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Fit-Tribunal tal-Konsumatur

Claudiu Marcan Otan

vs

RACA Ltd

CCT124/20/MS

24th November 2021

The Tribunal

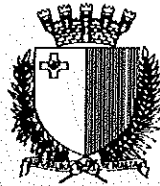
Having seen plaintiff's claim presented on the 15 September 2020 requesting the sum of one hundred and twenty Euro (€120.00), being the price of a bag he purchased from defendant company, which bag developed serious defects a few months after purchase.

Having seen defendant company's reply dated 24 December 2020 refuting plaintiff's claims and stating that the bag in question did not have a manufacturing defect but was damaged as a consequence of a reaction to heat while in the client's possession. Defendant company also offered a credit note to plaintiff for the full price of purchase, on a without prejudice basis.

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

Considers.

That there is agreement between the Parties that the bag which forms the merits of the case was purchased by Plaintiff on the 5th February 2020 and that about four and a half months later, on 17 June 2020, Plaintiff returned the bag to defendant company on account of air



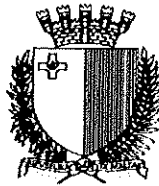
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pockets/ bubbles which developed on the bag's surface. Initially the company was very helpful and told Plaintiff that they would look into the matter but a few weeks passed before he was offered a remedy in the form of a credit note for the full amount. Plaintiff stated that a credit note was not a viable option for him because there were no other leather bags available in stock, which is what he wanted. Failing the option of replacement or repair, Plaintiff requested a complete refund, which option was refused by defendant company since the defect was not a manufacturing or latent one.

That Leonard Cassar also testified behalf of defendant company to the effect that the bag was brought to the shop more than four months after purchase and left at the shop by plaintiff. He explained that it took a few weeks for the bag to be properly inspected, but once inspected, he concluded that the damage was a result of exposure to heat and was not the result of a latent or manufacturing defect. He conceded that plaintiff was not happy with that assessment made and that he agreed to give him a credit note for the full price strictly on a without prejudice basis. He insisted that he had gone beyond what was expected of him purely to maintain good client relations and because he always leans in favour of the consumer, but that the Plaintiff refused and told him that he did not wish to buy another Diesel product.

Considers

That the Plaintiff never exhibited photographic evidence of the damage to the bag, which is unfortunate. While it is true to say that the bag was exhibited by Leonard Cassar when he testified before the Tribunal, the Tribunal should not be expected to rely on memory. The onus for proving that the bag was defective and the causal relationship between the defect and the damage falls on plaintiff, and at the very least, he should have provided photographic evidence of the damage in question. While it is true that the bag remained in the possession of the defendant, said photographs could easily have been taken prior to the bag being returned or even after. The Tribunal is able to recall that the bag was a form of bonded or PVC leather although recollections are now vague. The Tribunal also noted that it was only one specific area of the bag which developed air bubbles and that the rest of the bag appeared to be in perfect condition.



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That the Tribunal is satisfied that the bag was used for a period of four and a half months by Plaintiff, between early February and mid June 2020 and that the bag was returned to defendant company after Plaintiff noticed air pockets/bubbles. The damage itself is not in dispute. Ultimately, what the Parties disagree on what caused this defect, with Plaintiff insisting that this was a latent defect and with defendant company stating that this was a result of exposure to heat or some other substance. Plaintiff denies these claims.

While it is true that defendant company did offer the Plaintiff a full refund in the form of a credit note as a matter of goodwill, Leonard Cassar insists that this was without prejudice and in no way was it an admission of fault. Plaintiff ultimately refused the credit note since there were no bags available at the time. Contrary to what was stated by Plaintiff in his email dated 25 June 2020, this offer is not tantamount to an admission of fault on the part of defendant, but rather an attempt to maintain good customer relations and this can in no way be held against defendant company.

Considers

That the Plaintiff is requesting the sum of 120 Euro after purchasing a bag from defendant company, which bag was allegedly defective. It is up to the Plaintiff to prove that the bag was damaged and that this damage was the cause of a latent or manufacturing defect.

That while there is no doubt that the bag in question was damaged, the Tribunal must be satisfied that the damage was in fact the result of a latent or manufacturing defect and not as a result of mis-use by Plaintiff. Defendant company has rebutted plaintiff claims and has alleged that this damage was a result of exposure to heat or some other substance.

That certain types of leather - especially bonded leather can and does sometimes bubble up. However there are also other factors which can cause such bubbles to appear, such as excessive cleaning, exposure to the sun, moisture, salt or harsh cleaning products.

The Tribunal notes that there is a significant lack of evidence to go on bar the agreement by Parties that the bag in question was in fact damaged. The Tribunal recalls that the bag was



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only partially damaged, in a specific area, which is more compatible with defendant's version. The Tribunal is not satisfied that the damage to the bag was in fact a result of a latent defect.

The Tribunal also has before it, an offer by defendant company to provide the Plaintiff with a credit note and this strictly on a without prejudice basis.

That offer was never withdrawn by defendant company and the Tribunal feels that it would be counter-productive if the Tribunal were to dismiss this gesture of goodwill in the particular circumstances of the case.

For these reasons, while dismissing Plaintiff's request for a cash refund of €120.00, orders defendant to furnish Plaintiff with a credit note for the full amount of €120.00 as per defendant company's offer. Costs of the case are to be borne by each of the Parties respectively.

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

Michela Spiteri LL.D
Arbitru