



IN THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR
DR MARSETTE PORTELLI XERRI LL.D.
LL.B, N.P, LL.D, M.A., Dip. Tesol (Trinity)

Sitting of Friday, 12th April, 2024

Case Number: 8/2018 (MPX)

**Giuseppe Piazzi (ID 32261A) and
Patrizia Piazzi (ID 32262A)**

vs

Connect Services Limited (C55794)

The Tribunal,

Having seen the notice of claim filed in on the 19th February, 2018, by which, for all the reasons indicated therein, plaintiffs asked for the compensation of damages allegedly due to them by defendant company in the amount of €4,275.96, in view of damages incurred to a piece of furniture which defendant company was entrusted by plaintiffs to deliver;

Having seen the reply filed in by defendant company, wherein it pleaded that:

1. The requests made by plaintiff are unfounded since the alleged damages are not attributable to the company or any of its employees or representatives;
2. That, furthermore, defendant company did not cause plaintiffs any damages;
3. That defendant company carried out its work as had been agreed;
4. That the piece of furniture allegedly damaged was being manoeuvred by an engaged carpenter or by a representative of the brand Core at the time of the alleged incident, and hence, no responsibility could be attributed to defendant company;
5. That in any case, and without prejudice to the foregoing, and without any admission of any amount being due, plaintiffs need to prove the amount being requested.

Having seen the affidavit of plaintiff Patricia Teou Piazzzi, and the documents annexed thereto;

Having seen the affidavit of plaintiff Giuseppe Piazzzi;

Having seen the affidavit of Antonio Gauci, director of New Front Ltd.;

Having seen all the documents exhibited by plaintiffs;

Having seen the affidavit of Shaun Debono, director of the defendant company;

Having seen the affidavit of Matthew Sultana;

Having seen all counter-examinations;

Having seen the testimony of Antonio Gauci;

Having seen the report filed in by tribunal-appointed technical expert, Michael Formosa, who described the piece of furniture in question as consisting of a single unit with two doors. When the doors are fully opened, they offer an extension of a cupboard on each side, which will serve as a mini kitchen. He further explains that the cabinet is equipped with various fittings to enhance its storing facilities.

It is further explained that the furniture was constructed from what seems to be a walnut veneer, attached to a wooden manmade board. It is added that the surface of the kitchen cupboard was varnished, with the overall dimensions of the piece of furniture, when doors are closed, being approximately 1333mm by 1882mm by 700mm.

According to the same technical expert, the damage seems to have been caused by an impact with a hard object. Considering that the kitchen door is quite heavy and the forces acting upon the impact were quite great, the two dents are quite deep and clearly noticeable. The damage was caused to the surface coating, the furniture veneer and the underlying wooden support.

The report proposes five (5) ways of how the damaged can be resolved, explaining the process inherent to each and every one of them, delving also into the possible consequences of each one.

The same report concludes by stating that the professional opinion of the technical expert is to opt for either option one or two. Option two, it states, may be the less expensive option, and may be attempted, but the results are not promising or satisfying. It further explains that option four is too time consuming and will also result to be quite costly, especially if the same veneer is bought from the company manufacturing the kitchen cupboard. It adds that option five is very risky and may not be the best solution.

Having considered

That through their claim, plaintiffs Giuseppe and Patrizia Piazzzi, are requesting that defendant company is ordered to pay them the sum of €4,275.96, in representation of damages allegedly caused by defendant company when, having being entrusted with the delivery of a Bulthaup kitchen cupboard, damages occur to the same after one of the doors falls against a pot and a dent results.

Through their tendered evidence, the representatives of the defendant company argue that the incident was due to an Act of God, it being an unexpected gust of wind.

Article 1630 of Chapter 16 of the Laws of Malta, dealing with liability of carriers, states as follows:

They are liable for the loss of or injury to the things entrusted to them, unless they prove that such loss or injury was caused by a fortuitous event or irresistible force and without any fault on their part.

It is obvious, from the wording of this article, that the burden of proof for a carrier not to be held responsible for the damage or loss of the transported item, is posed upon the same carrier. This subsequently means that, in order to absolve themselves from responsibility, the carrier has to prove that the transported object sustained damages through a fortuitous event or an irresistible force.

It is well established that the degree of diligence that needs to be exercised by a carrier is such that it has to be manifested that the circumstances were not only extraordinary, but also such as to render it impossible for the carrier to impede the event, even through the employment of the highest degree of diligence:

¹*L-essenza tad-difiz hija l-imprevedibilita` u l-inevitabilita`.*

The First Hall of the Civil Court in its judgement in the names 'Thomas Smith Insurance Agency Limited noe vs MD Trucking Limited et, decided on the 18th February, 2004, retained as follows:

"Skont il-gurista Jan Ramburg ("The Law of Carriage of Goods: Attempts of Harmonization" – 9E.T.L. 1974), il-bazi ta' responsabbilita` enuncjata fis-CMR mhix eskluza billi dak li jkun agixxa diligentement, izda hemm oneru akbar mixhut fuq it-trasportatur, li jrid jiehu l-mezzi kollha biex jevita kull hsara jew serq. L-awtur S.Zamara ("Carrier Liability' Am.J. of Comp. Law 1975) jghid li "the courts have been reluctant to admit as a defense that the carrier has simply not been negligent. Instead, they place a heavy burden on the carrier to show specifically how the unavoidable circumstance caused the loss."

