



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Philip M. Magri LL.D; M.A. (Fin.Serv); M.Phil (Melit)

Sitting of Monday, 26th October, 2020

Talba Nru: 512/2018 PM1

Andrew James Logue (ID 38263(A))

Vs

Jolanta Maria Belcik (ID 10983650 (A))

The Tribunal,

Having seen the notice of claim filed on the 26th October, 2018 by which the plaintiff asked for the liquidation and payment of the sum of three thousand euros (€3000) representing expenses incurred and losses suffered in relation to the vehicle IBF304 which is a food truck purchased by plaintiff from defendant not being as agreed, namely but not limitedly, not conforming to health department requirements amongst other things. The action is being filed in terms of art. 1424 et. seq. of Chapter 16 of the Laws of Malta, with costs and conterest.

Having seen the reply filed the defendant by which she pleaded that:

1. On a preliminary note, the action of the plaintiff Andrew James Logue is time-barred;
2. Without prejudice to the above, the vehicle Peugeot Boxer with Maltese registration number IBF304 was not affected by any latent defects when sold to the plaintiff Andrew James Logue
3. Saving the production of any further pleas.

Having seen the counter-claim filed by the defendant by which the latter asked that the plaintiff should be condemned to pay defendant the sum of three thousand euros (€3000) representing the outstanding balance of the purchase price for the sale of the same above-mentioned vehicle which sum had to be paid by not later than the 25th October, 2018 and this as indicated in the private writing dated the 9th April, 2018 annexed and marked as Doc. JB1 to the same reply, with costs and interests.

Having seen the documents attached to such reply, namely the private writing dated 9th April, 2018.

Having seen the reply filed by plaintiff to the said counter-claim by which the plaintiff pleaded:

That the counter-claim filed by respondent is entirely unfounded in fact and at law and ought to be rejected in its entirety with costs against the said respondent. This for the following reasons:

- (a) That the balance claimed by respondent is not due to be paid by the applicant in view of the fact that it resulted that the vehicle IBF304 did not satisfy those conditions agreed to between the parties both verbally and by virtue of the contract dated 9th April, 2018, including but not limited to the fact that the said vehicle did not conform with statutory requirements to be utilized as a hot dog van as specified in the same agreement
- (b) Without prejudice to the above and only in the event that this Tribunal should deem the counter-claim submitted by respondent justified, the balance therein

claimed in the amount of three thousand euros (€3000) (or such lesser amount as the applicant may be ordered to pay by this Tribunal) ought to be set-off with the amount which is due to the said applicant as detailed in the original claim.

Save for such ulterior reply as may be necessary.

With costs against respondent.

Having heard the testimony of plaintiff during the sitting of the 8th November, 2019.

Having seen the note filed by defendant including her affidavit and her husband's affidavit and relative documents attached thereto (a fol. 37 et. seq. of the acts of these proceedings).

Having seen the note filed by defendant where she indicated that her first plea of prescription is based on art. 1431(1) of the Civil Code and this pursuant to the plaintiff's declaration that he was basing his action on art. 1424 et. seq. of the Civil Code.

Having heard the testimony of plaintiff during the sittings of the 16th December, 2019 and the 3rd March, 2020 and having seen the documents filed by him during the latter sitting.

Having heard defendant's declaration that she does not have any further evidence as well as having seen the Tribunal's order for the closure of stage of filing of evidence.

Having heard the oral submissions made by the defendant's legal representative during the sitting of the 23rd October, 2020.

Having taken into due consideration all the circumstances of the case.

Having determined that the case was adjourned for the delivery of judgment for today.

Considers

That, as results clearly from the notice of claim, the current action is declaredly being lodged by plaintiff in terms of art. 1424 et. seq. of the **Civil Code**. The Tribunal therefore understands that plaintiff is basing his claim on an allegation that the seller breached the warranty in respect of latent defect of the thing sold. Art. 1424 and the following articles, in fact, deal extensively with such warranty and its relative rights of action. Art. 1424, in particular, provides expressly:

“The seller is bound to warrant the thing sold against any latent defects which render it unfit for the use for which it is intended, or which diminish its value to such an extent that the buyer would not have bought it or would have tendered a smaller price, if he had been aware of them.”

Plaintiff complains that he incurred a number of expenses as a result of the fact that defendant sold to him a food truck which did not satisfy health department requirements amongst other defects, including problems with the door-lock and other issues with an allegedly non-compliant gas grill, deep fryer, hotplate and floor decking. He is thus requesting a payment which is equal to the remaining balance due by him for the price of the same food truck.

In reply to the above, defendant pleaded prescription in terms of art. 1431(1) of the **Civil Code** which article expressly provides:

The actio redhibitoria and the actio aestimatoria shall, in regard to immovables, be barred by the lapse of one year as from the day of the contract, and, in regard to movables, by the lapse of six months as from the day of the delivery of the thing sold. (emphasis added)

Hence, before entering into the merits of the case including as to whether or not the food truck was effectively the subject of latent defects, the Tribunal must necessarily determine if the plaintiff's claim – as declaredly filed by plaintiff in terms of art. 1424 et. seq. of the **Civil Code**, has lapsed in terms of law.

