



MALTA

**Fit-Tribunal tal-Konsumatur**

Margarita Vnukova

vs

Power House

CCT 172/22/MS

28th June 2023

The Tribunal

Having seen plaintiff's claim dated 10 November 2022, requesting the sum of €250,00, being the price of a mattress purchased from defendant company, which mattress did not conform to the specifications indicated in the order form.

Having seen that although defendant company did not file a reply, defendant company representative Ranier Scerri, attended the hearing and gave evidence under oath.

Having seen the acts of the case and heard the parties testify under oath.

Considers

That from the evidence presented, it results that on the 26 September 2022 plaintiff made an order for a 160 x 190cm storage bed (€599.00) and corresponding mattress (€450.00) from defendant company. Subsequently, plaintiff added another orthopaedic mattress to the order measuring 140 x 190cm at a cost of €250. Upon delivery, plaintiff paid the amount of €1,300 for all items and asked the delivery man to measure the mattress. However, since he did not have a measuring tape, the mattress was not measured on site. Plaintiff claims that the delivery man assured her that it was indeed 140cm but when her son measured the mattress, she discovered that it was in fact 135cm. Plaintiff immediately called the driver to complain, just a few minutes after he had delivered the items in question. The delivery man told her to take the matter up with the shop owner. Plaintiff also contends that when she spoke to defendant he told her that the mattress was in fact 138cm and that this was the standard size for a double bed.



That, Ranier Scerri, essentially confirmed plaintiff's version of events. He further stated that the standard mattress size for a 140cm bed is in fact 138cm and that a mattress should not be exactly the same size as the bed as you have to have room on either size.

#### Considers

That plaintiff is claiming the sum of €250.00 being the price she paid for a mattress ordered from defendant company measuring 140 x 190cm, which did not conform to the dimensions and specifications ordered by the plaintiff. Defendant does not dispute the fact that the mattress delivered was in fact 138cm x 190cm but argues that the mattress in question is the standard size sold for a double bed measuring 140 x 190cm and that 2cm clearance is recommended - 1cm on either side.

Be that as it may, the fact remains that plaintiff ordered a mattress measuring 140cm x 190cm and if defendant was aware of the 2cm discrepancy, he should have made this known at the outset and before purchase and delivery. Then it would have been up to the plaintiff to decide whether or not to go ahead with the purchase. Defendant certainly should not have made the assumption himself, before making this clear to plaintiff. Moreover, the delivery man should have been in a position to measure the mattress, and should have taken it back on the same day that mattress was delivered, which was the same day that plaintiff called to complain. In the interest of good customer care relations and given that plaintiff had purchased two other items from defendant company without any complaints, it was short-sighted of defendant company not to agree to refund plaintiff in the circumstances, particularly when the mattress dimensions clearly did not conform to plaintiff's order.

Having seen the relevant sections of the law, in particular Articles 73 et seq of Chapter, the Tribunal feels that plaintiff has proved her case according to law.

For these reason, the Tribunal accedes to plaintiff's request and orders defendant company to refund plaintiff the sum of €250.00. With the right of defendant company to take back the mattress in question, after effecting payment. 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.

Arbitru