

Fit-Tribunal tal-Konsumatur

Soufiane Akbas

vs

MX Institution for Higher Education & Study First Europe

CCT 78/23/MS

17 January, 2024

The Tribunal

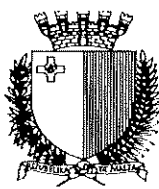
Having seen applicant's claim filed on the 3 May 2023, requesting this Tribunal to order Respondent company/ companies to refund him the sum of €3,900.00 being the amount paid by him for a Diploma course in Strategic Management and Leadership with MX Institute for Higher Education, which course could not be pursued successfully given a change in management, as explained in said claim.

Having seen the reply of MX Institution for Higher Education pleading the nullity of Plaintiff's claim given that the claim was presented in English without the Tribunal's prior authorisation, which claim should have been presented in the English language; and without prejudice, disputing the claim as unfounded, both in fact and at law and requesting that all claimant's requests be rejected with costs on the basis of the reasons outlined in the said reply.

Having seen the reply of Study First Europe contesting the claim which was wrongly instituted against it given that they had no contractual relationship with applicant and that the damaged sustained and the amount being claimed is solely and entirely attributable to MX Institution for Higher Education and insisting that there was no fault on their part since they merely acted as intermediary and introducer between the student and MX Institution.

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

Having noted that when testifying before this Tribunal on the 11 October 2023, Plaintiff limited his claim to the amount of three thousand five hundred Euro. (€3,500.00)



MALTA

Considers

That the Tribunal will first consider the preliminary plea raised by Respondent company MX Institute for Higher Education who are attacking the nullity of the claim on the basis of the fact that this was filed in the English Language without prior authorisation. The Tribunal notes that the Notice of Claim (Form 1) submitted by the applicant was drawn up in the English Language and Plaintiff was perfectly correct to file his claim in the same language. The Forms are available in both languages and once applicant was given a Form in English, he was well within his rights to fill in the form in the same language. Moreover, by replying to the claim in the English Language (albeit on a Maltese language Form) Respondent company was tacitly accepting the state of affairs and the Tribunal fails to understand how this could have prejudiced Respondent company. The Tribunal is therefore dismissing this plea and will proceed now to consider the merits.

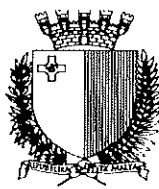
Considers

That on 15 December 2021, applicant Soufiane Akbas, a Moroccan citizen, was accepted by Respondent company MX Institute for Higher Education to attend a 12 month study program (OTHM Level 7 Diploma in Strategic Management and Leadership), due to commence on the 10th January 2022. Plaintiff paid the sum of €3,900.00 on 15 December 2021 -€400.00 of which was the application fee and €3500, the course fee. According to the invoice issued on 13 April 2021(8 months before applicant paid for the course) the course also included 4 months of English as a Foreign Language in Level 7, which was due to start on 7th June 2021 (a total of 16 months) - for a total fee of €5,350 - including a 400 Euro application fee.

A subsequent Course Acceptance Letter dated 29th April 2021 indicates the starting date as 5th July 2021 for a period of 18 months.

That applicant contacted an agency and dealt with a certain Kamal Bortal because he wished to get a student visa. He was informed that to do so he would need to have a diploma and that an English course was not enough. To this end, he paid the total amount of €5,350 (which included a four month English course). Part of that amount (€3,900) was paid for the level 7 Management Diploma. Applicant/Plaintiff is claiming a refund of the latter amount, minus the application fee.

Applicant contends that he paid the course fees when he was still in Morocco and when he paid he did not know that he would be studying English at Gateway - i.e. he assumed that both courses would be held at the MX Institution. He complained to the Agency 'Study First Europe' since these things were not outlined clearly and waited two months for the course to begin. He started the English course online from Morocco through 'Study First'. In December 2021 he came to Malta and received a letter indicating that he was to start the

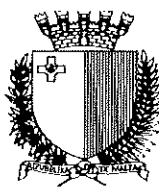


MALTA

Diploma on the 10th January 2022. He was also told that he would be following an English course, which was to be held at Gateway. The Diploma was held online, twice a week, for a period of twelve months and after six months he received an email informing him that the MX Institute was changing management and that courses would continue under this new management. Unfortunately however, there was no continuation and he was informed that he would have to complete assignments for material which was never covered. Moreover plaintiff was told to contact a certain Patricia who was in charge of the new school. He sent her an email requesting a refund and sent her various text messages, to which he never received a reply.