In this regard, local case-law provides that the warranty of latent defects covers all such defects or anomalies in the thing sold which render it not fit for use. The six month term provided under art. 1431(1) of the **Civil Code** is a peremptory term of forfeiture of rights which cannot be suspended or interrupted:

“Id-difetti li l-bejgiegh huwa obligat li jaghmel tajjeb ghalihom irid ikunu "ma jidhrux" u tali lil-haga "jaghmluha mhux tajba ghall-uzu li ghalih hija mahsuba, jew li jnaqqsu daqshekk il-valur taghha illi x-xerrej ma kienx jixtriha jew kien joffri prezz izghar, li kieku kien jaf bihom".

Illi in-nozzjoni ta' "difett" ghall-finijiet ta' dan l-artikolu gie defenit mill-Qrati lokali bhala li jikkompreni "kull annormalita' jew imperfezzjoni, u kull gwast jew avarija li tigi riskontrata fil-haga u li, aktar jew anqas, tnehhilha l-attitudini ghall-uzu jdew l-bonta' jew l-integrita' taghha" Il-vizzji jew id-difetti jridu jkunu gravi, okkulti u pre-ezistenti.

Ingredjent iehor li ghandu jirrikorri sabiex tirnexxi l-actio aetimatoria hija li d-difetti li minnhom qed jilmenta l-attur ikunu "ma jidhrux" ossia latenti. Fi kliem iehor, id-difetti jridu jkunu tali li anki b' ezami serju u mghamul bid-diligenza normali, xorta wahda tkun tesisti l-impossibilita' li jigu skoperti.”
(**MIFSUD CARMEL ET vs SANT JOSEPH ET** decided by the Hon. First Hall Civil Court on the 23rd April, 2004)

“Hu assodat fil-gurisprudenza taghna li, nonostante li l-ligi tikkwalifika t-terminu stabbilit fl-Artikolu 1431(1) bhala perjodu ta' preskrizzjoni, dan it-terminu gie dejjem ritenut bhala terminu ta' dekadenza, sahsitra anke fiz-zmien qabel l-emenda introdotta fis-sena 1994. B'din l-emenda l-istess terminu gie mtawwal konsiderevolment, proprju biex jinnewtralizza certi

abbuzi da parti tal-vendituri, bhal dawk li accennaw ghalihom l-appellanti odjerni fir-rikors ta' appell tagghom.

Billi si tratta ta' dekadenza, din il-Qorti difficilment tista' taccetta li jistghu jezistu cirkustanzi fejn dan it-terminu jista' jigi sospiz.” (CHARLES DEBONO ET. V. IS-SOCJETA` CEILING SYSTEMS LIMITED decided by the Hon. Court of Appeal on the 30th May, 2003).

Although plaintiff was quite approximate as to the date on which the food truck was delivered to him or the date on which he discovered the lamented defects, defendant testified in this regard through her affidavit where she stated that the vehicle “*was delivered to Andrew James Logue on the 20th April, 2018*” (fol. 38 of the acts of proceedings). The same was also confirmed by her husband through his own affidavit (fol. 40 of the acts of proceedings) who continues to explain how “*they had messaged me on Whatsapp on the same day after they took delivery of the vehicle as they had some issue with the keys*” (fol. 40 of the acts of proceedings). No cross-examination of this testimony was carried out by the plaintiff after his second lawyer renounced his brief and he failed to attend for the sittings fixed on the 9th July, 2020, 2nd October, 2020 and 23rd October, 2020. Taking into due consideration the fact that, under cross-examination, the plaintiff himself confirmed that, with reference to the whatsapp chats dated 20th April, 2018, “*it seems like there I was already at that point in time in possession of the food truck*” (testimony dated 8th November, 2020) and also taking into due account of the fact that, through such message, plaintiff was already complaining of an issue with the door lock of the food truck (an aspect which he also continues to lament as per his testimony dated 8th November, 2020), the Tribunal finds that any claim which the plaintiff had or could have had in connection with latent defects lapsed on the 20th October, 2018, that is, six months following delivery to him of the food truck on the 20th April, 2018.

With regards to the other issues, although the plaintiff testified three times during these proceedings, at no point in time did he indicate the date when according to him such other defects could have been discovered after delivery. Neither did he indicate the date when, as alleged by him, public health authorities visited his food truck and listed to

