TRIBUNAL GHAL TALBIET TAL-KONSUMATUR

CONSUMER CLAIMS TRIBUNAL

MALTA

Fit-Tribunal tal-Konsumatur

Ivan Privitera

vs

Klikk Ltd

CCT 192/21/MS

11 ta' Jannar 2023

It-Tribunal

Ra l-avviz tar-rikorrent ipprezentat fid-9 ta' Novembru 2021, fejn talab lil dan it-Tribunal jikundanna l-isocjeta' intimata thallsu s-somma ta' tlett mija u hamsa u sebghin Euro (€375.00), prezz ta' Nintendo Console mixtri minghand is-socjeta' intimata, liema console zviluppa difett meta kien taht garanzija.

Ra r-risposta tas-socjeta' intimata fejn ippremetiet illi t-talbiet ghandhom jigu indikati b'mod car stante li l-avviz huwa priv minn talba; u minghajr pregudizzju li l-esponenti mhijiex responsabbli ghal ebda ilmenti li hemm fis-sezzjoni appozita tat-talba;

Ra l-atti kollha tal-kawza

Sema' x-xhieda bil-gurament.

Ikkunsidra

Illi ghal dak li huma l-ewwel u t-tieni eccezzjonijiet, it-Tribunal jaghmel referenza ghall-artikolu 23(3) tal-Kap 378, li jipprovdi illi l-ebda procediment quddiem it-Tribunal ma jkun invalidu minhabba nuqqas ta' tharis ta' xi formalita' sakemm wiehed ikun mexa b'mod konformi kemm jista' jkun mar-regoli. Mill-avviz ipprezentat, huwa car illi r-rikorrent indika l-ammont ta' €375.00 bhala l-ammont li qed jippretendi mis-socjeta' intimata u dan wara li l-console tat-tifel tieghu zviluppa hsara fil-perjodu tal-garanzija. Ghalkemm huwa m'ghamilx talba specifika fis-sezzjoni appozita tat-talba, it-talba kienet facilment identifikabbli u ghalhekk it-Tribunal ha jastjeni milli jiehu konjizzjoni ulterjuri tal-ewwel u tat-tieni eccezzjonijiet.

Ikkunsidra

Illi permezz ta' din il-kawza, ir-rikorrent qed jitlob il-hlas ta' €375.00 rapprezentanti prezz ta' console mixtri minghand is-socjeta' intimata, liema console zviluppa hsarat fil-perjodu tal-garanzija. Illi min-naha taghha, s-socjeta' intimata qieghda tghid illi jekk saret hsara, din grat minhabba agir attribwibbli unikament lir-rikorrenti u ghalhekk mhuwiex kopert bil-garanzija.

Irriizulta mill-provi illi fit-13 ta' Awwissu 2020 ir-rikorrent xtara Nintendo switch Console minghand is-socjeta' intimata. Ftit inqas minn sena wara, dan zviluppa hsara fl-iscreen u fit-2 ta' Awwissu 2021 ir-rikorrent hadu s-showroom taghhom fejn spezzjonawh u kkonstataw li kellu ftit grif (*some scratches)* u kellhom jaghtuh risposta fi zmien hamest ijiem. Fl-10 ta' Awwissu, meta ma kienx ha risposta, cempel u qalulu li kienu baghtuh ghat-tiswija ghand l-agent. Pero' jumejn wara, regghu cemplu u qalulu li kienu ser jibghatuha ghand l-agent. Fis-6 ta' Settembru, rega' ghamel kuntatt maghhom u qalulu li l-ispejjes ghat-tiswija kienu telghu ghal mitejn euro. Ir-rikorrenti ighid illi fil-*fault report* gie rappurtat illi l-console ma kienx jixghel, mentri skond hu, meta hadu ghandhom, il-console kien ghadu jixghel u kellu *blue screen.* Illi apparti, huma kkonstataw illi c-*charging point* kellu l-hsara u partijiet mid-display kienu neqsin. Tant hu hekk, kien hemm SD card nieqes. Ghalhekk, skond ir-rikorrent, kien hemm diskrepanza cara bejn l-istat tal-console meta inghata lilhom mir-rikorrent, u l-istat tal-console meta huma ghamlu r-rapport xahar wara. Hareg ukoll, illi qabel ma ntbaghat ghand Nintendo fl-Ingliterra, il-console kien l-ewwel intbghat ghand Game Breakers, Malta, li skond Nintendo UK mhuwiex "authorised repair centre". Ir-rikorrent talab li jinghata rapport minn Klikk ta x'qalu Game Breakers, pero' ma nghata xejn. Ghalhekk ir-rikorrent ma jistax jeskludi illi kien hemm xi *mishandling* tal-console wara li ma baqax fil-pussess tieghu. Ir-rikorrent talab replacement, pero' kull ma offrewlu kien skont ta' hamsin Euro fuq xiri ta' wahda gdida.

