Consumer Claims Tribunal

Alison & Nicholas Fry

vs

Technological Innovations Limited (C 60666) trading as Window World Innovations

CCT G6/19/ MS

9th September 2022

The Tribunal

Having seen the claim filed by plaintiffs on the 5 November 2019, requesting a refund of the sum of seven hundred Euro (700.00), being the deposit paid to defendant company for an order in connection with the manufacture and installation of a PVC door, which order could not be executed by defendant company as originally agreed upon because of a technical issue which required additional works, subject to an increase in cost which was not acceptable to plaintiff;

Having seen the reply filed by defendant company on the 9th December 2019 refuting the plaintiffs' claims in fact and at law and moreover that plaintiff Alison Fry had accepted the conditions stipulated by company, namely that the order could not be cancelled unless the Company was in breach of its obligations to the buyer;

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

Considers

That from the evidence, it results that in or around January 2019 plaintiff Alison Fry visited a showroom in Victoria and enquired about a PVC door. Her details were taken by a shop assistant and plaintiffs were later contacted by a certain 'Mario Grand'. The latter was employed with Window World Innovation and contacted plaintiff/s regarding the purchase and installation of a PVC door.

Grand visited the premises and took approximate/indicative measurements using a measuring tape and informed plaintiffs that the government would be giving a maximum 1000 Euro grant. On 23 January 2019 a purchase agreement was signed and plaintiffs handed over a deposit of €700.00. In early February 2019 defendant company sent a surveyor to measure the exact space where the door was to be fitted and plaintiffs were informed that because the walls were not straight, the door as originally quoted, could not be fitted.

Several phone calls followed between plantiffs and Grand between February and April on a possible way forward. In early May plaintiffs held a meet with Anthony Saliba and the same engineer who had visited the premises where a solution was proposed for additional works to try to rectify the situation. An additional quote was sent to plaintiffs on 23 May 2019 (Dok B) which indicated a significant increase in cost which was not acceptable to plaintiffs. Plaintiff Alison Fry states that during the meeting, the company suggested leaving the door with the gaps but she refused because she didn't want gaps and she therefore requested an additional quote. She also states that she spoke to Anthony Saliba personally who asked her what colour she would want the door in the event that she opted for the new quote. She also made it clear that nothing was to be ordered until the second quotation was confirmed and at no point did plaintiffs give their consent for works to go ahead.

On 31 May plaintiffs informed Grand they would not be proceeding with the order as amended and were informed by Grand that he no longer worked for the company and told them to contact Saliba directly. Plaintiffs sent a text to Saliba on the number provided by Grand informing them of their decision not to proceed with the order and requesting a refund. No reply was forthcoming. Several attempts at telephone contact in early June proved futile and on 15 and 18th June, plaintiff went personally to the office to speak to Saliba and, on both occasions, was told by an employee that Saliba would be calling him to fix an appointment.

On 22 June, plaintiff delivered a handwritten letter to Saliba, requesting a refund of €700.00, which was acknowledged by a certain Andrew Cassar which was followed up by another letter on the 2 July and a legal letter on 22 July. (Docs NF3, NF4, NF5.) Plaintiffs insists that when the deposit of 700 was paid the door had not yet been measured and it was only some three weeks later that the door was measured whereupon it was established that the work could not be done. Plaintiffs were also told that they would be able to claim a refund of 700 Euro of the original price.

Tamer Sala Eldin Mohammed Abo Zied (aka Mario Grand) testified in these proceedings by means of an affidavit and also viva voce. He confirmed that he was the Sales Manager at Technological Innovations Limited and had assisted Alison Fry who had visited their showroom inquiring about a quotation for a door. The purchase agreement was signed on the 23 January 2019. Grand confirms that in early February 2019 an employee went to plantiffs house to take the exact measurements. Employee reported that the wall where the door had to be fitted was not straight and plaintiffs requested additional covers to camouflage the defect. A quote was provided to the plaintiffs which quote was not accepted by plaintiffs who also requested that works be stopped. By this time Grand had left the company and he informed them that the door was already cut and ready to be installed. He also states that he explained to the clients that they had to pay the full price for the door and once fiscal receipt issued, the company would help the to apply for a refund from the government. Questioned under cross examination, Grand says that he was still working for the company when he was contacted by the plaintiffs for works to be stopped, even though his affidavit states otherwise. He left the company some time later.

Grand confirms that subsequent to this technical issue, he held a meeting with the directors Mr and Mrs Saliba and the surveyor to see on a way forward and that he then had to call Mr and Mrs Fry to see whether they would accept the additional price. He recalls that plaintiff were not happy with the additional price and his aim was to try to reduce the price or get it for free. He acted as a mediator between the plaintiffs and the company. He also stated that the door had already started to be cut, even before the technical issue arose because the issue arose at the point of installation. He also confirms that when the issue arose, plaintiffs came to the factory because there was a further issue that there was going to be a discrepancy in the colour 'white'. Grand says he was trying to get these additional works for free and was also trying to solve the issue for the company. Grand states that although their door was ready cut he did not ever show plaintiffs the door because he could not take them inside the factory.