him the lamented defects which, also according to him, rendered the truck unfit for use as hot-dog selling point. Moreover, whilst during the sitting of the 8th November, 2020 he testified that *“the particular representative of the authority came, saw the food truck and gave me a whole list of aspects which I had to remedy before this food truck could pass for it to be operated. The issues pertained precisely to the door lock, in actual fact I could not lock the vehicle at all, this was one of the aspects that I had to remedy before I could actually operate the food truck.”*, during the sitting of the 3rd March, 2020, on *“being asked whether in actual fact the Health and Safety Authorities issued a written statement or report indicating which items I was required to purchase, I can say that no this was not the case. Christina went through each individual item and told me whether each individual item was compliant or not”*. Moreover, during the sitting of the 16th December, 2019 he had also testified, differently from the above, that: *“I am being asked how I discovered these serious problems which I have just described with regards to the food truck I can say that shortly after the acquisition of the food truck health and safety inspection was being carried out at my premises. I informed the person the inspector involved whose name is Christina that I also had bought a food truck and she provided me with an online link where I could check the essential requisites for the operation of such truck. She also referred me to a particular person within the health authority in order to discuss these issues with him. I actually contacted this person. I also sent some pictures of the particular appliances that I had in the food truck and it was then that I was informed that these were non compliant in terms of sanita` regulations. I can provide a copy of the communication between myself and this particular person from the Health Authority during the following sitting.”* At no point in time did plaintiff call the representative of the Sanita` authorities to testify in these proceedings or to file the relative correspondence as promised to confirm his version of events and to indicate which aspects were required to be remedied in order to render the truck fully compliant with its agreed use. The only confirmed evidence produced is that, already upon delivery of the truck, plaintiff discovered issues which, in his opinion were serious, with the door lock given that he was even unable to lock the same truck (as confirmed via the messages sent to the defendant’s husband on the date of delivery) and that such an issue also rendered the truck unfit for its agreed use. It is the Tribunal’s

considered opinion that such issue should have been deemed serious enough to sufficiently alarm the buyer and to lead him to take any necessary action in order to safeguard his rights. It should at least have been sufficient to lead him to check immediately for any other similarly serious aspects of the truck in order to determine any other latent defects, apart from those which should have been already evident to him, given also his experience in the catering industry. It is true that art. 1431(2) of the **Civil Code** provides that:

“Where, however, it was not possible for the buyer to discover the latent defect of the thing, the said periods of limitation shall run only from the day on which it was possible for him to discover such defect.”

However the Tribunal finds that, in view of the above, the plaintiff did not manage to prove that he could not have determined the defects lamented by him as latent upon delivery. On the contrary, the messages exchanged between himself and the seller (a fol. 43 of the acts of the proceedings) indicate that already upon delivery he had discovered issues which clearly rendered the truck unfit for its use.

Consequently, and given that the current case was lodged on the 26th October, 2018, the Tribunal determines that it cannot uphold any claim by plaintiff in terms of the said art. 1424 of the **Civil Code**, precisely because on the filing of this case any such right of action had already lapsed as described above.

It remains to be determined whether the Tribunal can and should uphold the counter-claim filed by defendant for the payment to her by plaintiff of the remaining balance of the price of the said food truck. In this regard, plaintiff contends that he should not be ordered to pay such sum as the food truck did not satisfy those conditions as agreed to between the parties and that, in any case such price should be set-off against the amount due to the applicant as detailed in his claim. Having determined that plaintiff’s claim cannot be upheld, there is clearly no possibility for any set-off to take place in this regard so the plaintiff’s second plea to the counter-claim clearly cannot be upheld. With regards to the question as to whether the plaintiff can still validly oppose the request for payment on the basis of the allegation that the truck did not satisfy the contracted conditions, local case-law provides that, if the actions relative to the warranty of latent

defects fail even on the basis of lapse of the period of forfeiture, the buyer cannot defend himself against a claim for payment of any remaining balance of the price due.

“Kif drabi ohra ntqal, "meta d-dritt għall-propożizzjoni tar-redibitorja jew ta' l-estimatorja permezz ta' azzjoni jkun spicca bid-dekors taz-zmien, la r-redibitorja u lanqas il-"quanti minoris" ma tkun tista' tigi mill-kumpratur opposta "in via di eccezione", għaliex in-nota massima "temporalia ad agendum perpetua ad excipiendum" mhiex applikabbli in tema ta' dekadenza". (APEX INTERIORS LIMITED vs CAMILLERI MARTIN decided by the Hon. Court of Appeal (Inferior Jurisdiction) dated 20th October, 2004)

In view of the above the Tribunal determines that plaintiff cannot validly oppose the counter-claim by referring to the allegations of non-compliance raised in his failed claim for a breach of the warranty of latent defects. The plaintiff will therefore be ordered to pay the remaining balance on the price of the food truck with interest as agreed by the parties from the 25th October, 2018.

Consequently the Tribunal decides this case by upholding the preliminary plea filed by defendant in terms of art. 1431 of the **Civil Code** and declares plaintiff's action as time-barred in terms of the same article whilst not taking further cognisance of the remaining pleas, consequently denies claim as raised by plaintiff, denies also the pleas filed by plaintiff to the defendant's counter-claim, upholds the same counter-claim and orders the plaintiff to pay the defendant the outstanding balance of the purchase price for the sale of the food truck amounting to three thousand euros (€3,000), with costs and all interest on the said sum due from the 25th October, 2018 to be borne by the plaintiff.

Avukat Dr. Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Gudikatur