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Consumer Claims Tribunal

Irina Spinu

vs

Lisa Farrugia - OJO Hair and Beauty Lounge

CCT/119/18/MS

14th October 2020

The Tribunal

Having seen plaintiff's claim presented on 27th July 2018 requesting this Tribunal to order defendant to pay the sum of €1,500 representing damages suffered by applicant Irina Spinu subsequent to her engaging the professional services of defendant for a hair colour, as a result of which she suffered considerable hair loss and damage to her hair.

Having seen defendant's reply of the 25th September 2018 refuting plaintiffs' claims in fact and at law and denying any responsibility;
by way of preliminary plea that claimant Kieran Vella has no juridical interest in the claims and no locus standi to appear in the case;
any damage suffered by claimant Spinu was a direct consequence of her own actions and omissions and that defendant was not responsible;
defendant is also contesting the quantum of damages being claimed because no proof was brought to substantiate the inflated sum being claimed;
defendant categorically refutes claim that defendant has suffered health trauma.

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

Considers

That the preliminary plea raised by defendant to the effect that Kieran Vella has no juridical interest in the case was superseded by plaintiff's request for a correction to the effect that Kieran Vella be omitted from the claim and Irina Spina be the sole claimant. Defendant found no objection to such correction and the Tribunal acceded to the request. Therefore the Tribunal shall not take further cognisance of this plea and shall proceed to examine the merits of the case.



Considers

That plaintiff was a one time client of defendant's. In March 2018, she went to defendant's salon for a consultation because she wanted to change her hair colour from black to copper and subsequent to the consultation made an appointment to carry out the process. The Tribunal is going to reproduce the first part of plaintiff's testimony:

"In March 2018, I went to Lisa Farrugia's salon for a consultation to remove black hair dye which I had at the time. At the consultation defendant remarked that my hair was healthy and asked what products I use to keep my hair so healthy. In fact the defendant told me that to remove the dye we had to undergo some treatments. On the 10th March, she said that I needed to do some treatments and two days later I bought a treatment. In fact I had treatments of my own, I sent pictures to her but she suggested that I buy treatments from her salon. I am exhibiting a receipt of €35.00 the price of the treatments and also some chats with reference to what I've just testified which are being marked Doc A - F. I applied the treatments on my hair as instructed once every two days for a half hour application and then I made an appointment for the first trial. I don't remember the date but it was sometimes in March. For the first time the process worked - first she applied the bleach and then she applied the hair dye that I wanted. I don't remember how long it took but it was quite long. Although the process went very well my hair was different colours. I made an appointment which I needed and the second was on the 28th April. Defendant told me I had to wait 4 to 5 weeks and since I needed the appointment before 1st May, she did it for 28th after 3 to 4 weeks. I kept on applying the treatment as suggested. On the 28th April, I went for the second appointment. She applied bleach as she had done the first time with foil. I was left with foil with bleach for 30 or 40 minutes and nobody checked my hair. After some 40 minutes, defendant and her staff came to check my hair and their facial expressions were changing colours. Defendant told me that she wanted to wash my hair. When I saw my hair it looked very yellow and when I felt it, it was brittle and actually falling out. When I asked Lisa for an explanation why my hair is falling out with patches she said it is normal and its damaged. I told her that I understand that it is bleach but not with my hair falling like this. When I asked again she ignored me and sent her assistant. I was in a state of shock. I couldn't even walk. I am exhibiting pictures of my hair which was falling off. My hair was copper. Her helper said "Jekk tibqa' tigbdu mhux ovvja li ha jinqalalghhek'. In fact my hair at the time looked much longer than it was and this was because it was falling. Her helpers applied treatments - something on my hair to heat it like a hair dryer on a stand, which in my view was much worse because it continued heating my hair. They applied more treatments and toners although I didn't know what they were doing."

Plaintiff went on to say that throughout this ordeal she was virtually ignored and made to feel like it was her fault. The entire appointment lasted 3 hours and she was not charged.



