



Fit-Tribunal tal-Konsumatur

Steven R. Paige

Vs

Colin Aquilina – Charichelon Co. Ltd/ROCS Travel

CCT 125/21/MM

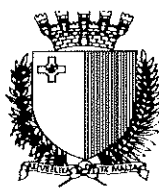
Today, 30th January 2024

The Tribunal

Having seen the plaintiff's claim, filed on 27th July 2021, wherein he seeks reimbursement of the sum of €385.14. This amount represents the balance remaining after he received a partial refund of €1752.86 from his original payment of €2138 for a holiday package, which included insurance fees. The necessity for reimbursement arose following the cancellation of the said holiday due to the COVID-19 pandemic.

Having considered the response submitted by the respondent, Colin Aquilina on behalf of Charichelon Company Limited and ROCS Group, wherein he:

- i. preliminarily objects to his designation as the proper defendant in this matter. Mr. Aquilina contends that he, in his personal capacity, holds no juridical relationship with the plaintiff since the booking in question was made with Charichelon

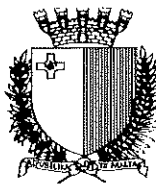


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Company Limited and the ROCS Group. Accordingly, he argues that he should be declared non-suited.

- ii. That, it is preliminarily observed that there exists no entity known as 'ROCS Group'. It is acknowledged that 'Charicheron Company Limited' is the entity engaged by the plaintiff in this regard and is endowed with distinct legal personality.
- iii. That, without prejudice to the above, the plaintiff's complaint is unfounded in fact and at law.
- iv. That when the plaintiff presented his grievance regarding booking number 786/2020, the respondent entity extended an offer of €1752.86 in settlement, which was accepted and received by the plaintiff, thus ostensibly settling his claims. Consequently, the plaintiff's current demands ought to be rejected.
- v. That, it is explicitly indicated on the booking form in question that the booking was not subject to a refund. Therefore, the plaintiff's request for reimbursement cannot be acceded.
- vi. That, without prejudice to the above, the terms and conditions associated with said booking shall prevail. These stipulate that in the event of cancellation, the designated cancellation fees as outlined in the same terms shall be applicable.
- vii. Subject to the right of the respondent to file a further reply in fact or at law, as needed.

Having reviewed Colin Aquilina's sworn affidavit, all relevant documents and proceedings,



And having duly considered the testimonies given under oath.

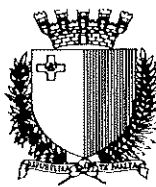
Considers

That from the facts of the case it emerges that the applicant's primary complaint relates to the fact that he paid the sum of €2138 for a holiday package and when the holiday was cancelled due to the COVID-19 pandemic he only received a partial refund of €1752.86 from his original payment. Therefore he seeks reimbursement of the sum of €385.14.

Colin Aquilina presented an sworn affidavit wherein he explained that the defendant did their best to obtain a refund and in fact they refunded the plaintiff the full amount save for €385.14 being the cost of the Ryanair tickets and other minor administrative costs. Colin Aquilina explained that whilst the flight out of Malta was cancelled, Ryanair did not cancel the flight from Edinburgh to Dublin, and thus they could not recover the costs of the flight tickets from Ryanair. Furthermore, the defendant insists on two preliminary points; i.e. that Colin Aquilina is not suited, and that the plaintiff accepted the refund of €1752.86 as full and final settlement.

Considers

With respect to the first preliminary plea, in the case **Pauline MacDonald vs Medistar Healthcare Services Limited et (Rik.Gur.Nru 700/14)**, decided on the 28 September Settembru 2016 the Court said: *Il-kriterji li jirrendu parti f'kawza bhala legittimu kontradittur jirrizultaw ben cari mill-gurisprudenza: Focal Maritime ServicesCompany*

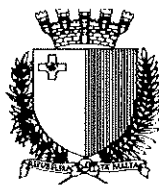


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Limited vs Top Hat Company Limited deciza fid-9 t'April 2008 mill-Qorti tal-Appell: "In linea ta' principju generali huwa, bla dubju, indiskuss illi d-deduzzjoni ta' konvenut f'gudizzju trid, necessarjament, titwieled minn rapport guridiku, sija jekk dan jemani minn kuntratt, lezjoni ta' dritt minn intervent delittwuz jew akwiljan, ope successionis jew minn sitwazzjonijiet strutturalment komuni (ad eżempju, f'kondominju jew il-krejazzjoni ta' ċerti servitujiet). Li jfisser, b'konsegwenza, illi kawża ma tkunx tista' tikkonsegwi l-iskop tagħha jekk mhux fil-konfront ta' dak li miegħul-attur, għal xi waħda mill-konnessjonijiet aċċennati, għandu relazzjoni guridika."

