintiff when his laptop was returned to him on the 27th November, allegedly in a 'worse' condition. If, as he claims, he noticed his laptop had been further damaged, then he would have lost no time sending defendant an email, or calling them up to complain about the damage.

His laptop was returned at 9.30am on the 27th November 2017 and yet, despite the frequency in communication and email exchange prior, plaintiff did not make any attempt whatsoever to call or email defendant on the 27th, 28th or 29th November. It was in fact defendant who sent an email to plaintiff on the 28th November querying the transfer and it was only two days later, in reply to that email, that plaintiff decided to complain about a problem with the DC pin which, in his words, had 'worsened'. In that email plaintiff alleges that there were missing screws and pieces that were not matching as they should. He then goes on to say that he decided to cancel the transaction for that reason. As already stated, the Tribunal is satisfied that there was no deposit transaction to cancel. No proof of this alleged transaction was ever submitted. On the other hand, evidence tendered tends to prove the opposite. The Tribunal is similarly not at all convinced that the damage to the lap-top had in fact worsened. As already stated plaintiff did not dispute defendant's contention as expressed in an email sent by him on 24th November 2017 stating that there was damage to the laptop, which was broken and which would explain why the laptop was not charging.

Considers

That in view of what has been stated above, the Tribunal will not be awarding the €55.00 deposit claimed by plaintiff, who is not denying that the alleged bank transfer never actually reached defendant.

That, as regards the sum of €260.00 claimed by plaintiff as payment for repairs he was constrained to make to another company Techpoint, for this sum to be awarded, plaintiff must show the Tribunal on a basis of probability that the damage caused to the lap-top was the responsibility of defendant company. This evidence was not brought forward. The information that the Tribunal has is that the lap-top was transferred back to plaintiff on the 27th November 2017. Three days later, on the 30 November, in reply to defendant's email, plaintiff accuses defendant company of damaging his lap-top and threatens court and police action. He then brings into question a third party and quotes him as saying "the guy who did this completely destroyed parts of the laptop and worsened the issue" This third party was never brought before this Tribunal and this has no probatory value at law. Moreover, from documentary evidence submitted by plaintiff, the first indication of a third party inspection of the lap-top by Arthur Briffa of Techpoint took place in January 2018 - about 6 weeks after plaintiff's laptop was returned to him. Whether or not the situation had in fact worsened in those six weeks (which has not been proved) certainly can not be attributed to defendant company, when there was a significant lapse of time between one visit and another. Moreover, no one is disputing that the laptop was damaged. Had it not been damaged plaintiff would not have taken it to defendant for repairs. Even if it was "dropped or mishandled", as pointed out by Arthur Briffa from Techpoint, this can't be imputed to defendant.



MALTA

The Tribunal shall now consider defendant's counter-claim and plaintiff's pleas.

1. Plaintiff contends that the defendant's counterclaim was filed late, after the 18 day time period prescribed by law. Although this Tribunal is not strictly bound by procedure, in this case, although plaintiff's action was filed on the 15th May 2018, defendant was only notified on the 18th May 2018, which is the day the 18 days have to start to run. In fact defendant's reply and counterclaim were filed on the 5th June 2018 - within the 18 day time-period. The Tribunal is therefore dismissing this plea.

2. Plaintiff's second plea - that the counterclaim was partially written in Maltese is also being dismissed. Defendant's reply and counterclaim were written in the English language. The fact that the form may have been drawn up in the Maltese language is an administrative issue that has nothing to do with defendant. It certainly did not prejudice the plaintiff who replied to the counterclaim and appears to have understood exactly what was being claimed.

3. The third plea set up by plaintiff is that the deposit was illegal and in breach of art.11 of SL 378.17. The article quoted by plaintiff refers to payment before delivery of goods with respect to off-premises contracts.

"In the case of an off-premises contract, the trader shall not require the consumer to pay any part of the price before the delivery of the goods

Provided that the trader may request a deposit not exceeding 10 percent of the goods being the subject of the off-premises contract "

Art. 18 of the same law provides for a number of exceptions to the right of withdrawal, amongst these, in respect of service contracts when the service has been completely performed if the performance has begun with the consumer's prior express consent; where the supply of goods are made to the specifications of the consumer or are personalised; contracts where the consumer has expressly requested a visit by the trader for the purpose of carrying out urgent repairs or maintenance.

There can be no question that the consumer expressly requested a visit by the trader for the purpose of carrying out repairs or maintenance. There can be no question that the contract in question began with the consumer's prior express consent and further that the order for the goods was going to be made specifically for consumer. The contract was both the performance of maintenance and repairs and the supply of goods. The 10 percent refers only to the value of the goods ordered. The fact that the goods were never supplied because the consumer withdrew from the contract does not mean that the consumer should not pay for the maintenance and repairs carried out, which were factored into the deposit.

4. With regard to plaintiff's fourth and fifth plea, it was the plaintiff who sought the services of defendant and he voluntarily decided to enter into an 'off premises' contract. Not only, but for three days after, plaintiff exchanged emails with defendant, expressly agreeing to the order of goods and gave defendant permission to examine the lap-top to determine what was wrong with it.



MALTA

Collecting and delivering a lap-top, opening it up and checking what needs to be done and relaying this to consumer via email is a service in itself. These pleas are therefore being dismissed.

5. As regards the sixth plea, the Tribunal notes that all expenses for this case are covered by law and are awarded accordingly. No pre-existing sum may be claimed by the parties as these are set by the registry when computing the expenses due.

6. The seventh plea concerns the merits of the case that have already been dealt with by this Tribunal.

Considers

That in view of the above and after due consideration being given, the Tribunal feels that plaintiff has not proved his case and his claims are hereby being dismissed.

That defendant's claim of €55.00 includes the diagnostic fees and the deposit on parts to be ordered. The Tribunal feels that defendant has a right to compensation for diagnostic fees carried out, but since the parts were never actually ordered, these can't be factored into the deposit claimed by defendant. The Tribunal is therefore calculating the sum *arbitrio bono viri* at €35.00. The Tribunal is partially acceding to defendant's request and orders plaintiff to pay defendant the sum of €35.00. All costs of the case to be borne by plaintiff.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

Michela Spiteri LL.D
Arbitru