



**SMALL CLAIMS TRIBUNAL  
(EUROPEAN SMALL CLAIMS PROCEDURE)**

ADJUDICATOR  
**ADV. DR. KEVIN CAMILLERI XUEREB**

**Sitting of Monday, 6<sup>th</sup> of November, 2017**

Claim Number: 3 / 2013

**DORIANNE ZAMMIT GUGLIELMI**

*VERSUS*

**LEON YOUSEFZADEH**

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimant on the 3<sup>rd</sup> May, 2013 whereby the same, in line with Regulation (EC) no. 861/2007, requested the Tribunal to condemn defendant to pay her the sum of six hundred twenty euros and forty two euro cents (€620.42c) for the reasons explained under Section 8 of the Claim Form, namely for a faulty car apparatus (a brand new Hydragas Unit) purchased by claimant over the internet from the defendant, a seller based in the United Kingdom. The said Unit was purchased by claimant on the 9<sup>th</sup> of August, 2012 and was destined for an MG car owned (or possessed) by the claimant.

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.* 7).

The Tribunal considers:

Along with the said Claim Form, the claimant submitted a written declaration whereby she gave a succinct description of the factual aspects of the episode relative

to her claim (see *fol.* 9). Claimant also submitted documentary evidence in support of her demands (see *fol.* 10-16).

However, claimant failed to follow the pertinent procedure and serve the defendant 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 3<sup>rd</sup> of May, 2013 and that the very first attempt to notify the defendant company with the relative acts of the proceedings (concurrently with filing) was not successful, with the court executive officer indicating that he could not state whether the defendant was duly notified or otherwise since the relative postal pink card was not returned (see *tergo* of *fol.* 33). Another attempt for services was made more than two (2) years after the first attempt, namely on the 7<sup>th</sup> October, 2015. Again, the result was the same as in the previous occasion (see *tergo* of *fol.* 35).

This Tribunal (diversely presided) issued a decree on the 7<sup>th</sup> of March, 2016 (see *fol.* 36) ordering claimant to notify the defendant. The Tribunal specified a time-frame of thirty days within which such notification had to take place. The claimant appears to have attempted a third notification process upon the defendant on the 22<sup>nd</sup> of March, 2016. Again, service was not effected as evidenced by the relative postal pink card (see *fol.* 37A) and its relative envelope (see *fol.* 37B) exhibited in the acts of these proceedings. The said envelope indicates that «addressee gone away». In line with such indication, the court executive officer's official stamp also states «addressee gone away» (see *tergo* of *fol.* 37). After this third attempt at notification, the claimant does not appear to have endeavoured to make another attempt to serve the defendant with the pertinent acts of these proceedings. This state endured for over a year and the proceedings did not progress further.

On the 6<sup>th</sup> of September, 2017 this Tribunal, as currently presided, issued a further decree (see *fol.* 38) 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;

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'.

Albeit decree (which was sent by email to the claimant on the 11<sup>th</sup> September, 2017 by the Tribunal's deputy registrar – see *fol.* 39) the claimant appears to have remained passive and inert and took no initiative to make another attempt at service in line with the Regulation (EC) no. 861/2007 and, particularly, in the light of this Tribunal's decree of 6<sup>th</sup> September, 2017, notwithstanding the warning thereof 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.*"

The time-period mentioned in the decree dated 6<sup>th</sup> September, 2017 lapsed on the 11<sup>th</sup> October, 2017 and in the interim period (*viz.* between service of the said decree on the 11<sup>th</sup> September, 2017 and the lapse of the 30-day time-limit on the 11<sup>th</sup> October, 2017), the acts of the present proceedings manifest no activity whatsoever on the part of the claimant. From the 11<sup>th</sup> of October, 2017 to the date of this decision, there was no other activity registered on the part of the claimant.

This inertia on the part of the claimant cannot but be interpreted as being tantamount to a lack of interest in pursuing these proceedings further. Such lack of interest is equivalent to the claimant's abandonment of her claim against the defendant.

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, 15<sup>th</sup> 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 għall-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, 16<sup>th</sup> 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 għall-kawza.”*

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

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*