



Fit-Tribunal Ghal Talbiet tal-Konsumatur

Lyudmyla Peretyatko

vs

TCTC Malta

CCT 66/21/MM

Today, 1<sup>st</sup> February, 2022

The Tribunal

Having seen the claim filed by the plaintiff on the 14<sup>th</sup> of April whereby the sum of Euro 300 is being claimed representing the value of the Customer Care Course Level 2 including the examination and certification of completion for such course acquired by the Plaintiff on the 28<sup>th</sup> of November 2020.

That the defendant company failed to file a written reply but contested the case orally at the sitting scheduled for the hearing.

Having seen the documents filed and the evidence tendered on oath.

Having seen the records of the case.

Considers.

That this case concerns a claim for a full refund of the course acquired by the plaintiff from the defendant company and this on the basis that the plaintiff was not allowed to sit for the examination by the defendant company on the date of the exam, that is the 25<sup>th</sup> of January 2020. Such refusal was due to the fact that the plaintiff failed to produce a negative Covid 19 swab test as previously instructed to do so by the defendant.



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The Plaintiff reiterated that the failure of presenting a negative swab test was due to a delay from the Health Authorities and in no way a negligent act on her part. Moreover, she insisted that the defendant company, given that they had empty rooms available, should have provided the plaintiff with the opportunity to sit for the exam in an empty room. The defendant rebutted that providing an empty room to a person without a negative swab test could expose the company to risk and incur additional costs and expenses and argued that its employees were not expected to handle the exam paper of a person without a negative swab test due to the risk of infection.

Considers.

That the primary consideration is whether the defendant company was justified in prohibiting the plaintiff from sitting for the exam and thus whether the plaintiff should be exonerated from paying again for the examination, and thus according to her request be refunded the fee of the whole course (since she declared that now she is no longer interested in sitting for the examination) as it was not within her control to provide a negative Covid 19 swab test on time.

Despite the fact the parties emphasised and in fact gave contrasting versions as to whether the plaintiff was instructed by an employee of the defendant company to contact City and Guilds (the company offering the examination) directly or not is of little relevance. The emails exhibited by the defendant company are very clear and it was under the clear instructions of City and Guilds that the plaintiff was to sit again for the examination and be re-charged.

This leads the Tribunal to conclude that not only did the plaintiff failed to provide any documentation to show when she had booked the swab test and when she was effectively tested, to show the Tribunal that the test results were truly unreasonably delayed but also cannot find any justification which could exonerate the plaintiff from being responsible for her own actions – failing to provide a negative swab test on time as had been previously informed and advised. The Tribunal notes that other options were available to the plaintiff such as opting for a same day test at a private clinic.

For these reasons, the Tribunal dismisses plaintiff's claim with costs to be borne by the plaintiff.

Avv. Martha Mifsud LL.D

Arbiter