Mohammed Bychou, also testified in these proceedings and confirmed that his role was helping foreign students who wished to study in Malta navigate their way and to this end he would carry out online orientations. His role was to facilitate communication between the schools and the student and also to market the school. Once a student applied to a certain school and fees paid, his role was to assist with VISA application and also assistance with studying English online, pending the application and arrival. Once in Malta, his role was also to assist with accommodation. Bychou confirmed that no monies were ever received by his agency and everything was paid directly to the school. He also testified that his services were normally limited to students' arrival in Malta and applying for their residence permit. Their remit did not include school or lessons. He stated that applicant's complaint started only after there was a change in ownership which happened many months after, when they were no longer involved. However, he stated that he did try to assist with his complaint and contacted the school. He also confirmed that there were certain students who stopped studying after the change in ownership of the school and others who continued.

Sayed Shamrat, CEO of the London Graduates School based in the UK, also testified in these proceedings and confirmed that his company acquired the MX Institute in August 2022. He confirmed that prior to the acquisition MX Institute were offering UK diplomas to international students and that subsequent to the take over, they wanted to offer UK qualifications solely to local students. He confirmed that there were 48 international students at the time and that they had spoken to the Malta Institute for Higher Education and explained to them that they wanted to transfer these students to another Institution and offer them the same courses in order for them to continue their studies. To this end, an agreement between Learnkey Institute and MX Institute was drawn up for the transfer of these international students, which had the approval of the Malta Further and Higher Education Authority. All students, even those who had started their courses when MX was acquired, were entitled to a full course of 12 months - and thus could either begin their course again or continue where they left off - and this at the expense of the newly acquired MX Institute. Out of the 48 students, only 32 students agreed and were transferred to Learnkey Institute at no extra cost. The remaining 16 did not reply to email communication and did not agree



MALTA

to the transfer. According to Shamrat, Learnkey immediately contacted all 48 students giving them guidance for the transfer to be completed and plaintiff also visited Learnkey Institute and met with Administrative Staff who spoke to him about what was needed for transfer to be completed, but applicant did not turn up to complete the transfer. Learnkey also communicated with Identity Malta because of immigration issues. Shamrat also exhibited an email which was sent to applicant.

Shamrat confirmed that Study First Agency were recruiters and worked in partnership with MX Institute to bring the students to Malta. They also helped out with communication when transferring the students.

Considers

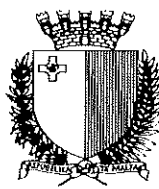
That according to documents exhibited, on the 19th October 2022, MX Institute for Higher Education and Learnkey Institute entered into an agreement whereby students who were pursuing their studies with MX Institute were transferred to Learnkey Institute. A total of 48 students including the Plaintiff/ applicant were indicated in Schedule 1 annexed to the agreement and given the opportunity to transfer. The agreement was signed by Patricia Land on behalf of MX Institute for Higher Learning and Hossain Mahamood on behalf of Learnkey Institute.

That on the same day, i.e. the 19th October 2022, Plaintiff as a London Graduate School student, received an email from a certain Maria Theresa Magro Scerri (from Malta Further and Higher Education Authority), informing students that following the acquisition and change in ownership, MX Institute was committed to finding a solution to the situation and that MX Institute would be communicating more detailed information. In the same email, Magro Scerri also outlined the two-pronged solution being proposed:

1) that students who wish to continue their course of study be given the opportunity to do so at no further charge with another fully licensed education institute in Malta; 2) that students who choose to discontinue their studies will be granted a refund after sending a clearly worded email to MX Institute and sending the required documentation.

To this end, Plaintiff sent a number of emails to Patricia Land, informing her that he would not be continuing with his studies and requesting a refund. On 29 November 2022 Patricia Land replied to Plaintiff telling him that his request for a refund will be reviewed once documentary evidence to support his claim is received and that this may take some time, given the number of checks necessary.

Plaintiff sent a number of reminders to Patricia Land on 19th December, 23 December, 30 December 2022 and 30 January 2023, but received no reply. No emails were exhibited by Respondent company contradicting Plaintiff's claim.