It was further maintained in the case in the names *Gasam Mamo Insurance Limited kif surrogata fid-drittijiet tal-assigurata tagħha Krea (Malta) Limited skont il-ligi u l-polza tal-assikurazzjoni vs Attrans Limited*, deciza mill-Qorti tal-Appell fit-3 ta' Ottubru, 2008:-

¹ Farrugia vs Gatt noe,, deciza mill-Qorti tal-Kummerc, 16.01.1984

“Jikkonsegwi minn dan l-artikolu illi malli l-merkanzija tigi affidata lit-trasportatur din tghaddi taht il-kontroll u l-kustodja tieghu u hu jsir id-detentur taghha fl-interess tal-esportatur jew tar-ricievitur. Dan, s’intendi, sal-mument li dak il-kontroll fuq il-merkanzija jghaddi f’idejn ir-ricievitur; Biex jiskansa ruhhu mir-responsabbilita ghan-nuqqas jew dannu fil-merkanzija, it-trasportatur jehtiegħu jiddemostra għall-konvinciment ta’ min irid jiggudika illi dak in-nuqqas jew dannu seħh għal xi raġuni mhux imputabbli lilu skont xi waħda mill-eċċezzjonijiet kalendati fis-subinciz (2) tal-istess Artikolu 17, u cioè, li dak l-istess telf jew hsara “was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as a result of its wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequence of which he was unable to prevent.”

This Tribunal opines that the defendant company did not satisfactorily manage to prove any fortuitous event or irresistible force which would exonerate its liability and is hence disposing of the narrative of there having been an unexpected gust of wind as unsubstantiated.

Following a thorough analysis of the tendered testimony, the Tribunal could elicit that that the damage occurred when the cabinet’s door was rested against the wall, this toppled over and subsequently hit a vase, leaving the same cabinet door dented. The Tribunal believes that, had the defendant company’s representatives exercised the due diligence of a *bonus paterfamilias*, ensuring that all the pieces of the cabinet were safely placed upon dissemblance, particularly when the defendant company’s attention had been drawn by plaintiffs as to its fragility, this incident and the subsequent damage could have been avoided.

The Tribunal needs now to determine whether the amount claimed by the plaintiff results well founded. At this stage, and in view of the inherent technicality, the Tribunal will delve into what was concluded by the technical expert in his report, whereby, after putting forward five (5) possible solutions, he concludes by stating that the two most feasible ones are the first and the second options given.

When asked about the reasoning behind his professional opinion about the feasibility of the provided solutions during the examination of his report, the same technical expert replies as follows:

Lawyer Doctor Luke Micallef: Just on the area. Okay. Now, in your conclusions where you are referring to the second recommendation, you state that parts of the vinyl that are lost will be integrated with a similar not identical type of vineer and that a similar not identical varnish would be applied to the affected areas.

The Witness: Yes.

Lawyer Doctor Luke Micallef: If I were to suggest to you that even if therefore carried out well this conservation, the cupboard would still not be exactly as though it was being bought brand new, correct?

The Witness: If there is an intervention of course it's different than if it was no intervention.

Lawyer Doctor Luke Micallef: Okay. So it would not be as though it was brand new.

The Witness: No, the brand new, but there are some disadvantages with regards to the brand new as well. Regarding colour.

Lawyer Doctor Luke Micallef: Okay. Given the nature of the cupboard, the fact that the designer piece of furniture, that it is made from one piece of wood, that the colour deteriorates with time, etc., would you agree with me that it would be more ideal that to varnish the entire cupboard, to properly preserve the whole cupboard to avoid consistencies between the damaged cupboard and the rest of the cupboard?

The Witness: Well, ethically, if we are talking about conservation you try to do the least intervention as possible. So, in my opinion and this is maybe subjective as well, in my opinion the sides of the cupboard or the cupboard is okay then I don't see any, if you treat it with a varnish it doesn't mean that the colours are going to match. The difference in colour may still be there.

Lawyer Doctor Luke Micallef: The difference in colour may still be there.

The Witness: May still be there.

Lawyer Doctor Luke Micallef: Okay. So you would agree with me that there may be inconsistencies in the colour between the damaged areas and the rest of the cupboard if we go down the lane of conservationship?

The Witness: Even if you replace them.

[...]

Lawyer Doctor Luke Micallef: Yes. So would you agree with me that the only solution from the two by you of the replacement of the both doors and conservationship of the damaged areas that the only solution which would guarantee removal of the damage would be installing new doors?

The Witness: Let me put it this way. If this was a conservation piece, if it has artistic or value of cultural heritage, not considering the costs you would go for the intervention. Even if the intervention is ten times as much. Now, in this case if it's obvious that if you replace the doors the damage would be less evident but again if this was an item of cultural heritage you wouldn't consider replacing.

