

Claim Number.: 8/2018



IN THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR: DR PHYLLIS AQUILINA LL.M. (Lond.), LL.D.

Today 9th January, 2019.

Claim Number: 8/2018PA

George Hadjithamas on behalf of KeepitPromo Trading Ltd

vs

Goldcar Malta

The Tribunal,

Having seen the Notice of Claim filed on 3rd September 2018 in which claimant premised that on 7th March 2018, he booked a car rental from respondent undertaking prior to his arrival in Malta; on arrival, respondent undertaking secured a deposit of €1,100 (one thousand and one hundred Euro) on his credit card, and he took possession of the vehicle bearing registration number IQZ 861; on the last day of his rental period, three hours prior to the departure time of his outbound flight from Malta, the car would not start; claimant informed respondent undertaking about the occurrence, and respondent undertaking sent an administrative officer who attempted to jump-start the battery for a charge of €150 (one hundred and fifty Euro), which claimant accepted to pay; on failure of this attempt, respondent undertaking's employee stated that the problem certainly involved the catalytic convertor, which conclusion he reported to have been confirmed by the manager of respondent undertaking in a telephone call; this happened fifteen minutes

prior to claimant's flight stipulated check-in time; applicant was asked to sign a 'Damage Invoice' for one thousand and one hundred Euro (€1,100) which he initially refused to sign, and then signed on the strength of respondent undertaking employee's assurance that claimant would receive a refund of this sum within one week under the 'default' insurance cover; claimant did not know and initially contested to have purchased said insurance cover; and due to time pressures, claimant accepted to sign the invoice, on the understanding that he would be receiving a refund from the insurance company, only that when he sent the claim form as directed, he was informed that he was not insured.

Claimant therefore requests this Tribunal to condemn respondent undertaking to:

- (i) provide a signed report from a certified (third party) mechanic that the problem with the car IQZ 861 was indeed due to damage to the catalytic convertor;
- (ii) provide a signed and dated purchase invoice that clearly states the serial number of the catalytic convertor proving that Goldcar indeed purchased a new catalytic convertor;
- (iii) provide photo evidence that the catalytic convertor with the same serial number as the invoice in (ii) was installed on IQZ 861;
- (iv) provide proof that the damage to the catalytic convertor was a result of claimant's misuse of the car, and not due to normal wear and tear;
- (v) refund in favour of claimant the monies wrongly charged, and the costs of these proceedings.

Having seen the documents filed with the Notice of Claim, namely claimant's detailed account of the claim (Doc. 17); his correspondence with Customer Service-Goldcar on this dispute (Docs. 2 and 13) in which Customer-Service Goldcar concluded that the damage was not pre-existing and the charge justified; the contract concluded

between claimant and respondent undertaking, including the charge on his credit card (Doc. 3); claimant's boarding pass (Doc. 4); claimant's complaint filed with Malta Competition and Consumer Affairs Authority (Doc. 5); receipt for transfer of blocked monies on claimant's credit card in favour of respondent undertaking (Doc. 6); vehicle condition report form (Doc. 7); damage invoice (Doc. 8); documents for pre-arrival rental booking with Auto Europe (Doc. 9); electronic communications in a foreign language unknown to the Tribunal (Doc. 10, 11 and 12 (part)); and various electronic communications with Maltese authorities on the subject-matter of this dispute.

Having seen respondent undertaking's Reply filed on 16th November 2018, in which respondent undertaking rejects the claim, on the grounds that:

- (i) the claim is invalid since it is filed against Damon Turner, who has no legal relationship with claimant, and does not represent respondent undertaking;
- (ii) 'Goldcar Malta' is a trade name and has no separate legal personality, and therefore cannot be sued;
- (iii) without prejudice, the damages for which claimant was charged were not present at the beginning of the rental period, and occurred whilst he was using it, besides being recorded in a Vehicle Condition Report and acknowledged by claimant;
- (iv) Goldcar Rental is exonerated from responsibility in terms of the contractual agreement between the parties because claimant did not purchase the Super Relax Cover Insurance policy;
- (v) claimant accepted the Damage-Repair Price List and signed it after due explanation, agreeing also to the payment of an Excess Acceptance deposit of one thousand and one hundred Euro (€1,100);
- (vi) claimant accepted and signed the Damage Invoice;

(vii) the monies were used to replace the damages catalytic convertor.

Having seen the documents which respondent undertaking exhibited with its Reply, namely the standard form agreement which claimant signed, including the Damage Excess Acceptance Declaration and the Damage Invoice.

Having seen the parties' declaration that they do not want an oral hearing to be held.

