**Fit-Tribunal tal-Konsumatur**

Antoinette u Pierre Gatt

vs

Comfur (Malta) Ltd

CCT 141/22/MS

12 ta' April 2023

It-Tribunal

Ra l-avviz tar-rikorrenti pprezentat fit-30 ta' Settembru 2022 fejn talbu s-somma ta' hames mija wiehed u hamsin euro (€551.00), prezz ta' saqqu mixtri minghand is-socjeta' intimata, liema saqqu tilef il-forma tieghu fil-perjodu tal-garanzija, u ma kienx tajjeb ghall-uzu li ghalih kien intenzjonat;

Ra li ghalkemm is-socjeta' intimata ma dahlitx risposta, rapprezentant taghha deher u xehed f'dawn il-proceduri.

Ra l-atti kollha tal-kawza.

Sema' x-xiehda bil-gurament.

Ikkunsidra

Illi jirrizulta mill-provi li f'Gunju 2021 ir-rikorrenti xtraw saqqu 160 x 190 cm minghand is-socjeta' intimata ghall-prezz ta' €551.00, li gie konsenjat xahar wara, f'Lulju 2021. Kien *vacuum packed* u d-*delivery man* qallhom biex jistennew gurnata sakemm is-saqqu jsib il-forma tieghu. Skond ma xehdet Antoinette Gatt, sa tlett xhur wara, is-saqqu diga kien qed jinzel u peress illi hi tbati minn kundizzjoni ta' sahha, ikollha bzonn saqqu b'sahhtu. Qalet ukoll illi meta hi xtrat is-saqqu kienet kellmet ma' *salesgirl* li infurmatha li *slats* kienu preferibbli ghal dan is-saqqu, u ghalhekk hi xtrat sodda bis-slats. Qaltilha wkoll li jekk xi hadd ghandu piz iktar minn 90kg, is-saqqu mhux rakkomandat, pero' dan ma kienx il-kaz. Wara xi tlett xhur ta' uzu, in-nofs tas-saqqu beda jinzel u l-gnub baqghu sodi. Giet persuna fuq il-post, li kien l-istess *delivery man* li kien ikkonsenja s-saqqu, u beda jaghfas is-saqqu b' lasta tax-xkupa biex jara kemm idum biex jitla u jinzel. Is-saqqu eventwalment inbidel ghal wiehed gdid, pero' r-rikorrenti gew infurmati illi kellhom

jissahhu s-slats u fil-fatt huma ghamlu vertical slats fuq dawk li diga kellhom. It-tieni saqqu gie konsenjat fi Frar 2022, u l-vertical slats tpoggew xi gimghatejn wara s-saqqu gie konsenjat. Minkejja dan, hames xhur wara, ghall-habta ta' Lulju 2022, it-tieni saqqu rega' beda jinzel.

Illi xehed ukoll Clayton Bartolo li ghamel referenza ghall-email datat 6 ta' Lulju 2022 li huwa kien baghat lir-rikorrenti, li kien ighid hekk:

*"When we visited your house in November 2021, we agreed to replace your mattress, which we did although there were issues with your slats, however we did inform you that your slats are not supportive for any type of mattress. We do this to help our clients however it is not our responsibility to ensure the mattress is used on a correct bed and it is always the responsibility of the client to ensure the mattress is used properly. We do however inform our clients when we see something that is not good.*
*When we delivered the replacement in February 2022, it was noted that you still had not made any alterations to your slats (or changed them), nor where (sic) we ever informed that you had made any alterations or when you did these alterations.*
*So unfortunately, since the new mattress was used again (we don't know how long for) on the improper bed base, the guarantee is unfortunately voided as the factory has no way of knowing if the mattress was damaged or defective."*

Illi ghalkemm fix-xiehda tieghu, Bartolo ighid li fil-mument illi saqqu tqieghed fuq bazi/ slats diffettuzi il-garanzija giet annullata, fl-istess nifs ighid ukoll illi r-rikorrenti nghataw gimghatejn cans biex jaghmlu t-tiswijiet necessarji u li jibghatu ritratti tat-tiswijiet. Dan id-diskors allegatament ntqal mid-delivery team u Bartolo ma kienx prezenti dakinhar u allura ma setax jikkonferma jekk dan id-diskors fil-fatt sar. Qal ukoll illi l-persuna li marret fuq il-post dakinhar u semma r-ritratti m'ghadux jahdem mal-kumpanija. Gie prezentat warranty check list datat 25 ta' Novembru 2021, li pero' ma giex iffirmat mill-klijent, kif ukoll kopja tal-garanzija fejn hemm indikat illi "the warranty will be voided if a mattress is damaged or deformed due to the use of defective or pure quality bed slats or base."

Ikkunsidra

Illi permezz ta' din l-istanza, r-rikorrenti qeghdin jitloba r-rifuzjoni tal-ammont li huma hallsu ghal saqqu, liema saqqu zviluppa hsarat wara ftit xhur ta' uzu u entro t-terminu tal-garanzija. Min-naha taghha, s-socjeta' intimata qed targumenta illi l-garanzija ma baqghetx vigenti u ma kenitx tapplika iktar, u dan ghaliex ir-rikorrenti ma osservawx it-termini tal-garanzija.
Illi meta sar l-ewwel ilment f'Novembru 2021, is-saqqu nbidel ghal wiehed gdid u dakinhar ir-rikorrenti gew infurmati illi kellhom jinbidlu jew jissahhu s-slats li kellhom.