Lawyer Doctor Luke Micallef: Here we are not speaking of a piece of cultural heritage. We are speaking of a design piece of furniture where consistency is important and obviously it is sort of made of one piece of wood so matching of consistency is important.

The Witness: Yes.

Lawyer Doctor Luke Micallef: So you agree with me that when purely focusing on result and therefore mitigating how evident the damage is, it is the first option so the replacement of both doors which you would recommend in this case.

The Witness: I think it would yield the best result.

Lawyer Doctor Luke Micallef: The best result, perfect. And you would also agree therefore that the second option, so the conservation of the damaged areas, would be the riskier option in terms of the possibility of the damage still being evident after the intervention?

The Witness: But it would be very very minimal.

Lawyer Doctor Luke Micallef: But it's –

The Witness: It is possible.

Furthermore, when questioned by defendant company's lawyer, technical expert answers as follows:

Avukat Dr Georgine Grech: And you said in your opinion it would be best to, for the purpose of conservation, to rectify the damaged piece only, ideally!

Xhud: Ehe.

[...]

Avukat Dr Georgine Grech: Issa, in the questions posed by Dr Micallef, his questions were directed towards going for option one because that would be the best option by changing the doors completely.

Xhud: Ehe.

Avukat: Though you noted in your report that that would mean that there would be a difference in the colour of the doors and the rest of the furniture through the passage of time. Mela, but in any case, in your conclusions, you are saying either option one or two. Would you agree with me that option two would be more reasonable and proportionate to the damage that occurred?

Xhud: If we had to consider this piece of furniture as an artifact, in our ethics we try and retain all the original material as much as possible. So in that case I would go for option two.

Avukat Dr Georgine Grech: Two.

Xhud: Even if it could be more expensive in my opinion, but additionally it depends on the client. If you are going to replace the door, I think the value of the furniture, even though it was carried out during the last ten or twenty years, I don't think it will change much!

Avukat Dr Georgine Grech: So, elaborate further why you would go for option two?

Xhud: I think it is less costly.

Avukat Dr Georgine Grech: Ehe!

Xhud: And it is still time consuming, and if we had to consider it as an artifact it would be the most ethical consideration is to retain what you have and not to replace it!

Avukat Dr Georgine Grech: Ok. So if we are considering it as an object of high value, we do not change the doors but we rectify what we have the best we can.

Xhud: Yes.

Avukat Dr Georgine Grech: Ok. Thank you.

Hence, from the expressed opinions of the technical expert, this Tribunal could elicit that:

- (i) In order to maintain, as much as possible, the proper value of the designer piece of furniture, the original material should be retained as much as possible;
- (ii) The conservation of the damaged areas, though still time consuming, tends to be a costly feasible option;
- (iii) Installing completely new doors does not necessarily guarantee no colour difference.

The explanation and reasoning provided by the technical expert lead this Tribunal to arrive at the decision that the most reasonable option would effectively be option two (2), proposed in the technical expert's report, leaving to be decided upon the question of the amount due.

When asked about what the suggested cost incorporates, the technical witness explicates as follows:

Lawyer Doctor Luke Micallef: Now, when you came to identify the fee of one thousand euros, did you consider what type of veneers are normally used when dealing with Bulthub products or did you take into consideration normal varnish?

The Witness: The type of veneer seems to be walnut. There are various types of walnut. Various species. So in order to pin point the exact type of veneer then the ones from the company needs to be bought, if it can be sold. Secondly, but in conservation sometimes it is very difficult to match a type of any type of wood. For example, it could be the same type of wood, the same type of veneer but very difficult to match. So in that case there is a different intervention which consists of fixing a different type of veneer lighter in colour, most of the

time, and then this is re-touched to look the same, because the optical effect is the most important.

Lawyer Doctor Luke Micallef: Okay. So you did not, if I'm always if I'm understanding correctly, you did not take into consideration the ordinary type of veneer used by ... products.

The Witness: In my opinion and again this is subjective, I don't see that you should that you can use the same type of veneer.

Lawyer Doctor Luke Micallef: And if I were to suggest to you therefore that the veneer used by Bulthub is genuinely much more expensive, because this is a much higher quality than the normal veneer, you would not be able to confirm this?

The Witness: I –

Lawyer Doctor Luke Micallef: And it's not something that
–

The Witness: I have no idea.

Lawyer Doctor Luke Micallef: So the one thousand euros is assuming that standard veneers use and not the pricier and higher quality Bulthub product.

The Witness: Yes, assuming that if you do not find the actual veneer you can do some amendments.

Lawyer Doctor Luke Micallef: Okay.

The Witness: As long as the final product is achieved.

Consequently, though delineating its possible subjectivity, the technical expert maintained that he sees no particular need for the veneer as originally opted for by the manufacturing company to be used. Hence, the suggested consideration of €1000 should be deemed comprehensive.

Decide:

In view of the above considerations, the Tribunal hence decides by upholding the plaintiffs' claim limitedly to the amount of €1,000, with legal interest as requested in the notice of claim. Costs are to be equally apportioned between parties.

Dr. Marsette Portelli Xerri
Adjudicator

Martina Axiak

Deputy Registrar