Considers that:

In this action, claimant is suing respondent undertaking for the expense of one thousand and one hundred Euro (€1,100) which he claims to have been unduly charged, allegedly for the reparation of the catalytic convertor installed on the vehicle he hired from respondent undertaking during his stay in Malta in March 2018. Said vehicle bears registration number IQZ 861.

On a preliminary note, the Tribunal rejects the first two pleas of respondent undertaking as unfounded in law and in fact. Claimant has mentioned a Damon Turner not as a defendant in his personal capacity, nor as a legal representative of respondent undertaking. Respondent undertaking does not deny that it employs, or employed at the time, a person bearing these name and surname. In addition, respondent undertaking cannot be justified in its plea that the action cannot succeed against its trade-name, without identifying the legal person against whom the action should be directed, or specifying what the correct and lawful name is. Claimant was justified to cite in judgment 'Goldcar Malta' because all documentation which respondent undertaking presented to him for signature identified said undertaking as the contracting party providing the consumer service. Claimant, who is a lay person and a consumer, cannot be expected to hunt around in the legal registers of the Maltese jurisdiction, or elsewhere, to find whether respondent undertaking is a registered legal person, and what its full correct name is.

On the merits, the Tribunal reviewed claimant's account of the occurrence leading to the dispute, and notes that respondent undertaking has opted not to produce any differing or contrasting accounts of its personnel involved in its relationship with claimant. It is immediately evident that respondent undertaking has opted instead to rely exclusively on the content of its own pre-set standard agreement forms, and claimant's signature on those forms, for its own defence against claimant's demands.

Worse still, respondent undertaking did not produce any evidence to support its claim that all terms and conditions stipulated in these pre-set standard agreement forms, prepared for its account, were duly explained to claimant consumer. It is clear from claimant's account of the happening that he did not have time to read, and surely did not understand the terms and conditions that he signed for on taking possession of the rented car from respondent undertaking.

After considering all documentation exhibited, and arguments made, in the acts of these proceedings, the Tribunal remains very much perplexed about the evidenced illegal, unjust and unfair abuse of the respondent undertaking's position in the market of car rentals to foreigners in Malta. The terms and conditions stipulated in the pre-arranged forms – exhibited as Docs. 1a, 1b, 1c, 1d, 1e, 1f and 1g – are heavily biased in favour of the respondent commercial undertaking, for its own use and benefit in whatever dispute or difference arising with a client. The Tribunal is even more worried with the defence which respondent undertaking raised in its last plea in regard to the actual repair of the alleged damage to the catalytic converter of the rented car, stating that the sum charged to claimant *'was used in order to replace the damaged catalytic convertor, as can be evidenced by the invoice herein attached and marked Document 1g'*. This invoice is the invoice which respondent undertaking presented to claimant, when he was in a rush not to miss his flight, and in no way evidences that the monies charged were actually utilised to repair the alleged damage.

As already stated, the Tribunal has not been presented with the account of facts of the employee who attended to claimant's demand for support when the car would not

start. It is very clear, however, that claimant was fraudulently induced, and unlawfully pressured, into signing for the release of the monies blocked on his credit card in favour of respondent undertaking because he did not know that said monies constituted a damage excess payment. Had he known, or been informed, he would never have believed the employee's feigned comfort that he could get full reimbursement of the sum under his insurance cover within a week.

On facts, the Tribunal is not convinced, on a balance of probabilities, that claimant bears civil responsibility for the damage which caused the rented car not to start, or that said damage necessitated the repair or replacement of the catalytic convertor of the vehicle. In addition, the Tribunal is of the view that the terms and conditions stipulated in the agreement which respondent undertaking presented to claimant for signature, and which claimant signed, are unlawful and unenforceable in terms of art. 44, 45 and 47 of the Consumer Affairs Act (Cap. 378 of the Laws of Malta). Therefore, respondent undertaking cannot rely on said terms and conditions to justify the lawfulness of the payment charged.

On the basis of these legal and factual considerations, the Tribunal concludes that this claim appears, on a balance of probabilities, to be founded both in law and equity, and in fact.

Thus, for the aforementioned reasons, the Tribunal rejects Respondent Undertaking's pleas and upholds Claimant's claim and, whilst abstaining from giving judgement on the first four demands of Claimant, upholds the fifth demand and therefore condemns respondent undertaking to pay in favour of Claimant the sum of one thousand and one hundred Euro (€1,100), with costs and legal interest with effect from today until the date of full and effective payment.

Advocate Phyllis Aquilina LL.M. (Lond.), LL.D.

ADJUDICATOR