



SMALL CLAIMS TRIBUNAL
(EUROPEAN SMALL CLAIMS PROCEDURE)

ADJUDICATOR
ADV. DR. KEVIN CAMILLERI XUEREB

Sitting of Thursday, 11th of June, 2020

Claim Number: **10 / 2019**

MAURO VELLA

VERSUS

ORLANDO PERITI
(ERACLESOFA ITALIA S.R.L.)

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimant on the 14th June, 2019 whereby the same, in line with Regulation (EC) no. 861/2007, requested the Tribunal to condemn defendant to pay him the sum of two thousand, eight hundred euros (€2,800.00) for the reasons explained under Section 8 of the Claim Form, namely for a defective sofa purchased by claimant from the defendant (a seller based in Italy), through a Maltese shop which is now closed. Claimant did not demand the expenses of the procedures and neither any legal interest on the amount claimed (*vide* Sections 7.3 and 7.4 respectively at *fol.* 4).

Took cognizance of all the acts and documents relating to the case;

The Tribunal considers:

The claimant submitted a succinct description of the factual aspects of the episode relative to his claim (see *tergo* of *fol.* 4) and also submitted documentary evidence in support of his claim (see *fol.* 7–13).

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 14th of June, 2019 and that the very first attempt to notify the defendant with the relative acts of the proceedings was not successful

(see *tergo* of *fol.* 21). Thereafter, on the 27th of September, 2019, this Tribunal issued a decree (see *fol.* 22) which stated thus:

The Tribunal,

Having seen the acts of the present proceedings;

The Tribunal notices that the defendant has not yet been properly notified with the relative claim in terms of EC Regulation no. 861/2007;

Although the claim was filed on the 14th June, 2019, claimant's first and sole attempt to notify defendant was on 7th August, 2019 (see *fol.* 21), which attempt was not successful (see *tergo* of *fol.* 21);

Having seen Articles 12(2) and 14(1) of EC Regulation no. 861/2007, the Tribunal orders and directs the claimant 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 his claim 'Form A'.

In spite of this decree – which was communicated to the claimant by email dated 30th September, 2019 issued by the Tribunal's deputy registrar (see *fol.* 23) and also communicated to him by registered post to his Maltese address, and served upon him on 4th October, 2019 (see *fol.* 24 and also *fol.* 25) – the claimant appears to have remained passive and inert, taking no initiative to make another attempt at service, generally, in line with Regulation (EC) no. 861/2007 and, particularly, in the light of the Tribunal's decree of 27th September, 2019 (duly communicated to him), even though the same contained the intimation stating that upon "*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 Tribunal's decree has abundantly lapsed and in the interim period (*viz.* between service of the said decree and the lapse of the 30-day time-limit and even in the several successive months until this decision), the acts of the present proceedings manifest no activity whatsoever 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, albeit being prompted by the Tribunal as above shown. Such lack of interest is equivalent to the claimant's abandonment of his 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, 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 jinformat 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 Paul 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-mentioned reasons, this Tribunal decides the present case by cancelling plaintiff's case. All the expenses connected with these proceedings are to be borne by the plaintiff.

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

Sgnd. ADV. DR. KEVIN CAMILLERI XUEREB
Adjudicator

Sgnd. ADRIAN PACE
Deputy Registrar