Illi min-naha l-ohra, Joenick Farrugia, General Manager fi hdan is-socjeta' intimata, qal illi huma l-ewwel kienu rrikorrew ghand Game Breaker, umbaghad il-console ntbghat l-Ingliterra ghal 'second opinion'. Ikkonferma illi n-Nintendo gie ghandhom fit-2 ta' Awwissu u ghamlu l-ispezzjoni inizjali. Haduh ghand Game Breaker dik il-gimgha stess. Fix-xhieda tieghu, Farrugia ighid illi Game Breaker hija kumpanija li tispecjalizza fuq dawn il-gaming consoles u riedu parir minghandhom qabel xejn. Ighid ukoll illi huma (Game Breakers) ma ghamlu l-ebda tiswija fuq il-console, u ghamlu biss spezzjoni vizwali, fejn huma setghu jikkonstataw illi dan kien mghawweg u li kien hemm bzonn tinbidel il-mainboard. Minn hemm, il-console ntbaghat ghand Nintendo UK, li min-naha taghhom, feta il-console, ghamlu inspection u qalu li kien hemm pressure fuq il-console, u li l-hsarat ma kienux jaqghu taht garanzija. (Dok JF1). Ir-rikorrent ghazel li ma jipprocedix bit-tiswija u meta l-console gie lura mill-Ingliterra, dan infetah quddiem il-klijent. Skond

Farrugia, ma kien hemm l-ebda hsarat godda u dawk il-hsarat li kienu gew rappurtati bhala grif (scratches), ma kienux grif (scratches) imma krakjaturi (cracks) u li dan jigi minn mishandling tad-device jew tac-charging point.

Xehed ukoll Gordon Zammit li kkonferma illi c-console l-ewwel inbaghtet ghand Game Breaker repair centre. Ghalkemm ma setax jikkonferma bic-cert, skond ma jahseb hu, dan huwa authorised service centre tan-Nintendo. Meta l-console intbaghat barra minn Malta, kkonstataw illi kien hemm il-hsara. Mistoqsi fuq il-job sheet originali li kien jindika 'some scratches', huwa ighid illi dak iz-zmien ma kienux jiehdu ritratti u allura seta' jaghti l-kaz illi d-daqqa li kienet fuq ic-charging point, ma kenitx daqshekk vizibbli. Mistoqsi fuq id-daqqiet, ighid li kien hemm daqqa fuq il-heat sink u daqqa ohra fuq ic-charging point.

Ikkunsidra

Illi d-divarju principali bejn il-kontendenti huwa jekk il-hsarat li gew rappurtati minn Nintendo UK kienu rizultat ta' mishandling mir-rikorrent, jew inkella grew meta l-console kien fil-pussess tas-socjeta' intimata. L-ilment principali tar-rikorrent huwa spejgat f' zewg emails li nbaghatu fis-7 ta' Settembru li ighidu hekk:

"I am pretty sure that the showroom technician would have surely identified the difference between:
A blue screen versus does not turn on
Blue screen versus pixel missing
Some scratches versus mainboard is damaged by big dent in heat shield including bezel damage."

"I handed the console with light scratches. If the console had apparent "physical damage", which according to the report included damage by big dent in the heat shield including bezel damage, I strongly believe that the technician receiving the console at the showroom would definitely have highlighted it and not list it as received with light scratches. ..... I handed the console with light scratches and a blue screen. Any further reported damages must have occurred while entrusted to Klikk."

It-Tribunal ghandu quddiemu s-segwenti dokumenti:

1. Repair Tech Job Sheet datat 2 ta' Awwissu 2021, fejn gie rappurtat ilment fuq Blue Screen. Ir-rapport ighid hekk:
Reported Fault: Blue Screen

Visible Damage: Subject to inspection by our technicians, you will be contacted with any damages found before any work is done. Condition: some scratches.

