

MALTA

Fit-Tribunal tal-Konsumatur

Branko Radojevic

vs

MBL Garage Doors Ltd

CCT 50/18

31st July 2019

The Tribunal

Having seen plaintiff's claim presented on the 23rd March 2018 requesting the Tribunal to rescind the sale regarding purchase and installation of garage door and consequently order defendant company to pay the sum of €2,230 in addition to moral damages suffered to be assessed by this Tribunal, and this after plaintiff requested the services of defendant company for the supply and installation of a garage door, which door was not properly installed and gave plaintiff problems within three weeks from installation.

Having seen reply of defendant company of the 12th September 2018 whereby it first raised a preliminary plea in the sense that MBL Garage Doors Ltd is not a registered company, nor a trader and has no locus standi in the proceedings; that the plea is being filed by Garage Door Services Limited as notified with the claim; secondly plaintiff's claim is time-barred as per article 2153 of Chapter 16 of the Laws of Malta; that plaintiff's claims are unfounded both in fact and at law.

Having seen the records of the case and heard the evidence under oath.

Considers

That with reference to the preliminary plea raised by defendant, it is to be noted that defendant is claiming that the case against MBL Garage Doors Limited was filed incorrectly since the company is neither a registered company at law, nor a trader. No evidence was brought by defendant to substantiate this plea, however by means of an email dated 20th February 2019 sent from info@mblmalta.com to this Tribunal and signed by said Michael Balzan, the latter introduces himself as "Director of MBL Garage Doors Ltd". This is in direct contrast to the plea raised by defendant against the claim made by plaintiff. The Tribunal accepts the signed declaration made by Michael Balzan that indeed MBL Garage



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Doors Ltd exists and that he is the director of the same. Therefore the Tribunal dismisses this preliminary plea.

That with reference to the second preliminary plea, defendant company refers to Article 2153 of Chapter 16 of the Laws of Malta. This article provides that actions for damages not arising from a criminal offence are barred by the lapse of two years.

According to the documents presented in this case, a quotation was issued by defendant company on the 18th June 2015. Plaintiff states that the door was installed in two parts about six months later and finally installed by April or May 2016. Plaintiff paid the amount of €2,230.80 as per quotation. No date is given as to when the exact payment was effected. The motor arrived after installation and by end of June 2016 plaintiff claims that he could not use the door anymore. Despite's plaintiffs attempts at contacting defendant company, these proved futile and he eventually sought legal help. Messages presented in this case show that they were sent to defendant in November 2016 - approximately six months after installation. This case was eventually filed on the 23rd March 2018, well within the two year period indicated in Article 2153.

The Tribunal is therefore dismissing the second preliminary plea raised by defendant.

Considers

That as far as the merits are concerned, Tribunal notes that plaintiff Branko Radojevic contacted defendant company to install a garage door at his residence 'San Gorg, Triq is-Siegh, Swieqi'. A quotation was issued by defendant company on the 18th June 2015 and sometime in April or May 2016 the garage door was installed. Plaintiff paid the amount of €2,230.80 but a receipt of purchase was never tendered. Some three weeks after installation plaintiff noticed problems with the door - i.e. that it was not functioning via remote control and was not closing properly. In addition he also noted that rust was forming. He contacted Mr Balzan several times on the phone or via sms, where he claims he was mostly ignored. He even approached Mr. Balzan directly by going to his shop personally, even stopping him in in the street. Balzan would assure him that he would send one of his employees to fix the door but this never materialised. Legal action was sought by plaintiff and a letter was sent to defendant, but no reply was ever forthcoming. Plaintiff says that he had to open and close the garage door manually through the use of a steel bar which caused caused great inconvenience.

Plaintiff sought the advice of architect Kevin Bencini who presented his report on the 18th December 2017 whereby he concluded that the garage door was defective because of defective lateral anchorage/ supports (photos 2 &#); that door did not close properly and remained out of plane during normal operation (Photo 4); inadequately and loosely



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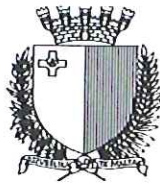
installed lateral motor bracket (photo 5); door was not mechanically operable during the said inspection; corrosion of steel door frame was noted.

That, on his part, defendant Michael Balzan whilst confirming that the installation did in fact take place at different stages over a few sessions, insists that the damage to the door was caused because the ground was not yet ready and cement was missing on the outer part. By the time the installation was finished, the door was already damaged because the release mechanism was forced and the motor broken. Defendant insists that whilst his workers were installing the door, other people were working on the premises and that his workers had nothing to do with the damage caused. He claims that the door had to be forced open because it was broken and his workers had nothing to do with this. Balzan claimed that he was not in a position to comment on the photos filed in this case although he did comment on photo number 6 saying that the gate was not like that when he left it and that this was certainly not done by his workers. Under cross examination Balzan concedes that the missing cement did not affect the installation but could have affected the rust that appeared in due course. As regards the architect's report, Balzan reserved the right to put questions to the architect, but never summoned him for the purpose or turned up in the following sitting. In fact out of the five sittings held by this Tribunal, defendant only appeared once.

Considers

That on the basis of the evidence submitted and the report filed, the Tribunal feels that plaintiff proved his case on a basis of probability. Evidently things were very wrong at installation stage. The fact that installation took place over a protracted period and that the motor was not installed at the same time does not augur well and shows a lack of professionalism. If indeed, as claimed by defendant, there were problems because of other works being carried out, defendant should have brought this to the plaintiff's attention and suspended the installation. The fact that defendant chose to say nothing about the missing cement can't now be used as an argument against plaintiff and in defendant's favour. (*The ground was not yet ready, cement was missing on the outer part. I am being asked if I brought this to the attention of the plaintiff and I say that he was present and I didn't have to tell him.*) Moreover, no evidence was brought by defendant to substantiate his claim that the damage was caused by third parties. None of his employees were brought to testify in these proceedings.

As regards the architect's report, although defendant reserved his right to comment when the architect was present, ultimately he made no such attempt and therefore the report remains uncontested. Defendant was well within his rights to appoint an architect ex parte, to contradict the first report, but this was not ever done.



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The Tribunal can't help but notice the behaviour and attitude of both parties in the proceedings, whereby plaintiff was consistently present and courteous, whilst defendant only turned up once, and this after being warned that his failure to attend would result in the Tribunal having to give a judgement without hearing his evidence. Still, having examined plaintiff's claim the Tribunal does not feel that moral damages should be awarded in this case.

In view of the above, the Tribunal partially accedes to plaintiff's request, orders the rescission of the sale, and orders defendant company to pay plaintiff the sum of €2,230.80. With costs. Defendant company may take possession of the garage door after effecting payment.

A handwritten signature in blue ink, appearing to read 'M. Spiteri', with a horizontal line underneath.

Michela Spiteri LL.D
Arbiter