That Anthony Saliba, company Director, also testified in these proceedings and referred to an agreement / quotation signed by Alison Fry and Mario Grand on the 17 December 2018, regarding a PVC door with French beading. Saliba states that once there is a 50 percent deposit the order is processed and production can commence. He further states that the actual measurements were provided and confirmed by client and that the 1cm gap was normal and could be sealed off with silicone. However, the client requested a covering at the side of the door which created the need for an amendment to the original quote - in fact the original quote was 1,368 and the amended quote was 1,718. The latter was never accepted. Saliba states that the door was produced and ready for installation and applications with the Malta Resources Authority were prepared. Saliba further states that since the door was bespoke and produced for the client it would not be sold to anyone else and that the deposit could not be returned because the door had already been produced. He contends that the extra cost was not factored into the original agreement.

Considers

That in this case plaintiffs are requesting the sum of 700 Euro, being the deposit paid for the installation of a door, which door could not be installed as per contract. Plaintiff contends that due to the fact that the original contract could not be performed (the wall was not straight and the door could not fit into the space in question), this brings about the 'impossibility' of performance and consequently leads to a discharge of plaintiff's contractual obligations. Moreover, they contend that once they asked for a second quote, the original quote was repudiated.

Defendant company contends that since the original order was signed by plaintiff, then they are still bound by that contract since the additional order was extraneous to the original contract. Moreover, they maintain that the door was produced and ready for installation and that costs were incurred in the process. They also refer to clause 2 and clause 4 of the Terms and Conditions of Sale - namely that orders can't be cancelled by the buyer unless the company is in breach of its obligations and further, that if the buyer cancels an order, the company reserves the right to charge the buyer a cancellation fee, which is sufficient to cover the Company's cost of materials, expenses and handling charges until the date of cancellation.

Considers

That the Tribunal has before it a General Purchase Agreement dated 23-1-2019 signed by plaintiff Nicholas Fry and Sales representative Mario Grand. The agreement make reference to quotation 1984 and the amount of €1368.69 and to the amount paid of €700.00. (Doc AF1). The quotation in question, dated 17 December 2018 and valid for thirty days, refers to the production of a 2 leaf door (Elegance Bianco) with French beading.

From the evidence, the Tribunal is satisfied that when the purchase agreement was signed on the 23 January 2021, the Company surveyor had not yet been sent to take measurements, according to company policy. Clause 2 of the Terms and Conditions makes it clear that it is only subsequent to the signing of the contract that the company carries out a survey for the proposed work required and installation. This was also confirmed by Anthony Saliba under cross examination, who made it clear that the company does not begin working on the basis of indicative measurements but that the company waits for further confirmation after the exact measurements are taken.
The same clause also refers to the Company's right to cancel the contract in the event of 'an unsatisfactory survey report (of which the Company shall be the sole judge).

Leaving aside the unilateral wording of the clause in question (which is also manifestly unfair), it is adequately clear that production and manufacture of the goods does not commence until the survey is carried out. And that in the event of an 'unsatisfactory report', the contract can be cancelled by the company.

That the Tribunal is also satisfied that after the survey was carried out, a technical issue arose, which required modification of the original contract. This required further works and the Company issued a second quote for these further works, which quote cost an additional 400 Euro and was never accepted by plaintiffs.

That although Saliba contends that he informed the plaintiffs that the door had already started being manufactured, plaintiffs insist that they were never informed that the door had been cut. Moreover, given that a solution was trying to be reached, it would have been premature, imprudent and unprofessional of defendant company to go ahead with the order and the Tribunal finds it very hard to believe that this was in fact the case.

It is clear that between February (when the issue arose) and April plaintiffs were in constant touch with the sales representative Mario Grand on a possible way forward and there was absolutely nothing to suggest that the door had been manufactured. Mario Grand sent at least three text messages to plaintiffs but none of these make any allusion to the fact that the door had been manufactured and produced, even after plaintiffs informed him that they would not be proceeding with the door. Had the door been produced and manufactured as early as February (which is what defendant company is contending), surely this significant detail would not have been omitted.

Anthony Saliba's testimony lacks corroboration. The 'finished door' was never even photographed and does not form part of the acts of the case; the plaintiffs were never shown the door in question, the MRA application referred to was never produced in evidence and

despite the fact that Saliba was contacted repeatedly by plaintiffs (on sms, telephone, mail and even through a lawyer), he consistently ignored plaintiffs' attempts at communication. This does not augur well at all and serves only to render Saliba's version implausible.

The Tribunal also refers to s.73 of Chapter 378 of the Consumer Affairs Act which provides that traders are obliged to deliver to consumers goods which are in conformity with the description and specifications in the contract of sale. Clearly in this case, the trader could not deliver the good according to the specifications and description indicated and plaintiffs were justified in not accepting the door with visible gaps. Given that the original contract could not be concluded and required additional works, and given that the plaintiffs had no way of knowing this until after the on site survey was conducted, the plaintiffs are justified in their claim. Conversely, defendant company's refusal to refund the deposit (50 percent of the original quote) is a form of unjust enrichment. Requesting a cancellation fee is one thing, but half the sum of the original quote is quite another.

Having evaluated the evidence, the Tribunal believes that plaintiffs were far more credible and consequently feels that their claim should be upheld.

For these reasons, the Tribunal upholds plaintiffs' claim and orders defendant company to refund plaintiffs the sum of seven hundred Euro. With costs that are to be borne by defendant company.

Michela Spiteri LL.D
Arbiter