



MALTA

**Fit-Tribunal tal-Konsumatur**

CCT 23/19/B

Karl Cassar  
Vs  
Dr. Mohab Fahmi

Today, 6 July, 2020

The Tribunal:

Took cognisance of the Notice of Claim filed by Karl Cassar dated 1st March 2019 requesting the Tribunal to condemn the defendant to refund the price of € 318.75c representing key code device which was not functioning.

Took cognisance of the fact that defendant did not file a reply however appeared before the Tribunal and contested the case.

Examined the documentation filed and heard the parties give evidence under oath and the report of the appointed expert.

Considers:

Plaintiff claims that the key code device installed was not functioning. Plaintiff explained that the device had failed twice and ultimately the defendant claimed that the fault was not due to the key code device but due to the electricity supply. Plaintiff claims that the key code device was installed in the common part (main door) of block of apartments and none of the owners of apartments in the same block had any issues with electricity supply.

Plaintiff explained that following suggestions of Defendant they installed a voltage regulator this notwithstanding the key code device still was not functioning and defendant only offered to provide a new one at a discounted price which was not acceptable for Plaintiff.

Defendant gave evidence under oath and claimed that the first unit was replaced however he claimed that the defect was not with the unit per se but due to a power surge. Defendant explained that after the second unit also developed the same defect he urged Plaintiff to identify the source giving such fault. Defendant claimed that there is no link between the

- 1.Report Dr Cedric Caruana, p. 2
- 2.Report of Dr Cedric Caruana, p. 5
- 3.Ibid. p.4



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electricity supply of each individual unit and that of common parts since these were on separate meters.

That the Tribunal considers relevant the observation made by the expert appointed, Dr. Cedric Caruana. The expert having examined the common area observed that: *"the electrical installation supplying the common area is in poor state..."* however, the expert noted that albeit such the state of the common area the spot reading of the electrical supply was within regulations, in fact the expert determined:

*"1. The Electrical installation for the common area supply is in a poor state but does not seem to affect the quality of the supply.*

*2. The spot reading of the electricity supply of the common area showed that the voltage was well within regulations*

*3. There is no sound evidence to suggest the occurrence of a strong power surge coinciding with the failure of the key code device " 2*

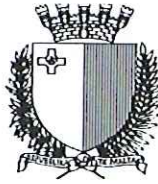
That the Tribunal considers that jurisprudence has established that whilst the Court are not bound by the conclusions of the appointed experts however these conclusions are not to be ignored without a justifiable and reasonable cause. In the Judgment dated 23 April 2012, in the names 'John Mifsud et vs John Giordemaina' the First Hall Civil Court determined the following:

*"In linea ta' principju, ghalkemm qorti mhix marbuta li taccetta l-konkluzjonijiet ta' perit tekniku kontra l- konvinzjoni taghha (dictum expertorum numquam transit in rem judicata), fl-istess waqt dak ma jfissirx pero' illi qorti dan tista' taghmlu b' mod legger jew kapriccejuz. Il- konvinzjoni kuntrarja taghha kellha tkun ben informata u bazata fuq ragunijiet li gravament ipoggu fid-dubju dik l- opinjoni teknika lilha sottomessa b' ragunijiet li ma ghandhomx ikunu privi mill-konsiderazzjoni ta' laspett tekniku tal-materja taht ezami ("Grima vs Mamo et noe" – Qorti tal-Appell – 29 ta' Mejju 1998)"*

That the Tribunal considers that from the technical aspect of the case, this Tribunal is relying on the report of Dr. Cedric Caruana who also indicated: *"Further inspection of the device reveals the method of installation as a potential suspect which could have contributed to the device fault" 3*

That following careful examination of evidence tendered, the report of Dr. Cedric Caruana and the documents presented the Tribunal is convinced that the plaintiff's claim deserves to be upheld.

1. Report Dr Cedric Caruana, p. 2
2. Report of Dr Cedric Caruana, p. 5
3. Ibid. p.4



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DECIDES

Therefore, for the reasons hereinabove explained, after having seen Chapter 378 of the Laws of Malta as well as the circumstances of the case, the Tribunal decides to uphold claimant's claim and condemns Defendant to pay Claimant the sum of three hundred eighteen Euros and seventy five cents (€ 318.75c)

The Tribunal further orders that Defendant is to pay costs of these proceedings.

A handwritten signature in blue ink, appearing to be 'Dr. Paul Borg', written over a horizontal line.

Dr. Paul Borg  
Arbiter

- 1.Report Dr Cedric Caruana, p. 2
- 2.Report of Dr Cedric Caruana, p. 5
- 3.Ibid. p.4