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She left the salon with wet hair, went to her boyfriend's house and told him about what had happened and then went home. She tried brushing her hair and parts of her hair fell off. She was in a state of shock and the reason she had carried out the procedure in the first place was in anticipation of a holiday on June 6, 2018. As a result of the procedure, she spent a month worrying. Upon arrival in Santorini, she fainted and found herself inside an ambulance. She attributed the fainting episode to all the worry and stress brought about by this incident and the fact that she was given no guarantees that her hair would recover from the damage until the hair grew back. Plaintiff blames this on defendant's lack of professionalism, her failure to carry out a patch test and insists that she was never asked whether her hair had been coloured with a box treatment (metallic salts) until after the procedure which is when her hair started falling out.

Plaintiff's partner, Kieran Vella, also testified in these proceedings, confirming that the couple had booked a holiday some five or six months prior and were looking forward to the trip. To this end, plaintiff also wanted a more summery look and changed her hair colour. Vella's involvement was after the fact, when a distraught plaintiff went over to his house and he witnessed her distress and her hair falling out. Vella also confirmed that this incident affected his partner's mood and that she didn't want to leave the house. She didn't want to travel either but because the trip was not refundable he convinced her to go along and she did to make him happy. Upon arrival in Greece (and two flights later), she felt ill and fainted and they ended up in hospital. Doctors told him that this could have been post-traumatic stress disorder and the holiday was ruined.

Monique Caruana, who works with defendant, testified in this proceedings to the effect that she first met plaintiff when she came to the salon and requested a hair colour change - from black to copper. A consultation followed where both her and defendant were present. A first appointment was scheduled and she offered the client a coffee and then defendant took over and started the process. The first appointment was a success and Caruana, who was observing the process in between other clients, could see that the bleach had lifted well, although there was still more work to be done. A toner was then applied to the hair to maintain uniformity. A second appointment was scheduled and client was advised to treat her hair with products that were good for the hair and to return some 4 - 6 weeks later for further bleaching as continuing with the process before would have caused damage. A second appointment was set in late April (28th) and once again Caruana offered plaintiff a coffee and then defendant took over. Defendant applied bleach and asked Caruana to keep an eye on the bleach after she was finished with her client. When she was done with the client (about 10 minutes later) she checked the foil which was hot and immediately went to tell defendant who came to remove them. Caruana remembers that strands were breaking off (about 30 percent of the hair) on the band which did not want to lift. A decision was taken to apply a 30 minute protein treatment to reverse the process and restore elasticity and client was told not to touch her hair but client's knee jerk reaction was to touch the hair and



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she couldn't help it. As a result the treatment didn't really work. Client left unhappy and defendant did not charge her for the services.

Under cross examination Caruana says that during the consultation they asked the client what they had done in the last 6 months and that there were a standard set of questions clients were asked before carrying out colour changes. Caruana also said plaintiff was not asked directly whether she ever had a box colour but asked whether she had always gone to a professional hairdresser, and she had answered in the affirmative.

Defendant Lisa Farrugia explained that she has been a hairdresser for 30 years, starting out in the UK where she worked for high-end establishments and after moved to Spain where she received training in colour techniques. She explained that a lot of clients want to change their hair colour from black to blonde which is a complex process that requires patience as it needs to be done in stages. In fact this can take some four or five sessions.

Defendant explained all this to plaintiff at the initial consultation stage where she also asked about plaintiff's hair history. According to defendant, the first treatment was done on the 7th April and the second, on the 28th April. Defendant also claims that at consultation stage she asked plaintiff whether she had ever used a box colour (which contains metallic salts and which could have an explosive result on hair), and that plaintiff had assured her that she had not and had always used the services of a professional hairdresser. Defendant observed that plaintiff's hair was healthy and in a good state and the first treatment was applied using a bond linker. The hair was checked every five minutes and although there was a band of hair which refused to lift, this was normal. Plaintiff asked when she could come back for second treatment and 4 - 6 weeks was recommended but plaintiff wanted it sooner and against their recommendations, an appointment was booked for three weeks later.

