



TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR

Gudikatur DR. Leontine Calleja LL.D

Wednesday, 18th May 2022

Claim Number: 83/2021 CL

The Tribunal;

Sean Alexander Larkin (0248475A)

VERSUS

No Deposit Cars Malta Ltd (C85780)

Having seen the notice of claim filed on the 8 th March, 2021 by which, the plaintiff stated that he had entered into an agreement on the 23rd November 2020, and paid the defendant company the sum of nine hundred and forty six euro (€946) for a vehicle of the make Opel Corsa. A receipt dated 23rd November 2020, was attached to the notice of claim. That although the defendant company received the payment they never intended to hand over the car and thus the amount paid by plaintiff is to be refunded with expenses including the expenses relating to official letter filed under article 166A dated twenty sixth (26) January 2021, together with interest.

Having seen the reply filed the defendant by which he pleaded that the claims by the plaintiff are unfounded and should be rejected with expenses. They claimed that Sean Alexander Larkin signed an agreement with the defendant company on the 23rd November 2020. A number of bills of exchange were signed between the parties and it was agreed that vehicle would be retained in name of defendant company and plaintiff would make use of the vehicle, which would be transferred onto plaintiff once it was paid in full. The document presented by the plaintiff and marked as SLA1 was not the contract but a receipt of the amount paid to the defendant company. According to the agreement, plaintiff was to present a copy of a valid driver's licence and he was requested to fill in an insurance proposal form so that he would be covered by insurance so that he can be given possession of the vehicle. Although the plaintiff was called upon by the defendant company to present his driving licence and a signed insurance proposal form these were never handed over although he was informed that it was against the law to hand over the vehicle without these documents,he insisted he wanted possession of the vehicle.The defendant company is still calling upon the plaintiff to present these documents so that they can hand over possession of the

vehicle. The Small Claims Tribunal is not competent to order rescission of the contract. For these reasons the claims should be dismissed with expenses to be paid by plaintiff.

Having seen the affidavit of Larkin Sean Alexander wherein he stated that on the 23rd November 2020 he went to No Deposit Cars Malta as he wanted to buy a vehicle, and he decided on a second hand Opel Corsa. He was informed by an employee that they had a scheme where a vehicle could be paid in monthly instalments until the full amount will be paid. Until the car was fully paid the car will remain in the name of the company. Once it is fully paid the company would then allow him to register the car in his name. He was informed that he would have to pay the price of €946 which included the license plates, insurance and the first deposit of €150. He was then asked for the money and was told to go to their headquarters in Burmarrad for the contract. He was given a hand written paper with the company logo and when he asked for an invoice or receipt he was told that this was standard procedure and a receipt would be given to him in Burmarrad after he signed the contract. He was given a two page contract and another contract marked as SLA2¹. While he was trying to read the contract, he was constantly interrupted by James the accountant, who distracted him but reassured him and wrote on the contract that all damaged parts of the vehicle would be repaired before it will be given to him, however he did not sign the contract. The agreement was that it was going to be a hire purchase agreement but the contract that he was given made no reference to this. James took copies of all his documents including driving license, passport, maltese ID card, contract of employment and rental agreement and also issued a receipt for the €946 that he had paid². Plaintiff was informed that he would receive the vehicle within 14 days. On the 3rd December 2020 he went to the showroom and found Sean who informed him that there were some issues with the previous owner and they couldn't register the car on the company and he was advised to choose another car. He was told to go to Burmarrad again to sign a different contract. So on the 4th December 2020 he went to Burmarrad accompanied with his friend, Catalin Nicolae where James had prepared everything and asked him to sign a new contract which he did not sign. He asked about the €946 he had paid and James became aggressive and asked if he wanted a second hand car or not. He replied that he wanted the car he had initially chosen and James and another company employee started insulting him and told him to leave the premises. He sent messages to two different mobile numbers he was given on the 7th and 9th December 2020 to which he did not receive a reply³. He went again to Burmarrad to see if they would give him his vehicle or his money back but as soon as James saw him, he left the room and the other employee told him to go to speak to the manager in Qormi, after which he sought legal advice. He confirmed that he had provided the company with his driving license⁴ and insurance details, and it was the obligation of the defendant company to insure the car. On cross examination Larkin confirmed that the vehicle was to be delivered 14 days after the 23rd of November 2020. He confirmed that the text message he presented was dated 3rd December 2020, sent during break time, and he then went to the showroom and headquarters on the 4th December 2020. He confirmed that the 14 days were not up, there were 3 more days but he was not drunk and aggressive. He was told the vehicle he chose could not be registered and was offered another car. He confirmed that he had presented his driving license but denied

¹ Foll. 20

² Dok SLA1 a foll 2

³ Foll. 23 and 24

⁴ Dok SLA7

that he refused to sign the insurance papers. He went again on the 9th December 2020 and he was told to go to the manager again. He was told that there was a problem with documentation and the vehicle could not be registered and he should choose another car. The next day he went again and was told to sign another contract on another car which he refused.

