

MALTA

Fit-Tribunal tal-Konsumatur

Gokce Tuna Kuscu

Vs

Crosscraft Co. Ltd

CCT 34/25/MS

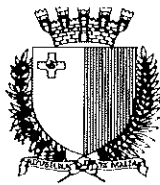
9 April 2025

The Tribunal

Having reviewed the claim filed by the Plaintiff, requesting this Tribunal to order Defendant company to pay the sum of €1,299.90—the amount paid for a kitchen sink purchased from Defendant company. The Plaintiff alleges that the sink was delivered with a hairline crack.

Having seen the reply of Defendant company contesting the claim as unfounded, arguing that:

- At the time of delivery, the Claimant personally inspected the product and signed the delivery document, confirming that the goods were received in good condition and agreeing to the terms and conditions outlined therein.
- In addition to the signed delivery document, the Claimant also signed a job card sent via email, confirming acceptance of the goods with no damage or defects noted.
- As per the terms and conditions, the Claimant was informed—both verbally and via email—that any visible or minor damages should be reported within 24 hours of delivery. No such report was made.
- The alleged damage was reported four days after delivery, after the sink had been handled by third parties.
- The sink was moved and repositioned by third parties, negating any liability on the part of the Defendant for any damages that may have occurred.



The Defendant Company is requesting the Tribunal to dismiss the claim, with costs.

Having heard the testimony of both parties under oath and examined the submitted documents

Considers ,

That Tribunal notes the following:

The sales invoice, issued on December 11, 2024, was addressed to Kuscu Baris, who also signed the delivery note confirming receipt of the goods. The Tribunal notes however, Kuscu Baris is not a party to these proceedings and did not testify before this Tribunal.

The case was instituted by his wife, Gokce Tuna Kuscu, who was not present at the time of delivery nor when the hairline crack was allegedly discovered on the side of the sink.

As such, her testimony is second-hand (hearsay), and she is not in a position to provide first-hand evidence regarding what transpired on the day of delivery, including the circumstances surrounding the photograph that was taken.

That Plaintiff's husband, Kuscu Baris, who signed the delivery form, was present at the time of delivery and inspected the sink, which was opened in his presence and photographed.

The Tribunal is satisfied that Baris did not sign the delivery form "blindly" but had the opportunity to verify the product's condition.

The sink was purchased on Thursday 12th December, one day before a public holiday, and the damage was only reported the following Monday.

While this timeline might have led the Tribunal to consider overlooking the stipulated terms and conditions, the evidence presented still does not support the Plaintiff's claim.

Considers

The photograph submitted by the Plaintiff shows a clearly visible crack that would have been impossible to ignore or conceal at the time of delivery. In contrast, the photograph taken at the time of delivery shows no such crack.



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The Plaintiff's argument that a finger seen in the photograph taken upon delivery was covering the crack is unconvincing. Upon examining both photographs, the Tribunal is satisfied that if the same crack had existed at the time of delivery, it would have been visible and impossible to hide.

The Tribunal further clarifies that the photograph taken by the Defendant company on-site is not meant to substitute the Claimant's own personal inspection. The person who purchased the item had every opportunity to inspect it. The photograph serves as an additional safeguard but does not detract from the fact that he was given the opportunity to see the sink in person

The Plaintiff further claims that the crack was discovered four days later by workmen installing the kitchen, who then promptly informed her. However, it is unclear whether she was physically present when the crack was discovered, or whether the workmen had already moved, handled and repositioned the sink before noticing the damage.

Given that four days had passed since delivery and the Plaintiff's husband did not notice any visible damage upon receipt of the sink, which was also photographed in his presence, the testimony of the workmen who allegedly discovered the crack would have been not only helpful but essential in establishing when and how the damage was identified, and also the extent and nature of the damage. This assumes even more importance in light of the fact that the Plaintiff contends that the damage had progressed further.

Based on the evidence and the circumstances presented, the Tribunal is not satisfied that the crack existed at the time of delivery and feels that the Plaintiff has not proved her case according to law.

For these reasons, the Tribunal is dismissing Plaintiff's claim, with costs.

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

Dr Michela Spiteri, LL.D.

Arbiter