



Marius Adrian Sandulescu

vs

Apap Lifts Limited

CCT G3/22/MS

24th March 2023

The Tribunal

Having seen the claim filed by plaintiff on 4 May 2022 requesting the sum of €679.61 or alternatively, specific performance of the contract after defendant failed to provide installation of auto-dialler and LCD lift display, according to the contract accepted by plaintiff.

Having seen that defendant company, duly notified, failed to reply and did not appear before the Tribunal when called to give evidence.

Having seen the acts of the case and heard the evidence of plaintiff under oath.

Considers

That plaintiff is requesting specific performance of the contract or the sum of €679.61 being the difference in price between the quotation offered by defendant company (€731.80) and the quotation obtained from a third party company:

That the facts of the case are as follows: following an enquiry made by plaintiff, on 29 September 2021 plaintiff received an online quote from defendant company via email.

Almost one month later, on the 25 October 2021, plaintiff sent an email to defendant company on two separate email addresses, confirming his acceptance of the online quote. He also informed defendant company that he had collected the funds in question and looked forward to hearing from defendant company with regard to a timeframe of when works would be carried out. No reply was forthcoming after that.

Plaintiff also submitted numerous call logs and a couple of text messages - one dated 24 November 2021, where he requests someone to call him back to discuss the works as per quotation. He also reiterates that he has been trying to contact defendant company for the last couple of weeks, but received no reply or call back.

That defendant company did not reply to plaintiff's claim and did not appear before this Tribunal when duly notified.



Considers

That the Consumer Tribunal has jurisdiction to hear and determine claims made by consumers against traders where the value of the claim, exclusive of interests and costs, does not exceed five thousand euro (€5,000), and where the claim relates to, arises out of or concerns, whether directly or indirectly - (a) the purchase or hire of goods by a consumer from a trader; or (b) the provision of services by a trader to a consumer.

Article 2 of Chapter 378 defines a "services contract" as any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof.

That while it is clear, that the consumer (in this case the plaintiff) undertook to pay the price to the trader, the Tribunal is not convinced that the same can be said of the trader - i.e. that he undertook to supply the services agreed to. While it is true that a quote was sent to plaintiff via email, no further contact was made by defendant company/ trader after that and it is safe to conclude that defendant company never acknowledged plaintiff's confirmation of order.

Considers

That according to law, when a contract is concluded electronically and sent by email (as was the case here), the contract is deemed concluded when, after placing his order, the recipient of the service (in this case the plaintiff) receives from the service provider (in this case defendant company) an acknowledgement of receipt of the order made by the recipient.

From this it is clear that in the case of e-contracts, until the recipient or plaintiff actually receives confirmation and acknowledgement of the order, the contract is not deemed to have been concluded.

In this case, the contract was sent on the 26 September and it was only on the 25 October that plaintiff replied to signify his acceptance. However defendant company did not acknowledge that email or any of plaintiff's emails or telephone calls thereafter and therefore it is safe to conclude there was no undertaking on its part to supply the service in question.

In fact the plaintiff himself submitted text messages which clearly indicated that he had been chasing the defendant for a number of weeks/ months, with no success.

Good afternoon. Can you please call me back to discuss the works for Gianluca Court which quotation I have accepted one month ago. I have been trying to contact you for the last couple of weeks, but nobody answered to my calls, nor got back to me.



(Message sent on 24 November) - one month after plaintiff confirmed acceptance of quote.

That although the Tribunal sympathises with plaintiff and finds defendant company's behaviour highly censurable, to say nothing of unprofessional, in the circumstances it was unrealistic for plaintiff to have continued to pursue the matter, when defendant company was clearly incommunicado. However censurable, the Tribunal feels that in the circumstances there was no actual undertaking to provide the service and certainly no provision of services by the trader and consequently the Tribunal has no jurisdiction to hear the case.

For these reasons, the Tribunal is hereby dismissing plaintiff's claim. With costs.

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

Michela Spiteri LL.D
Arbiter