



Consumer Claims Tribunal

CCT 16/19/B

Edward Bourne

Vs

Portughes Laundry and Dry Cleaning Ltd

Today, 5 October, 2020

The Tribunal:

Took cognisance of the Notice of Claim filed by plaintiff dated 4th February 2019 requesting the Tribunal to condemn the defendant to refund the price of € 725 representing value of Hackett grey linen jacket which was damaged during dry cleaning by Defendant.

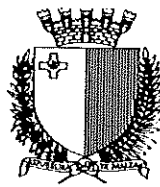
Took cognisance of the fact the reply filed by defendant on 25 February 2019 in which he rejected Plaintiff's claims on the basis that the garment was cleaned as much as possible but were limited due to the fabric's nature. Defendant also refuted the claim for reimbursement of price of garment which was sent to Defendant stained.

Examined the documentation filed

Considers:

Plaintiff claimed that he submitted the garment to Defendant since it was stained. Plaintiff explained that when the garment was first returned it had been cleaned yet the stain was still present and thus he sent back the garment to Defendant in order to get the stain removed. Plaintiff noted that the garment had minimal damage however the stain was still present. Plaintiff explained that together with this garment he had sent to Defendant another item which had beading and Plaintiff notes that Defendant had warned that the beading could be damaged during dry cleaning. No such warning had been given with regards to the jacket. Plaintiff further claimed that following that the jacket was damaged by defendant company since it had a whitish stain around the original stain making the garment unwearable.

Ian Portughes gave evidence under oath and claimed that the jacket was dry cleaned only as per instructions on the garment itself. He refuted the claim that the garment was cleaned with bleach infact he noted that the yellowish colour around the stain was due to



MALTA

the fact that the stain was bleeding out. Mr Portughes claimed that they also attached a note with the jacket stating that further cleaning could damage the garment however stated that they had no copy of such note. Under cross examination Mr Portughes noted that this case the item was not sent abroad from third party opinion since it was clear to them that the stain which was a result of bird droppings contained acid and consequently following cleaning the stain became lighter but not removed. Witness claimed that they give no guarantee that stain would be removed.

That the from the evidence produced it results that Plaintiff acquired a Hackett's jacket for £ 325 on the 29 July 2015 and that this garment was used on multiple occasions yet it still was in good condition apart from the stain. It also results that the garment was sent to Portughes twice. On the first occasion the garment although dry cleaned still had the stain visible and on the second occasion the stain became lighter however the stain bled and was still noticeable.

The Tribunal has Mr. Ian Portughes evidence on the manner in which the garment was treated, through which Mr. Portughes refutes claims that bleach was used. Unfortunately, the Tribunal has no expert opinion apart from the *ex parte* explanation on the manner the garment was cleaned.

From the acts of the case it results that on the first occasion the stain was dry cleaned and this following the instructions indicated on the label of the same garment. It was only on the second occasion that spotting agents were used which resulted in the stain becoming lighter yet with a yellowish colour around the stain.

Tribunal notes that the parties also contrast on the version of events on whether the consumer was notified with the possibility of damaging further the jacket. Whilst plaintiff claims that unlike his wife's dress no note was attached to the Jacket, Defendant claims that a note was also attached to the said Jacket since the stain was still visible.

This Tribunal considers that whilst the Defendant did its utmost in order to remove the stain however through the use of spotting agents the garment became even more damaged. It is logical that this technique incurred more risk since it was not immediately resorted to the first time the Jacket was sent for dry cleaning. Consequently, Defendant is in part at fault for the further damage (though the bleeding of the stain) caused to such garment. The Tribunal also considers that Plaintiff also accepted an element of risk when the garment was sent back to Defendant for the second time. This Tribunal notes that Plaintiff could have exercised more diligence by inquiring why the stain had not been removed and what could be done to do so rather than sending the garment back to defendant with the delivery person, when such item had so much sentimental value.



That this Tribunal considers that for the reasons outlined above Plaintiff's claim should be in part acceded. As regards to the computation of damages this Tribunal notes that in the written reply and testimony Defendant offered the sum of € 75 in terms of the Company's Terms and Conditions being "ten times as much the laundry and dry cleaning charge"¹. This Tribunal notes that a copy of the terms and conditions were never submitted in the Acts of the case and thus the Tribunal cannot ascertain that these were given to Plaintiff. The Tribunal also considers that the jacket had been worn on multiple occasions and that value of such items devaluates in time. Also, the Tribunal takes into consideration that when the jacket was first submitted to Defendant was unwearable due to the clear stain from bird dropping thus for the above reasons the Tribunal calculates *arbitrio Boni viri* the sum of one hundred fifty Euro (€ 150).

That following careful examination of evidence tendered and the documents presented the Tribunal is convinced that the plaintiff's claim deserves to be upheld in part.

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 *in parte* and condemns Defendant to pay Claimant the sum of one hundred and fifty Euros (€ 150).

The Tribunal further orders that each of the parties is to bear its own costs of these proceedings.


Dr. Paul Borg
Arbiter

¹ See written reply.