- PARTY TO A LAWSUIT IS DUTY BOUND TO DILIGENTLY FOLLOW THE PROCEEDINGS -

SMALL CLAIMS TRIBUNAL
(EUROPEAN SMALL CLAIMS PROCEDURE)

ADJUDICATOR
ADV. DR. KEVIN CAMILLERI XUEREB

Sitting of Monday, 6th of November, 2017

Claim Number: **3 / 2012**

ANTOINETTE PULLICINO & MARIE ANTOINETTE CIAPPARA

VERSUS

RYANAIR LIMITED

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimants on the 9th August, 2012 whereby the same, in line with Regulation (EC) no. 861/2007, requested the Tribunal to condemn defendant company to pay them the sum of six hundred euros (€600.00c) for the reasons explained under Section 8 of the Claim Form, namely due to a delay in flight number FR7798 from Valencia to Malta dated 4th September, 2010.

Took cognizance of all the acts and documents relating to the case and having noted that the claimant required no oral hearing (*vide* section 8.3 of the Claim Form at *fol.* 8).

The Tribunal considers:

The claimants submitted a written declaration whereby they respectively stated the factual aspects of the episode relative to the delay, stating, *inter alia*, that the delay was of about thirteen (13) hours and, as a corollary thereof, they were "*stranded at the*

airport with no financial means and with only €5 (five) voucher given to [them] *by Ryanair staff.*" They also explained that they were given "*no explanation for the delay*." (see *foll.* 10–11)

However, claimants failed to follow the pertinent procedure and serve the defendant company with the acts of these proceedings, notwithstanding the Tribunal's directives and orders in this respect.

The acts show that the claim was filed on the 9th of August, 2012 and that the very first attempt to notify the defendant company with the relative acts of the proceedings was after a month (i.e., September, 2012). However, such attempt was not successful and the court executive officer indicated that he could not state whether the defendant company was duly notified or otherwise since the relative postal pink card was not returned (see *tergo* of *fol.* 31). From that moment onwards, the proceedings appear to have remained in a state of abeyance – no further attempt was made by claimants to notify the defendant company and no decree (or other directive, instruction or order) was issued by the Tribunal (diversely presided).

This state of abeyance endured from September, 2012 until the 7th of March, 2016. On this latter date the Tribunal (diversely presided) issued a decree (see *fol.* 32) ordering claimants to notify the defendant company. The Tribunal specified a time-frame of thirty days within which such notification had to take place. Notwithstanding such order, the acts do not show any attempt to serve the defendant company with the pertinent acts of the proceedings.

Thereafter, on the 6th of September, 2017 this Tribunal, as currently presided, issued another decree (see *fol.* 33) which stated thus:

> Having seen the acts of the present proceedings, including its decree dated 7th March, 2016;
>
> The Tribunal notices that the defendant has not yet been properly notified with the relative claim in terms of EC Regulation no. 861/2007 and that the claimant has not adhered to the terms set in the said Tribunal's decree;
>
> Having seen Articles 12(2) and 14(1) of EC Regulation no. 861/2007, the Tribunal orders and directs the claimant, for the last time, to notify the defendant, within a period of thirty (30) running days from service of this decree, with the relative acts of these proceedings in terms of the relevant provisions of EC Regulation no. 861/2007.

> The Tribunal makes it clear that failure to abide by the directions contained in the present decree, after the lapse of the stated time-frame, the Tribunal shall proceed for judgment.
>
> The Tribunal orders that a copy of the present decree be communicated immediately to the claimant on the email address shown in her claim 'Form A'

Again, in spite of this last decree (which was sent by email to the claimants on the 6th September, 2017 by the Tribunal's deputy registrar – see *fol*. 34) the claimants appear to have remained inert and have taken no initiative, personally or through their legal counsel (in the Claim Form claimant indicated that they were legally represented by a specific lawyer – see section 2.7 thereof at *fol*. 2) to serve defendant company in line with the Regulation (EC) no. 861/2007 and, specifically, in the light of this Tribunal's decree of 6th September, 2017, notwithstanding the warning therein contained stating that "*failure to abide by the directions contained in the present decree, after the lapse of the stated time-frame, the Tribunal shall proceed for judgment*."

This complete inertia on the part of the claimants cannot but be interpreted as being tantamount to an absolute lack of interest in pursuing these proceedings further. Such lack of interest is equivalent to the claimants' abandonment of their claim against the defendant company.

This Tribunal observes that it is a known tenet at Law that a party who initiates proceedings is duty bound to diligently follow the proceedings which it instigated and gave rise to. A party is not allowed to file judicial proceedings and expect Justice to take its course in the absence of any contribution on its part or without any impetus whatsoever from its side. When proceedings are initiated, the party instigating such judicial process (i.e., the plaintiff) triggers a number of procedural mechanisms by virtue of which it calls upon the Court's or Tribunal's jurisdictional authority to delve into a specific subject-matter and decide thereupon. However, in order to do so the Court or Tribunal (i.e., to consider and decide the issue at hand) must be 'aided' by the party calling upon its authority. Certain formal requirements, particular procedural norms and specific normative mechanisms must be addressed and adhered to by the interested party in order for the Court or Tribunal to do so, failing which the deciding authority finds itself incapable and paralysed to consider or accord that which is desired or demanded. All this dilutes itself into the imperative requirement that when proceedings are set in motion, the party seeking a remedy ought to meet a certain level of diligence, care, zeal and vigour in following the process it voluntarily gave rise to. In relation to these observations, reference is

made to the judgment *in re* **Raymond Cauchi et v. Kontrollur tad-Dwana** (Court of Appeal, 15th December, 2015) wherein it was held that: "*huwa palezi li l-partijiet f'kawza ghandhom l-obbligu li jsegwu l-kawza b'mod diligenti u li jattendu ghall-udjenza fid-data u fil-hin indikat fl-udjenza precedenti sabiex jinformaw ruhhom dwar dak li jkun qed isir fl-udjenza u dak li jkun qed jigri fil-kawza.*" Furthermore, in the case of **Mary Zammit v. Paul Camilleri pro et noe** (First Hall, Civil Court, 16th March, 2012) it was *inter alia* pointed out that, "*parti ghandha l-oneru li kull tant zmien tivverifika mill-atti x'ordnijiet ikunu qeghdin jinghataw mill-qorti in camera b'riferenza ghall-kawza.*"

Therefore, in the light of the above and for the above-mentioned reasons, this Tribunal decides the present case by rejecting claimants' claim. All the expenses connected with these proceedings are to be borne by the claimants.

Finally, the Tribunal orders that a copy of this judgment is served upon the claimants in terms of Article 13 of Regulation (EC) no. 861/2007.

Sgnd. **ADV. DR. KEVIN CAMILLERI XUEREB**
Adjudicator

Sgnd. **ADRIAN PACE**
Deputy Registrar