

Claim Number 9/20 PM

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 30th August, 2021

Claim Number: 9/2020PM

Pierre Kemmler

vs.

Satboerse24

The Tribunal,

Having seen the Notice of Claim filed by claimant whereby he submits that he bought a Sat-Receiver VU Zero 4K UHD from defendant company. When he came to use it, he discovered that the receiver was not functioning properly. He thus returned it to the seller for repair and although the latter returned it after having tested it, he argued that the problem remains and that he is still awaiting feedback from defendant company in this regard. He thus claims a refund of the price paid for such equipment amounting to one hundred and fifty-two euros and ninety-five cents (€152.95).

The Tribunal also notes that defendant company was duly served with the acts of the case on 22nd September, 2020 and no reply was filed.

The Tribunal:

Having seen the documents filed with the Notice of Claim as well as the certified translations thereof, namely the repair consignment note, invoice and email exchange between the parties.

Having also considered that the lack of reply by defendant company does not in itself mean that claimant's claim is automatically proven;

Having therefore considered all evidence brought forward by claimant;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

In this action, claimant is suing defendant for refund of the price paid by him in connection with the Sat-Receiver VU Zero 4K UHD bought by him from defendant company which he claims was affected by a latent defect.

The Tribunal notes that the existence of the said defect is proven via the repair consignment note whereby, under the heading 'Work performed', it is confirmed that an update of software was performed and a test run carried out with positive results. However, it is also proven that the said defect could not be remedied given the email exchange between the parties. Via email dated 26th March 2020, a representative of the defendant company provided the link for installation of the "*current firmware*" via USB, to which claimant replied via an email of the same date indicating that that was "*exactly the firmware which I already tried twice to install*". The last email received by claimant from the defendant

company dated 27th March, 2020 indicates that the message had been forwarded to the manufacturer.

Art. 1424 of the **Civil Code** expressly provides that:

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.

Art. 1427 of the **Civil Code** continues by providing the relative remedies in the case of a breach of such warranty:

In the cases referred to in articles 1424 and 1426, the buyer may elect either, by instituting the actio redhibitoria, to restore the thing and have the price repaid to him, or, by instituting the actio aestimatoria, to retain the thing and have a part of the price repaid to him which shall be determined by the court.

The Tribunal is of the considered opinion that, even in this case, the equipment purchased by the plaintiff was and remains affected by a latent defect which defendant company repeatedly tried to solve but without any positive results. The Tribunal also understands that the equipment sold, failing a compatible or suitable software, was and remains unfit for use by the claimant. In view of the above, the claimant's request for a refund of the full price paid by him for the purchase of such equipment is justified in terms of law, this without prejudice to the defendant's right to claim the return of the said equipment. The purchase invoice, inclusive of shipping costs, indicates the claimed sum of one hundred and fifty-two euros and ninety-five cents (€152.95).

Thus, for the aforementioned reasons, the Tribunal upholds claimants' claim and thus orders defendant to pay to claimant the sum of one hundred and fifty-two euros and ninety-five cents (€152.95). All costs are to be also borne by the defendant.

Dr. Philip M. Magri

Adjudicator