

MALTA

Fit-Tribunal tal-Konsumatur

Dmitry Reiderman

vs

Christian Borg ezercenti l-kummerc bhala Gold Car Rental Malta

*CU 55/20/MS*

Today, 9th December 2020

Having seen applicant's claim dated 21 April 2020, requesting the Tribunal to order respondent to refund him the sum of €995.00, representing an amount paid to respondent for the lease of a vehicle, which lease agreement was not honoured when respondent failed to deliver what was promised to applicant, not once, but twice.

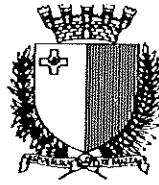
Having seen that respondent raised a preliminary plea to the action, namely that this Tribunal is not competent to decide on the applicant's claim in so far as applicant cannot be deemed to be a consumer in accordance with article 2 of the Consumer Affairs Act.

Having seen the acts of the case and heard submissions by the Parties on the preliminary plea in question.

Considers

That respondent is contending that applicant cannot claim to be a consumer as this transaction was in fact 'related to his trade, business, craft or profession' as evidenced by the agreement which shows the consistent use of a company email, negotiations involving another individual from the same entity and an indication that monthly payments will be settled by Aspire Global International Limited. Accordingly, claimant can't be reasonably considered a consumer, as stated by the European Court of Justice (C464/01),

That applicant refuted this plea, insisting that the claimant had corresponded with defendant rental company in his own name on numerous occasions and the car was for his own personal use, even if it was going to be paid for by the company. Moreover, the contract is signed in the personal name of applicant and not in the company's name.



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Considers

That the respondent contends that the fact that claimant used his business email address, that negotiations involved a third party who was acting on behalf of Aspire Global International Limited and that monthly payments were being settled by the company itself, could have reasonably created the impression that claimant was acting in a business capacity and therefore was not a consumer in terms of law.

That applicant contends that since the contract was concluded in applicant's own name and not in the name of the company, this sufficed for the purposes of satisfying the 'personal consumption' criteria, as it were.

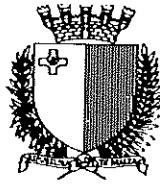
That Chapter 378 of the Laws of Malta, defines a consumer as any individual who in transactions and other matters covered by this Act or any regulations made thereunder, is acting for purposes which are not related to his trade, business

Considers

That in the final analysis, the ECJ has held that it is for the Court to decide whether a contract was intended to meet the needs of the trade or profession of the person concerned or whether, on the contrary, the business use was merely negligible. For that purpose, the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded.

That the Tribunal also notes Directive 2011/83/EU of the 25 October 2011, on Consumer Rights, which defines consumers as "natural persons who are acting outside their trade, business, craft or profession. However in the case of dual purpose contracts, where the contract is concluded for purposes partly within and partly outside the person's trade and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered a consumer."

Now in the case at hand, it is clear that the contract was concluded by Dmitry Reiderman, in his own personal name. Nowhere in the contract or in the email does claimant's name or signature appear in relation to the company, nor is his designation within the company, (as CEO) nor the company logo or address beneath his signature indicated. The fact that he corresponded using an email address which included the words 'aspireglobal' does not suffice to create an overriding impression that the transaction was contracted for business purposes, as opposed to for his own personal use. On the contrary, all the emails were simply signed "Dima" and likewise the contract does not describe him in relation to the



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company. The add on driver 'Natlija Reiderman' (clearly a family member/ wife) corroborates the Tribunal's view that, in the overall context the transaction was a personal one. Neither is the matter of payment by the company relevant, in that Chapter 16 allows payment of a debt by a third party in the discharge of the actual debtor's obligation.

The Tribunal therefore considers that in this case the applicant qualifies as a consumer in terms of law.

For these reasons, the Tribunal dismisses defendant's preliminary plea and orders the continuation of the case.

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

Michela Spiteri Av.  
Arbitru