In the matter between **Frankie Refalo et vs Jason Azzopardi et** decided on the 5 October 2001, the Court of Appeal held that: "Jekk dan in-ness jigi stabbilit, il-persuna citata setghet titqies li kienet persuna idoneja biex tirrispondi ghat-talbiet attrici, inkwantu dawn ikunu jaddebitawlha obligazzjoni li kienet mitluba tissodisfa dan inkwantu il-premessi għaliha, jekk provati, setghu iwasslu għall-kundanna mitluba f'kaz li jinstab li l-istess konvenut ma jkollux eccezzjonijiet validi fil-ligi x'jopponi għaliha. Dan, naturalment ma jfissirx li jekk il-Qorti tiddeciedi li l-konvenut kien gie sewwa citat inkwantu jkun stabbilit lil-interess guridiku tiegħu fil-mertu kif propost mill-attur illi hu kellu necessarjament ikun finalment tenut bhala l-persuna responsabbli biex tirrispondi ghat-talbiet attrici kif proposti, kif lanqas ifisser li l-istess konvenut ma jkollux eccezzjonijiet validi fil-mertu, fosthom dik li t-talbiet attrici kellhom fil-fatt ikunu diretti lejn haddiehor ukoll inkwantu dan ikun involut fl-istess negozju u li allura seta' jigi wkoll citat bhala legittimu kontradittur fil-kawza."

In view of this, the Tribunal is of the opinion that Colin Aquilina shall be declared non suited because his involvement in this transaction was limited to matters of administrative nature and could not reasonably give rise to the appellant to believe that Colin Aquilina was transacting in his personal capacity. Indeed, the letter that was sent to the plaintiff together



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with the cheque is signed by Colin Aquilina in his capacity of Chief Executive Officer of the company clearly indicating that he was acting on behalf of ROCS Group.

With respect to the second preliminary plea, the Tribunal will abstain from determining it since ROCS Group has no juridical personality. On the other hand, Charichelon Company Limited is a legitimate defendant.

That on the merits, the Package Travel and Linked Travel Arrangements Regulations, S.L 409.9, transposing the provisions of Directive 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, it is provided that if before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.

The Tribunal is of the opinion that the plaintiff is justified in demanding a full refund and the defendant's plea that they could not refund the portion pertaining to the Ryanair tickets is not sound at law because that is part of the business risk that they must assume.

That on the matter raised by the defendant that the plaintiff accepted the partial refund in full and final settlement, the Tribunal refers to the matter between **Johann Schembri proprio et nomine -vs- Charlot Mifsud nomine**, decided by the Court of Appeal, the Court held: *"ghalkemm in linea ta' massima hu prezunt li min jaccetta cheque lilu mibghut fit-termini "full and final settlement", u jghaddi biex isarrfu, jigi li accetta dak il-hlas f'dawk l-istess termini precizi, eppure, jekk jigi muri li huwa tempestivament ipprotesta ghall-pagament b'dik il-modalita', l-accettazzjoni minnu ta' dak ic-cekk u s-sussegwenti*



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tisrif tieghu ma kellux, imbaghad, jigi rinfaccjat lilu bhala xi abdikazzjoni tad-dritt tieghu ghal hlas tal-bilanc dovut”.

In the matter between **Aceline Entertainment Ltd vs Price Breakers Ltd** decided by the Court of Appeal on the 11 October, 2012 (Appeal Number 150/2011/1: the court referred to jurisprudence and held: *Tabilhaqq, il-pagament akkompanjat bid-dikjarazzjoni illi dan kien qed isir “ghas-saldu” ma hux bizzejjed biex jassolvi ghal kollox ir-rapport kreditur-debitur u l-estinzjoni ta’ l-obbligazionijiet da parti tad-debitur. Dan irrikonoxxietu wkoll is-sentenza **Agius Marble Works vs AX Construction Ltd**, Qorti Civili Prim’Awla deciz fit-8 ta’ Marzu 2005 per Imhallelf **Giannino Caruana Demajo**.*

The Tribunal further refers to the matter between **Agius Stone Works Limited vs AX Construction Limited** (App. Number 1887/2001/1) decided by the First Hall, Civil Court on the 12 October, 2012 and **Agius Marble Works Limited v. AX Construction Limited** (Appeal Number 1886/2001/1) decided by the Court of Appeal on 31 October, 2007 (S.T.O. Prim Imhallelf Vincent De Gaetano, Onor. Imhallelf Albert J. Magri and Onor. Imhallelf Tonio Mallia).

That this Tribunal is of the opinion that the defendant did not present any evidence to show that the plaintiff accepted the partial refund as 'full and final settlement'. As seen above, even if the plaintiff signed the letter proposed by the defendant, that would not have been an automatic confirmation that the consumer-seller relationship had been concluded. In addition, the close proximity between the date when the cheque was cashed and the plaintiff's request for the refund of the remaining sum show to the satisfaction of the Tribunal that the plaintiff did not intend to forego the remaining sum.



The Tribunal rejects the remaining arguments put forward by the defendant.

DECIDE

For the reasons set out above, the Tribunal decides and definitively resolves to:

1. Accept the defendant's first plea,
2. reject the defendant's all other pleas and
3. To uphold and accede the plaintiff's request and order the defendant Charichelon Company Limited to refund the plaintiff the sum of €385.14 within two weeks.

Costs to be supported by Charichelon Company limited

Dr Martha Mifsud LL.D.

Arbiter