Illi meta t-tieni saqqu gie konsenjat fi Frar 2022, is-sitwazzjoni kienet ghadha l-istess u s-slats kienu ghadhom ma nbiddlux, pero' fix-xieohda tieghu Clayton Bartolo, mis-socjeta' intimata ighid illi r-rikorrenti nghataw gimghatejn cans sabiex jaghmlu t-tibdiliet necessarji - u dan id-diskors giet konfermata anke mir-rikorrenti. Ighid ukoll illi r-rikorrenti kellhom jibghatu ritratti bhala evidenza illi s-slats inbiddlu, pero' dan ma sehhx. Min-naha taghha, ir-rikorrenti Antoinette Gatt tikkonferma illi s-slats inbiddlu xi gimghatejn wara t-tieni konsenja, pero' tichad illi meta gie konsenjat it-tieni saqqu, sar xi diskors li hi kellha tibghat ritratti bhala evidenza.

Ikkunsidra

Illi bhala fatt, l-ewwel saqqu kien difettuz u gie mibdul f'Novembru 2021, u dakinhar stess is-socjeta' intimata avzat lir-rikorrenti biex ibiddlu jew jissahhu l-islats. Bhala fatt ukoll, meta t-tieni saqqu gie konsejnat fi Frar, u allura tlett xhur wara, is-slats kienu ghadhom ma nbidlux. Is-socjeta' intimata qieghda targumenta illi hija tat lir-rikorrenti gimghatejn cans sabiex taghmel it-tibdiliet necessarji u avzat lir-rikorrenti biex tibghat ritratti ta' dawn it-tibdiliet. Ir-rikorrenti qieghda tichad li dan id-diskors sar u tghid li huma kienu qalulha biss biex tissahhah is-saqqu, kif fil-fatt ghamlet fi zmien gimghatejn, skond dak miftiehem.

Illi t-Tribunal mhuwiex daqstant cert jekk is-saqqu kellu garanzija ta' ghaxar snin jew hames snin, pero' dan ma tantx jaghmel differenza ghaliex ir-rikorrenti ghamlu uzu minnu ghal ftit xhur biss, u ghalhekk il-hsara zgur li grat entro t-terminu tal-garanzija. Dan it-Tribunal allura, ghandu jiddeciedi jekk dik il-garanzija kienet ghadha tapplika jew jekk giet annullata.

Illi min jallega irrid jipprova, u jekk il-garanzija giet annullata minhabba uzu hazin jew ghaliex ir-rikorrenti ma zammitx mal-kundizzjonijiet u l-istruzzjonijiet tas-socjeta' intimata, kien sta ghas-socjeta' intimata illi tipprova dan il-fatt. Bir-rispett, dan m'ghamlitux. Tajjeb jew hazin, meta t-tieni saqqu gie konsenjat ir-rikorrenti kienet ghadha m'ghamlitx it-tibdiliet, pero' b'danakollu s-socjeta' intimata kienet lesta li tikkoncedi gimghatejn zmien sabiex ir-rikorrenti taghmel dawn it-tibdiliet. Jekk, kif qed tghid hi, l-validita' tal-garanzija kienet tiddependi fuq li jsiru dawn it-tibdiliet, kien jinkombi fuq is-socjeta' intimata illi taghmel l-affarijiet kif suppost u tizgura li kollox jitnizzel bil-miktub u mhux thalli dan id-diskors isir verbalment minghajr ebda prova jew almenu follow-up. Kif qal l-intimat stess, huwa ma kienx prezenți u allura ma jistax ighid jekk fil-fatt ir-rikorrenti kienu avzati b'dana kollu. Il-fatt illi huma nghataw gimghatejn cans minghajr l-ebda skrittura jew anke follow-up email ma jawgura xejn tajjeb.

Illi bhala fatt, is-socjeta' intimata qatt ma nnegat illi s-saqqu kien difettuz. Huwa inkoncepibbli ghal dan it-Tribunali, li saqqu gdid, b'ghaxar jew anke hames snin garanzija, jitlef il-forma tieghu wara ftit xhur ta' uzu biss, anke jekk, ghal grazzja tal-argument, is-slats

ma kienux idoneji. Pero' gialdarba s-socjeta' intimata accettat u kienet lesta li taghti r-rikorrenti gimghatejn cans biex taghmel it-tisiwjiet mehtiega, u dan abbazi ta' ftehim verbali, allura ma tistax issa tuza dan il-fatt biex tahrab mir-responsabbilita' taghha taht il-garanzija.

Ghalhekk it-Tribunal jidhirlu illi r-rikorrenti ppruvaw l-istanza taghhom sal-grad rikjest mill-ligi. Peress illi s-saqqu kien uzat biss ghal ftit xhur, ir-rikorrenti ghandhom dritt jiehdu lura rifuzjoni shiha.

Ghal dawn il-motivi jaqta' u jiddeciedi illi jilqa' t-talba tar-rikorrenti u jikundanna l-isocjeta' intimata thallasha s-somma ta' hames mija wiehed u hamsin euro (€551.00), bi dritt tas-socjeta' intimata illi tiehu lura s-saqqu mertu tal-kaz, wara li jsir id-debitu hlas.

Michela Spiteri LL.D.

Arbitru