2. Email datat 9 ta' Awwissu 2021 minn Charlot Azzopardi lil Lara Cutajar - Subject - Switch number 654:

Rapport ta' technician - Nintendo Switch console is bended, need new main board
To go abroad to Nintendo but 99 % will not be covered by warranty

3. Email datat 16 ta' Awwissu 2021 mibghuta minn Joenick Farrugia rapprezentant tas-socjeta' intimata indirizzata lil Nintendo Customer Support UK li ighid hekk:

I have a Nintendo Switch that is giving a blue screen and is not switching on. It is still under warranty and I would like to ship it myself directly to Nintendo since I live in Malta.

4. Email datat 16 ta' Awwissu 2021 minn Ricardo B (Nintendo Customer Support) li ighid hekk:

"We are sorry to hear that your console has a solid blue colour on screen and it won't turn on, but don't worry we are here to help you out. Before sending in your repair we kindly request that you hold down the Power button on the console for at least 12 seconds to force it to shut down. Then power it on again. .. If the situation continues then we have to book a repair for your console. As you reside in Malta, you would have to post your items into our facilities directly and it must be noted that the shipping is not covered,"

5. Email/ Risposta datat 26 ta' Awwissu 2021 minn Nintendo UK Support:

"Dear Customer. Please be advised that your Nintendo Product has been diagnosed. Please find a cost estimation accompanying this email.

Cost Estimation - Dok JF1

Fault Details: Does not turn on
Diagnosis: Damaged Main Board - Out of Warranty
Comments: Mainboard is damaged by big dent in heat shield
Fault Details: Cosmetic Damage
Diagnosis: Cosmetic Damage on Housing - Out of Warranty
Comments: Bezel is Damaged
Fault details: Image problem
Diagnosis: Screen, Pixel Missing - Out of Warranty

Total Amount - Stg: 157.50

6. Email datat 28 ta' Settembru 2021 minn Klikk Support Team lil Nintendo Customer Support UK:

"We received back console that we sent there for repairs... we were told that there was a big dent on the heat shield and that motherboard was damaged because of this 'big' dent. We reinspected the console and we couldn't see any dents on the console, and we assume that a big dent can be immediately spotted. Do you have any photos of the damage being reported to substantiate your claims please?"

7. Email/ Risposta datata 28 ta' Settembru 2021 minn Murilo H (Nintendo Customer Support UK):

"We are sorry to hear that you have not been able to identify the physical damage found by our repair engineers on your Nintendo Switch, but rest assured we will do our best to help. We have now gotten in touch with our dedicated repair team to ask for photos of the damage found on your device. Please allow us some time while the request is being handled."

Ikkunsidra

Ili minn dawn ir-rizultanzi processwali, jirrizulta illi l-console gie fil-pussess tas-socjeta' intimata fit-2 ta' Awwissu, u dik il-gimgha stess haduha ghand il-Game Breaker, tant u hekk li fid-9 ta' Awwissu intbaghat email minghand certu Charlot Azzopardi fejn gie konstatat illi l-mainboard kienet mghawwga "*bended*"(sic).

Fix-xhieda tieghu r-rikorrent ighid illi meta cempel fil-10 ta' Awwissu, qalulu li kienu baghtuh ghat-tiswija u fit-12 ta' Awwissu regghu qalulu li kienu ser jibaghtuha ghand l-agent. Dan jirifletti il-verita' ta' dak li attwalment gara. Ma jistax ikun hemm dubju illi fid-9 ta' Awwissu il-console kien diga ntbghat ghand Game Breakers u huma ghamlu l-ispezzjoni vizwali fuq il-console. Dan intbghat lura u fis-16 ta' Awwissu Joenick Farrugia ghamel kuntatt man-Nintendo UK biex jibghat il-console l-Ingliterra.

Ta min jinnota wkoll, illi ghalkemm ir-rikorrent ighid illi Game Breakers mhuwiex authorised repair centre, dan qatt ma gie pruvat quddiem dan it-Tribunal. Min jallega irrid jipprova, u gialadarba r-rikorrent qed jaghmel din l-asserzjoni, kien sta ghalih li jgib il-prova ta' dan il-fatt. Ir-rikorrent qed jargumenta illi l-console, li diga kien bil-hsara, iddeterjora want li kien fil-pussess tas-socjeta' intimata. Filwaqt li r-rapport originali kien

jindika 'blue screen' u 'light scratches', fir-rapport sussegwenti mahrug minn Nintendo UK gie indikat 'Does not turn on' u li kien hemm iktar hsara minn grif superficjali.

