



MALTA

Consumer Claims Tribunal

Crysta Darmanin

vs

Tip Top Sports

CCT 81/19/MS

26th February 2020

The Tribunal

Having seen plaintiff's claim dated 17th July 2019 requesting the refund of the sum of €185.00, being the price of a table soccer table purchased from defendant company, which table developed a fault when one of the legs broke off.

Having seen that defendant company, duly notified with plaintiff's claim, did not file a reply.

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

Considers.

That plaintiff is claiming that her sister purchased a table soccer table from defendant company around the 10th February 2019, for the price of €185.00. This was a birthday present for plaintiff's son whose birthday fell on the 17th February. Since defendant company could not deliver on time for his birthday, plaintiff's husband sent his own driver to pay for and collect the table. On the 23rd April, plaintiff's children, aged 10 and 13 respectively, were playing table soccer when one of the table's legs snapped, making it unfit for purpose. Plaintiff got in touch with defendant company and after some correspondence was told that the damage sustained to the table leg could not be covered by warranty both because two months had passed since the date of purchase and because the damage was not caused by a manufacturing defect. After contacting MCCA as required by law and not having obtained redress, plaintiff resorted to these procedures.

That Ivan Milosevic, on behalf of defendant company stated on oath that the table in question was most likely purchased some time in December 2018, which is the time when special offers on the soccer tables in question were promoted. He also submitted numerous cash sales of all sales made in respect to these tables. Milosevic also claimed that in such



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cases, the two year EU warranty does not apply and that the fifteen day cooling off period was the only right available to plaintiff. Furthermore the company could not assume responsibility for the assembly of the item as this was not carried out by a company employee, and that assembling the item wrongly could trigger further damages. That said, defendant contacted the supplier and sent photographs of the damaged item to see if such could be replaced and was duly informed that it would not be replaced because the damage was caused by misuse and was not a manufacturing defect.

Considers

That according to the evidence tendered, the Tribunal is satisfied that the item was indeed purchased from defendant company. Whether it was purchased in December 2018 or February 2019 is immaterial for the purposes of this case. It is also to be noted that plaintiff did not actually purchase the item herself and neither was she present when the item was collected from defendant company. It was her sister who bought the item in her absence and it was her husband's driver who collected the item from defendant company. Neither plaintiff's sister nor the delivery man gave evidence in this case. When asked under cross examination whether she was aware of the company policy which was communicated to the delivery man in question, namely that since the item was not going to be delivered and assembled by a company employee, wrong assembly could trigger further damage, plaintiff stated that she was not aware of this fact.

As far as the defendant's claim that in such cases, the item was not covered by a 2 year EU warranty but by a 15 day cooling off period, no evidence was brought forward in support of this claim. At any rate, this was not an online distance purchase or a door-to-door purchase so the fifteen day cooling off period would not seem to apply. It is the statutory guarantee that is to apply in this case. This guarantee applies for all manufacturing defects or other defects which make the item purchased not fit for the use intended.

Considers

That in this case, the Tribunal believes that the leg broke off as a result of a violent blow. The photograph exhibited is not indicative of a fault in the manufacturing process, but rather an 'over enthusiastic' use of the table causing the leg to break off. Plaintiff's own testimony indicating that the plastic stoppers on the handles were missing certainly can't be attributed to a manufacturing defect. Should these items have been missing on delivery these would have been reported directly to defendant immediately and not two or four months later.

The Tribunal is of the opinion that the only way plaintiff might have had a positive outcome to her claim was by proving that the damage was caused by a manufacturing defect. This



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failure to prove the above in addition to the fact that the plaintiff was never involved directly in the purchase or delivery and could not vouch for the proper assembly of the item, does not help her case. Moreover, defendant's evidence is more plausible and finds corroboration in the picture of the damaged leg exhibited which shows a violent break.

For these reasons, the Tribunal does not find in favour of plaintiff and is dismissing her claim, with costs.

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

Dr. Michela Spiteri
Arbiter