The second appointment arrived and defendant applied the bleach on the area which had resisted the bleach. Defendant says that she went upstairs and asked her assistant, who was working on another client to check on plaintiff. Some time later her assistant came to her and said the foil was very hot and she immediately attended to plaintiff and found that 30 percent of her hair had been diluted. She concluded that the reason for this was the presence of metallic salts in that area and although she told plaintiff not to touch her hair, plaintiff pulled on her hair for the duration of the treatment that was immediately applied to try to restore the hair's condition. Afterwards a toner was applied. Defendant attributes the reason for the damage to the metallic salts, despite the fact that plaintiff insisted she had never used a box colour, but defendant says that she later heard plaintiff say that defendant was no more professional than the girl who had done her hair at home.

Under cross examination defendant says that although she did not tell plaintiff that her hair would fall out if her hair history included these box colour/ straightening treatments, she said she conveyed the message that if she had used these products there could be a problem



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when bleaching the hair. Asked about scheduling the appointment earlier than six weeks, she said that although she felt it was too soon she had agreed to it and recommended a protein treatment and had not foreseen the catastrophic results. The second bleaching was applied with a product called Olaplex which is checked every 5 to ten minutes and that she had asked her assistant who was applying a root colour to someone else, to check on plaintiff. Defendant insists that no more than 10 minutes had lapsed from the second application of the bleach to the time when Caruana went to get defendant. Defendant concluded by saying that she knows that these things can happen because she is a professional and has been in the business for 30 years.

Emma Johnson presented an affidavit and also testified in these proceedings where she explained that a client's treatment history is best ascertained by asking the client what they have used on their hair recently and also by feeling the hair. Making suggestions and prompting the client to offer full disclosure depends on their replies. Johnson was not in the shop and had no first hand knowledge of the case and no relationship with defendant. On the subject of metallic salts Johnson said that someone who has always gone to a salon is not likely to have used metallic salts and the best way to ascertain this would be to carry out a test where you get a hair sample and mix it with perm solution and see if the ammonia reacts with the salts. Still, this is not always reliable because different parts of the hair react differently, which is why full disclosure from client is the only real way of knowing.

Considers

That plaintiff is requesting the sum of €1,500 Euro, representing damages she suffered after engaging the services of defendant, which services were carried out unprofessionally causing hair loss and extensive damage, in addition to emotional and psychological trauma.

Defendant refutes the claims and insists that any damage caused was a result of plaintiff's lack of full disclosure because she was not honest about her hair history.

Considers

That the Tribunal is satisfied that the first treatment was carried out 7th April 2018, and on the same day plaintiff purchased a treatment in the amount of €35.00 from defendant's salon. (Dok F) This treatment was recommended by defendant to be used between the first and second application. Text messages were also submitted which indicate that on 23 March plaintiff asked defendant to reserve a treatment for her, to be used before the first treatment. (Dok A) Although plaintiff says that she applied the treatment as instructed prior to the first application, unfortunately the only receipt exhibited bears the date 7th April, so the Tribunal can't be certain that the treatment was ever purchased prior to 7th April which was the date of the first bleach application. In any case, the Tribunal is



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satisfied that the process worked very well first time round and the problem occurred during the second application and there seems to be agreement by both Parties on this.

That plaintiff insists that she was not asked whether or not she had ever used metallic salts/ box colour during the consultation stage but only after the second application when her hair was falling off. Defendant, on the other hand, insists that this information was requested at the initial consultation stage and plaintiff assured her that she had always used professional services. Defendant and Caruana disagree on the matter of client history. While defendant testified that she asked for client's history in the last ten years, Caruana indicated that the focus of client's history is their recent history - i.e. as recent as 6 months prior, which does not rule out the fact that a client may in fact have used box treatment years before and failed to disclose this. Defendant also says that she was not explicit in telling plaintiff that her hair would fall out but intimated that using box treatments would have been damaging. Caruana on the other hand says that the words box treatment or metallic salts was not used per se, but rather plaintiff was asked whether she had always used professional services.