Illi filwaqt li t-Tribunal jaqbel illi s-socjeta' intimata setghet tkun hafna izjed professjonali fil-mod kif hadet nota tal-ilment, b'danakollu mhuwiex konvint illi kien hemm xi nuqqas da parti tas-socjeta' intimata li kkawzat il-hsara. It-Tribunal jidhirlu illi l-probabbilta' hija li l-persuna li spezzjonat il-console min-naha tas-socjeta' intimata, ma tatx kaz tal-kondizzjoni tal-console u ma flietux bir-reqqa. Lanqas m'huwa car jekk il-console gie mixghul mit-teknku quddiem ir-rikorrent jew sempliciment dan qaghad fuq il-kelma tar-rikorrent. Fil-fatt, is-socjeta' intimata qalet illi minn dakinhar huma biddlu l-policy taghhom u bdew jiehdu ritratti tal-hsarat. Dan missu sar mill-bidu, pero', b'danakollu wara li t-Tribunal ra l-iskambju tal-emails, irrizulta illi anke meta l-console gie lura mill-Ingliterra, il-hsara ma kenitx daqstant vizibbli u s-socjeta' intimata xorta kellha tibghat email biex titlob ritratti tal-hsara. (Ara email datat 28 Settembru - "we reinspected the console and we couldn't see any dents on the console."). Dan ikompli jikkorrobora l-versjoni tas-socjeta' intimata illi *'dak li kienu jidhru bhala scratches ma kienux scratches xejn imma kienu cracks u din tigi minn mishandling.'*

It-Tribunal jidhirlu ukoll illi meta si tratta ta' console li jinzamm fl-idejn (portable) u li jintuza spiss, dan huwa oggett li, bhal mobile phone, difficli hafna li ma twaqqghux - anzi huwa kwazi impossibbli, iktar u iktar, ghaliex it-tfal meta jilaghbu gieli jeccitaw ruhhom. It-tifel qatt ma xehed quddiem it-Tribunal. F'email li ntbaghat mir-rikorrent fis-7 ta' Settembru 2021, missieru ighid hekk:

When my son told me it was not working the first thing I asked him was if he had dropped it - which he had not. I inspected it myself to verify if it had any apparent dents, and it had none."

Illi bhala fatt, il-console gralha hsara u ma kenitx qed tahdem, u dan meta kien ghadu fil-pussess tat-tifel tar-rikorrent. Illum il-gurnata, meta jigri xi haga, facilment illi ssir taf ir-raguni billi zzur l-internet u taghmel search. Skond ricerka fuq google, 'blue screen on Nintendo Switch can occur because of physical damage to the screen, a broken dock, or a software issue." Bhala fatt, il-console beda juri screen blue wara sena ta' uzu u meta kien ghadu fil-pussess tat-tifel tar-rikorrent. Difficli ghalhekk biex dan it-Tribunal jattribwa l-hsara l-isocjeta' intimata, li zammet il-console ghal perjodu ta' gimghatejn qabel ma baghtitu l-Ingliterra. Fil-fatt gimgha wara biss li r-rikorrent ikkonsenja l-console, fid-9 ta' Awwissu, intbghatet email fejn gie konstatat li l-mainboard kienet mghawwga.

Illi minghajr pregudizzju, l-isocjeta' intimata offriet lir-rikorrent skont ta' hamsin Euro fuq console gdida. Forsi kien ikun iktar utli, li kieku offrewlu skont fuq it-tiswija, pero' din hija xi haga li ghadha tista' tigi esplorata mill-partijiet, estranea minn dawn il-proceduri.

Illi wara li rat l-emails u r-ritratti esebiti, it-Tribunal jemmen illi r-rikorrent ma ppruvaw l-istanza tieghu fuq bazi ta' probabbilta'.

Ghal dawn il-motivi, it-Tribunal jaqta' u jiddeciedi illi jichad it-talba tar-rikorrent. Bl-ispejjes kontra l-istess rikorrent.

Michela Spiteri LL.D.

Arbitru