



MALTA

Fit-Tribunal tal-Konsumatur

In the Acts of Claim CCT 31/19/F

Henriette Cassar

vs

Aliya Noor – K Naz E Vehicles

Today, the 8th May 2023

The Tribunal:

Having seen the Notice of Claim filed by the Applicant on the 12th March 2019;

Having seen that the Respondent failed to file a formal Reply to the applicant's claim despite being duly notified with the Statement of Claim;

Having seen the Decree delivered during the sitting of the 2nd December 2019 whereby it was ordered that these proceedings shall be continued in the English language upon request of the Respondent, who declared that he does not understand the Maltese language;

Having heard the sworn testimony of the Parties;

Having seen the documents exhibited by the Parties;

Having seen the report presented by technical referee Dr Mario Buttigieg appointed by the Tribunal;

Considered:

Whereas through the instant proceedings, the Applicant is requesting that the Respondent be condemned to pay her the sum of one thousand, six hundred and fifty Euro (€1,650.00), representing the price which she paid for a Sakura electric scooter which she purchased from the respondent in September 2018.



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Whereas the Applicant testified that shortly after she purchased the electric scooter, she realised that the range offered by the batteries was nowhere close to the promised 70km. After she complained to the Respondent, she was offered a new set of batteries against an additional payment of €300, which she agreed to pay. Nonetheless, the problem was not solved and shortly after, as Applicant recounts, whilst driving from Valletta to Zebbug, the scooter would run out of power in Qormi, leaving her stranded, and this despite the display indicating that the batteries were fully charged. The Respondent kept promising to change the batteries once again however this never materialised.

Whereas in his testimony, the Respondent explained that when faced by complaints about the batteries, he offered to install a set of lithium batteries, which he did, at a reduced price of four hundred Euro (€400.00) (sic.) rather than five hundred Euro (€500.00). After replacement of batteries, he was contacted again by the Applicant's partner who stated that he "wanted his money back" without really explaining what was wrong with the scooter. The respondent explained that he lithium batteries were installed by an Italian engineer named "Gianluca".

Whereas in his report, Technical Referee Dr Mario Buttigieg concluded that the intervention carried out on the scooter to replace the batteries was clearly an amateurish operation and certainly not according to manufacturer specifications. Buttigieg refers to the fact that the new batteries were placed in a wooden box and a household MCB was used to connect them to the main circuit. Furthermore, Buttigieg also noted that the wiring was route along the scooters external frame, posing a health and safety hazard to the user.

Whereas Article 74(1) of the Consumer Affairs Act (Chapter 378 of the Laws of Malta) states that the trader shall be liable to provide a remedy to the consumer for any lack of conformity in the goods which existed at the time the goods were delivered by the trader to the consumer. Sub-article (2) goes on to state that the consumer shall be entitled to request that the contract be rescinded with regard to those goods.

Whereas on the basis of the above, the Applicant's claim is well-founded at law and the Tribunal understands that the remedy sought is that of the *actio redhibitoria*, that is, the rescission of the contract of sale based on the non-conformity of the thing sold and the return of the price paid.

Whereas on the strength of the above considerations, the Tribunal considers the Applicant's claim to be sufficiently proven and thus, upholds it.



Decision:

Therefore, for the abovementioned reasons, in the circumstances, after having seen Chapter 378 of the Laws of Malta, the Tribunal hereby decides this Claim by upholding it and consequently:

- 1. Declares that the Scooter at issue is afflicted by a serious non-conformity in terms of Article 74 of the Consumer Affairs Act (Chapter 378 of the Laws of Malta);**
- 2. Orders the rescission of the contract of sale; and**
- 3. Condemns the Respondent to pay the Applicant the sum of one thousand, six hundred and fifty Euro (€1,650.00) within one week from date of this decision.**

Upon payment being made to the Applicant, the Respondent shall be entitled to retake possession of the scooter.

Costs are to be borne exclusively by the Respondent.



Avv. Mattia Felice
Arbiter