



Fit-Tribunal tal-Konsumatur

Paul and Liyung Zarb

vs

Newark School

CCT 109/20/MS

3rd February 2021

The Tribunal

Having seen plaintiff's claim presented on the 24 August 2020 requesting the refund of €1,000 being the sum paid for registration fees to secure a place at Newark School for scholastic year 2020, which did not materialise due to the Covid pandemic.

Having seen that defendant company, duly notified, did not reply to the claim and moreover nobody from defendant company appeared before the Tribunal to contest the claim.

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

Considers.

That plaintiff testified in these proceedings to the effect that he and his wife wished to bring their granddaughter over to Malta from China, to study English. After making contact with defendant company they decided to enrol their grand daughter at Newark School in July 2020 for summer school in preparation of scholastic year 20/21. On the 6th December 2019 plaintiff paid the registration fee on verbal condition of refund. On the 14th May and before officially confirming acceptance, plaintiff withdrew the application on account of the Coronavirus pandemic, since the child was unable to travel. The school refused to refund the registration fee and instead offered plaintiff a credit note which could be utilised for the next scholastic year. The school also offered online learning. Neither of these options was acceptable to plaintiff since there is a time difference between China and Malta and also because the purpose of the trip was also to combine learning English with living in a country where English is spoken before the child entered the senior school - so postponing the course for a year or two would certainly defeat the purpose.



MALTA

That defendant company did not reply to plaintiff's claim and nobody appeared before the Tribunal when called to do so. Plaintiff's claim is therefore uncontested.

Considers

That a consumer has a legal right to cancel a contract or agreement and claim full refund of a deposit when the conditions of that contract can't be met. In this case, although it is true to say that the reason the conditions of the contract were not met was on account of a pandemic, which the supplier (Newark) was not responsible for and had no control over, it would be unreasonable of defendant company to retain the deposit considering the situation and the fact that the consumer was acting in good faith. The deposit was accepted on condition of refund should the child not attend and although the school technically did not refuse her entry at the school, the government measures and the situation worldwide was such to render it impossible for the child to travel to Malta and start the course. Moreover, the school itself would have been unable to provide the service required - therefore the terms and conditions of the contract could not be satisfied bilaterally.

Moreover, the contract between plaintiff and defendant was specific to a certain date and when the registration fee was paid the intention was for the child to learn English in Malta for a particular academic year. That was not possible and the school itself could not satisfy the conditions of that contract because of the pandemic. Offering a refund for a future academic year can't possibly be binding on the consumer unless he accepts it. The school could not unilaterally decide to change the terms of the contract without plaintiff agreeing to such changes.

Defendant company did not present any form of evidence showing that the refund was non refundable and moreover the Tribunal feels that in any event, plaintiff's claim should be acceded to. Failure to do so would result in defendant company being unjustly enriched and retaining a deposit when no services whatsoever were provided. The plaintiff was well within his rights to cancel the agreement all things considered.

For these reasons, the Tribunal is acceding to plaintiffs' claim and hereby orders defendant company to pay plaintiffs the sum of €1,000 for the reasons above-mentioned. All costs are to be borne by defendant company.

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

Michela Spiteri Av.
Arbitru