The Tribunal feels that when dealing with a new client with no prior experience or knowledge of their hair, a drastic procedure which could be potentially catastrophic is a huge risk. Professionalism requires that things be spelled out explicitly leaving no room for doubt.

The fact that defendant might have overheard plaintiff say that someone else had come to her home and did her hair in no way proves that she had box colour treatment done in the past. Moreover, in matters like these, allowances also have to be made for genuine oversight or error (people may forget doing a treatment or colour in the past) and moreover, a six or twelve month history window might not even be sufficient to rule out the possibility of a reaction given that hair reacts differently where different people are concerned.

Moreover given that this was a first time client and that defendant had agreed to an earlier application against her better professional judgement (second application was done after three weeks instead of six), the decision to apply the second treatment in the absence of a patch test at this stage, was certainly ill-advised. If the defendant really had reservations about carrying out the second application earlier, she could have refused to do. The fact that she agreed to do so without carrying out a patch test the second time round, at least on the problematic band in question, was clearly a gross error that proved detrimental. Even if there was a slight element of contributory negligence on the part of plaintiff who may have rushed the procedure, the buck has to stop with the professional person, who in this case, had a lot of experience under her belt and ought to have known better.

Having said that, it is clear that the second application might still have not produced the disastrous effects it did, had the application been better timed and attended to. Having heard the testimony, Tribunal is satisfied that given the potential for damage and



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considering that this was a second application being done on a first time client prematurely, the plaintiff should not have been left unattended for any amount of time. If, as defendant testified, the client had to be checked on every five minutes, then surely the decision to leave plaintiff alone for any length of time was another gross error of judgement. It clearly resulted that client was not being tended to by anyone during those ten to twelve minutes (or longer).

Leaving plaintiff alone for one minute longer than necessary was a risk which proved catastrophic and the pictures submitted leave no doubt about this. Both defendant and Caruana say that the client was checked on after ten minutes, subsequent to which Caruana still had to fetch defendant and inform her that the foil was hot. Defendant who was seeing to another client, would have had to stop what she was doing and then go to the plaintiff. So the plaintiff would certainly definitely have been waiting in excess of than ten minutes. Plaintiff testified that she was left alone for at least 30 minutes. Even if it was not the case, any amount of time in excess of 5 minutes was clearly risky. Defendant clearly testified that plaintiff was to be checked after 5 minutes. If that was the case, it would have been advisable and prudent to check on plaintiff after 3 or 4 minutes, not after 12 minutes. And certainly not after 15 or 20, which was probably closer to the truth. The Tribunal is satisfied that this was the main reason for the damage. The hair which was already being treated prematurely, after a mere 3 weeks, could not withstand further bleach and was 'overcooked'. Blaming the hair loss on the plaintiff's instinctive reaction to touch her hair is completely unfair and dishonest. The facts speak differently and the Tribunal is satisfied that the plaintiff has proved her case on a balance of probability.

Considers

That as far as quantum of damages, plaintiff is claiming €1,500. To this end, plaintiff substantiated damages in the amount of €1,135.90, €500.00 of which constitute the maximum amount of moral damages allowed by law, which the Tribunal is hereby awarding in full. Apart from moral damages, plaintiff presented:

- a) a number of receipts for treatment products in the following amounts: €63.90, €35.00, €22.00, €35.00 - totalling €155.90. The Tribunal is awarding these in full.
- b) a receipt for €300 covering the medical expenses incurred while on holiday in Greece, of which the Tribunal is awarding €200.00
- c) a receipt for legal fees in the amount of €180.00. After having seen s.25(2) of Chapter 378, the Tribunal is dismissing the request.



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For these reasons, the Tribunal partially accedes to plaintiff's claim and awards the plaintiff the sum of eight hundred and fifty five Euro and 90 cents. (€855.90.) Costs of the case are to be borne by defendant.

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

Michela Spiteri Av.
Arbiter

A handwritten checkmark in blue ink.