



MALTA

Consumer Claims Tribunal

CCT 110/22/MM

Yusuf Kerpic

Vs

Top Choice

10th July 2024

The Tribunal

Having seen the plaintiff's claim, filed on 08th August 2022, wherein he seeks compensation in the sum of five thousand euro (€5,000). This amount represents the price for a fridge that he bought for two thousand euro (€2,000), the cost of repairs amounting to two hundred seventy-five euro (€275) and two thousand one hundred eighty-four (€2,184) for annual leave that he took throughout the duration of the case.

Having considered the response submitted by the respondent, Jonathan Cauchi on behalf of the defendant company, wherein he argues that the plaintiff is to blame for the damages caused to the fridge because the mainboard was full of cockroaches and/or droppings and remains of cockroaches.

Having reviewed the parties' sworn affidavit, all relevant documents and proceedings,

And having duly considered the testimonies given under oath.



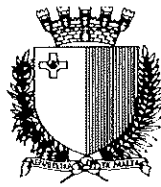
Considers

That from the facts of the case it emerges and it is not contested that on the 27th July 2017, the plaintiff bought an American style LG fridge from the defendant company for two thousand euro (€2,000). This was a display model.

On 7 July 2021, the water dispenser of the refrigerator stopped working. The unit was checked, and it was found that the water inlet valve was faulty. The part was ordered and installed on 24 August 2021. The issue was re-reported on 28 September 2021 and repaired again on 27 October 2021. The problem resurfaced on 7 December 2021 and was repaired on 11 January 2022. The issue was re-reported on 17 January 2022. On 22 March 2022, it was discovered that the PCB compartment was infested with cockroaches and droppings. The customer was informed that this was not covered by the warranty, and the part was replaced on 27 April 2022 and delivered to the customer on 13 May 2022. The refrigerator was reported faulty again on 26 May 2022.

Examination of Facts:

1. The refrigerator was purchased on 27 July 2017.
2. Issues with the water dispenser began on 7 July 2021, four years after the purchase.
3. The water inlet valve was replaced several times, but the issue reoccurred multiple times.
4. An infestation of cockroaches in the PCB compartment was discovered on 22 March 2022, and it was stated that this was not covered by the warranty.
5. The part was replaced on 27 April 2022 and delivered on 13 May 2022, but the refrigerator was reported faulty again on 26 May 2022.



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According to the Consumer Law in Malta, products sold must be of good quality and match the reasonable expectations of the consumer. Products should be free from defects for the warranty period as stipulated by the supplier or as reasonably expected.

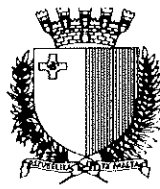
- The manufacturer's warranty typically covers defects in materials and workmanship for a specified period after purchase.
- Cockroach infestation generally would not be covered under a standard warranty as it could be caused by external conditions beyond the manufacturer's control.
- The supplier is responsible for providing products that function as expected and for repairing or replacing defective parts during the warranty period.
- Multiple instances of recurring problems, even after several repairs, indicate a potential issue with the product quality or that the replacements were not adequately addressing the core problem.
- The consumer is obliged to maintain the product adequately to prevent infestation or damage caused by external factors.

Considers

This Tribunal is confronted with conflicting evidence regarding the merits of the case, specifically concerning which party bears responsibility for the events in question.

Article 562 of Cap. 12 of the Laws of Malta provides that "*Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it*" and Article 559 states "*in all cases the court shall require the best evidence that the party may be able to produce*".

Confronted with conflicting evidence, the Tribunal must determine which version is most credible. As outlined in the aforementioned legal principles, the Tribunal must evaluate whether one version logically excludes the other. In the matter of "**Carmelo Farrguia -vs-**



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Rokku Farrugia", First Hall, Civil Court, per Judge Maurice Caruana Curran, 24 November 1966, it was stated that *"il-konflitt fil-provi huma haga li l-Qrati jridu minn dejjem ikunu lesti ghalha. Il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, ghandiex teskludi lill-ohra, anke fuq il-bilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f`kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant."*

Having alleged that the damages and faults on the fridge are imputable to the plaintiff, the defendant company failed to produce evidence to substantiate its allegation. The defendant company failed to avail itself of the right to appoint an expert in the matter to determine whether the damages reported were due to the cockroach infestation or otherwise imputable to the plaintiff or to some other cause.

After considering the facts and the legal evaluation, it appears that the supplier has attempted multiple repairs on the refrigerator but has failed to provide a lasting solution. While the cockroach infestation is not typically covered under warranty, the repeated failures of the water dispenser and other components indicate a quality issue with the product. Indeed, the replacement of the component after the discovery of the cockroach infestation did not last long and the fault was reported a few days later. Throughout the multiple repair attempts, valuable time was lost, and the recurring issues remained unresolved. If the main issue was truly down to the cockroach infestation, a reasonable and prudent technician would have opened the PCB compartment earlier for inspection, ideally before the third repair attempt. This oversight demonstrates a lack of thoroughness and attention to detail in addressing the underlying problem. The supplier is expected to take full responsibility for finding a permanent solution to the recurring problems with the refrigerator in the least possible time.

Likewise, with respect to the alleged damages and dents on the body of the fridge, the Tribunal finds that it is more likely that the front panel and body of the refrigerator were



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damaged during the multiple instances it was moved for repairs rather than being caused by the plaintiff. This frequent handling and transportation would have increased the risk of physical damage to the appliance and on a balance of probability it finds the plaintiff's version more plausible than that of the defendant company.

With respect to the amount claimed by the plaintiff, the Tribunal notes that the plaintiff failed to present any evidence to substantiate his claim that he spent two thousand one hundred eighty-four (€2,184) in annual leave. The plaintiff did not present any payslips, leave records or any other documentary evidence to show that he suffered the amount claimed. Therefore, whilst the Tribunal will entertain the claim for the cost of the fridge and the cost of repairs amounting to two hundred seventy-five euro (€275) which did not address the fault in question, it will not award any compensation for leave taken on the basis that no evidence was produced in support of this part of the claim.

Decision

For the reasons set out above, the Tribunal decides and definitively resolves to uphold and accede in part, the plaintiff's request and order the defendant company to refund the plaintiff the sum of two thousand two hundred seventy-five euro (€2,275) within two weeks. Costs to be supported by defendant company.

Dr Martha Mifsud LL.D.

Arbiter

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.