Having seen the affidavit of Shawn Camilleri who works as a salesman with No Deposit Cars Ltd in Qormi, who stated that in November 2020, Sean Alexander Larkin had gone to the showroom and chose an Opel Corsa. He explained to him that for them to reserve the car he had to leave a deposit and to proceed to sign the contract he needed to pay the money of the insurance, license, vrt and first instalment. He paid €150 deposit that was passed on to the finance department and the car was marked as sold. He informed the buyer that he had to go to Burmarrad to sign the contract. On the 3rd December 2020, Sean went to the showroom and he informed him that the vehicle was not ready yet as the 14 days were not yet up. He then offered him another car that was already registered however he had to go to Burmarrad to speak to James since he did not take care of registration and insurance. The following day James called him to tell him that Sean went to the showroom drunk and was aggressive. The Opel Corsa was still in the showroom so when all papers were in order Sean Larkin could take it.

James Spiteri was employed as Finance Executive with No Depoist Cars Malta Ltd and his job was to prepare contracts of hire purchase and to insure company cars. In November 2020, Shawn who was a salesman in Qormi showroom, sent him the details of Sean Alexander Larkin to prepare a hire purchase contract for an Opel Corsa. On the 23rd November 2020 Larkin went to the showroom and after he explained the contract to him and gave him time to read the contract and see the bills of exchange. He did not try to distract his attention. Larkin then gave him back the contract signed and he paid the balance to cover the insurance, license, number plates and registration with Transport Malta and VRT and the first instalment. He also infomred him that the car would be ready in around 14 days time and that they would contact him. On the 4th December 2020, Larkin turned up at the showroom with his friend, drunk and insisted in an aggressive tone that he wanted the car or his money back. He informed him that if he wanted a car immediately, they could offer him another one that was already registered and they could sign a new contract and cancel the cotract on the Opel Corsa. He also informed him that to prepare the insurance for the Opel Corsa he needed a copy of his driving license and the insurance papers to be signed, as they could not allow him to drive a car registered on them unless he was covered by insurance. Larkin insisted that he didn't want to sign anything, so he was asked to leave and come back when he was in the right state. After this he called him and asked him to go sign the papers and take the car but he refused saying he did not trust them. On cross examination he confirmed his signature on Dok SLA 1. The car was registered with No Deposit but not with transport Malta. They had imported the car from Japan but they register the car when a person makes payment. Sean made the payment of aprox 900 euro , the car was still in possession of the company because there was an agreement with Sean. Sean had gone to his office drunk at 2.00pm he was with a friend. Document a foll 20 was not the only contract signed by Larkin as there was also a hire purchase agreement which he signed, but he didn't sign it as this would be signed by the director at the end of the day. The first day he went to the office Sean had signed the contract, the hire purchase, addendum and insurance paper of

the first car. The first time he had provided the license. The first car chosen by Larkin was an imported car so they needed to register it with Transport Malta. Registration begins when a contract is signed unless the car has maltese number plates in which case all that is done is the transfer of log book.

Thorne Mangion was a salesman with No Deposit Cars Malta Limited and his job was to ensure that customers were satisfied. He had processed Larkin's contract but he hadn't met him. In December 2020, two people had gone to the showroom and went into the office of James and he started to hear shouting which after he found out was coming from Sean Larkin who seemed drunk. Sean Alexander Larkin started shouting that either they give him his car or his money back. He heard James telling him that if he wanted a car immediately he could choose another one that was already registered in Malta, but if he wanted the Opel he had to wait. James also asked him for a copy of his driver's license and he had to sign the insurance form. Sean started shouting and saying he didn't want to sign any more papers and James asked him to leave and to go back when he wasn't drunk.

On the 12th January 2022 the parties declare that they had concluded their evidence and requested to file a note of final submission after which the case was deferred for judgement.

After having heard the witnesses and seen the evidence submitted, the Tribunal considers, that although the vehicle was to be handed over within fourteen days, when the plaintiff went back to the showroom after ten days he was told that the paper work to transfer the vehicle were not ready since it was an imported vehicle that had not yet been registered with Transport Malta. He was offered another vehicle that was already registered with Transport Malta since this would be a faster transfer. When plaintiff was asked to sign another contract he refused and according to the representatives of defendant company became aggressive and was asked to leave the premises. The plaintiff tried to contact the company by sending text messages after the fourteen days were up and these were ignored. Defendant company claimed that they were waiting for a copy of his driving license and insurance however it resulted from their evidence that they had been given a copy of the driving license. Although during cross examination of James Spiteri held on the 10th November 2021, reference was made to a hire purchase agreement this was never presented by the defendant company and in the following sitting the parties declared that they had concluded their evidence. The case was adjourned for judgement after the parties were given the time to file a note of submission. A note of submission was filed by the plaintiff on the 26th January 2022, which was followed by a note of submissions filed by the defendant company on the 17th February 2022. On the 14th February 2022 an application was filed by defendant company to file the documents referred to both in the reply filed and during cross examination in November 2022. The Tribunal did not accede to this request since this was evidence that could have easily been presented at an earlier stage and such request should not have been made after having declared that evidence had been closed and the case had been adjourned for judgement.

The Tribunal thus decides that the defendant company failed to grant possession of the vehicle to the plaintiff within the stipulated time and accedes to the claim and condemns defendant company to the payment of nine hundred and forty six euro (€946) with interest from the 26th January 2021, being the date of the official letter. All

costs are to be borne by defendant company including expenses of official letter number 106/21 filed under art 166A of Chapter 12 of the Laws of Malta.

Avukat, Leontine Calleja LL.D.

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