



Fit-Tribunal tal-Konsumatur

Eve Russell

vs

Klikk Limited

CCT 103/22/MS

10th May, 2023

The Tribunal

Having seen plaintiff's claim presented on 12 July 2022 requesting the Tribunal to order defendant company to pay her the sum of one thousand two hundred and ninety nine euro (€1,299.00), as to €299.00 the price of an external hard drive purchased from defendant company, and as to 1,000 damages suffered as a result of professional incompetence, negligence and misleading information which led to loss of data. With costs.

Having seen defendant company's reply presented on the 24 August, 2022, claiming that (a) by way of a preliminary plea defendant company had no juridical relationship with plaintiff and therefore it should be declared non-suited; (b) that plaintiff's claims are unfounded both in fact and in law and defendant company is not responsible for any loss of data; that plaintiff's claims should be rejected with costs.

Having seen the minutes of the hearing on the 11 January 2023 where the Tribunal acceded to plaintiff's request ordering a correction in the name of defendant company.

Having seen the acts of the case and heard the evidence on oath.

Considers

That, given that the name of defendant company was corrected during the first sitting, the Tribunal will not take further cognisance of the preliminary plea and will proceed to consider the merits of the case.

That the facts of the case are as follows. Plaintiff purchased an external hard drive (Western Digital My Cloud Home Duo 4TB NAS USB) from defendant company in July 2021 for the price of €299.00. In April 2022, subsequent to a software update, plaintiff could no longer access or see the files stored on the hard drive.



Plaintiff contacted defendant company for assistance since the product was still under warranty. On 28th April 2022 plaintiff took the product in for repair (see Repair Tech Job - 36278). On 3 May 2022 plaintiff requested data to be retrieved by an IT consultant at defendant company's expense since the product was still under warranty, however this request was refused.

On further insistence, defendant company agreed to try to recover the data itself. Plaintiff had 1.4 TB of data and wanted assurance that this would be done professionally. A certain Michael who was assisting plaintiff assured her that he was familiar with data recovery software and that she would be able to see all her files through remote access before these were overwritten. However this did not happen. Instead her original files were overwritten and corrupted in the process. Plaintiff contends that the repair job was hurried and closed prematurely and that Michael was overworked and out of his depth. Plaintiff subsequently discovered through the WD website that there was a problem with accessing and retrieving data remotely and had defendant company been aware of this, it could have prevented the loss of data. This was a world wide problem which affected all WD customers.

That Cleaven Borg representative of defendant company also testified and confirmed that plaintiff bought an external hard drive in 2021, which suffered damage as a result of which plaintiff had no access to her photos. Borg claims that although it is not company policy for defendant company to retrieve data, this was done anyway by a colleague of his to try to help plaintiff beyond the call of duty. Company also offered her a replacement hard drive since this was still under warranty.

Considers

That plaintiff is claiming the sum of €1299.00 - as to €299.00 being the price of an external hard drive purchased from defendant company, and as to 1,000 damages suffered as a result of professional incompetence and misleading information which led to loss of data. That defendant company is not disputing the fact that the hard drive was damaged and even agreed to replace the hard drive - the dispute therefore concerns the damages suffered as a result of the loss of data, with defendant company claiming that the data was corrupted and not retrievable prior to plaintiff visiting defendant company.

Considers

That My Cloud Home Duo is described and advertised as an *"easy to use personal cloud storage device that plugs directly into your WIFI router at home, so you can save all your digital content in one central place ... a simple centralised solution to back up your photos videos and files and have it stored in one place ..equipped with two hard drives and set to Mirror Mode, so all your content is automatically duplicated on each drive for extra leave of mind."*



MALTA

Unfortunately this peace of mind was not afforded to the plaintiff who instead suffered a loss of data. Although defendant company claims that the data was corrupted before it intervened, the facts appear to show otherwise. Defendant company was well within its rights to pursue its policy of not attempting to retrieve data and should have done what plaintiff suggested - i.e. go directly to the supplier/ manufacturer for data to be retrieved, or, failing that, to seek assistance from a professional IT consultant. Instead, however, it seems that defendant company preferred to forego their company policy and attempted to retrieve the data themselves.

That having seen the documents and acts of the case, the Tribunal feels that defendant company was well within its rights to make a claim with the manufacturer, given that the product was still under warranty and that the files were probably corrupted subsequent to an update which was prompted by the manufacturer. Once defendant company chose to intervene directly, it assumed the liability that could and should have been assumed by the manufacturer.

The plaintiff is claiming the sum of €1,299. The sum of €299.00 is not in dispute given that defendant company accepted that the product was damaged and even agreed to replace the hard drive. The sum of €1000.00 is a claim for damages, which have to be quantified and proved on a balance of probability. Plaintiff does not explain how she reached that amount. From the evidence submitted, however, it appears that the files in question are photographs and videos which were in plaintiff's possession for a period of twenty years or more. These therefore are akin to personal effects and of sentimental value. The damages, therefore are moral damages and according to law, consumers may legally claim up to €500.00 - which is the maximum allowed by law. Given that plaintiff bought the product precisely to avoid a situation she found herself in, the Tribunal feels that it should award the maximum in moral damages, in addition to the price of the external hard drive.

For these reasons, the Tribunal is partially acceding to plaintiff's request and orders defendant company to pay her the sum of seven hundred and ninety nine euro (€799.00). With costs that are to be borne by defendant company.

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

Michela Spiteri LL.D.

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