MALTA

Considers

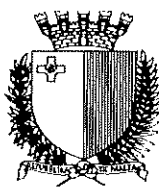
That when testifying, Sayed Shamrat referred to an email which was sent to Plaintiff. The only email which was exhibited was an email sent by Patricia Land on the 28th November 2022 informing Plaintiff that he was eligible for Level 7 Strategic Management and Leadership Diploma and urging him to continue his studies. That email however was superseded by various emails and events, namely Plaintiff's decision not to continue with his studies and his decision to request a refund, as per the email sent to him by Maria Theresa Scerri Magro on 19 October 2022. All evidence points to the fact that Plaintiff requested a refund several times and sent the required documentation, but received no reply from MX Institute.

The fact that 32 students opted for the transfer is immaterial. Once the offer of a refund was on the table and Plaintiff was given the option to continue his studies OR claim a refund, then Plaintiff was well within his rights to claim the refund and Patricia Land should have followed up on the request, one way or another. If the issue was the fact that Plaintiff did not send the required documentation (which certainly does not appear to be the case), this should have been addressed by Land. But in the absence of any replies, the Tribunal is satisfied that Plaintiff did indeed send the documentation to support his claim, and was ignored. There was no email from MX Institute outlining details of the two-pronged solution as promised by Magro Scerri and there was certainly no follow up email after Patricia Land promised to review the claim once documentation was received.

Considers

That Plaintiff is requesting the sum of €3500 - which consists of a course fee of 3,500. Plaintiff is not contesting the application fee of 400 and waived the claim when testifying. MX Institute for Higher Learning is disputing the claim, on the basis of the following: 1) according to the terms and conditions, the fees paid were non refundable, once the program had commenced; 2) that there was a change of ownership and the newly acquired defendant company decided to transfer all students to an alternative third party school, which transfer was approved by the MFHEA; 3) that without prejudice, the fee of 400 was a processing application fee and thus non refundable.

Study First Europe also disputed the claim on the basis that it only acted as an intermediary between the students and MX Institution and all fees are due by MX Institution who issued the invoice, received the payment and also issued receipt of payment.



MALTA

Considers

That the Tribunal agrees that if any fees are due, these are due by MX Institute for Higher Learning and not by Study First Europe, which had no contractual relationship with Plaintiff and received no monies.

The Tribunal therefore, must now consider if any fees are due by Respondent company MX Institute for Higher Learning.

The first argument put forward by MX Insitute for Higher Learning is that fees paid were non refundable according to the terms and conditions of the contract, since the program had commenced. The Tribunal fails to understand how Respondent company can refer to an agreement, which it basically rescinded itself, which was superseded by another agreement, which, as explained above clearly envisaged the possibility of claiming a refund and was endorsed by MFHEA. The Tribunal is therefore dismissing this argument.

The second argument follows on the first - Respondent company refers to the Transfer agreement which was approved by MFHEA. This however does not in anyway help Respondent company, because according to Maria Theresa Scerri Magro from MFHEA, students who did not opt to transfer were given the possibility to claim a refund, which is what Plainitff opted for. Therefore this argument does not hold any water.

The third argument put forward by respondent company is that the processing fee was not refundable, which is now superfluous given that Plainitff has waived the claim.

Considers

That for the propose of determining the quantum, this Tribunal will take into consideration the fact that the course had indeed started and that the acquisiton took place a few months into the course. Unfortunately there seems to be confusion as to when the course started and there are two course acceptance letters with different starting dates and different durations. The Tribunal shall be taking into consideration the Course Acceptance letter dated 15 December 2021, since the receipt of payment is also dated 15 December 2021. According to this, the course date was due to being on 10 January 2022 for a period of 12 months. The total qualification time of the course was 1200 hours.

Given that the entire course was 1200 hours and that there are 52 weeks in a year, the student would have had to do 22 hours a week or more of learning to make up the duration/ number of hours, which seems highly unlikely and impossible given that the course was only offered two days a week and was online. It is not clear how long the sessions were and how many hours a week were actually provided, but Plaintiff's claim that the course was only offered twice a week (online), were never contested or contradicted. Given the reduced hours, it is probable that the Plainitff didn't even receive 100 hours of learning, never mind 1200.



The Tribunal is satisfied that the Plaintiff's claim for a refunded should be acceded to.

For these reasons, the Tribunal whilst declaring Respondent company Study First Europe as non suited, partially accedes to Plaintiff's claim and orders MX institute for Higher Education to pay Plaintiff the sum of three thousand Euro (€3000). With costs.

A handwritten signature in blue ink, appearing to read 'M. Spiteri', with a horizontal line underneath.

Michela Spiteri LL.D
Arbitru