



## EUROPEAN SMALL CLAIMS PROCEDURE

ADJUDICATOR  
**AVV. DR. ILONA SCHEMBRI**  
LL.B., LL.D., LL.M. (Lond.), Ph.D. (Birm.)

**Today, Monday 29 July 2024**

**Claim number: 10/2021 IS**

**EMANUELA KNOWN AS EMILY GALEA (HOLDER OF MALTESE IDENTITY CARD  
NUMBER 08856 (M))**

*VERSUS*

**LA MAISON SOFA s.r.l. UNIPERSONALE (HOLDER OF ITALIAN V.A.T. NUMBER  
07188130723)**

**THE TRIBUNAL,**

Having seen the Notice of Claim filed by the plaintiff, as the claimant, in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on the 13 August 2021, whereby the claimant claimed that she bought a sofa from the defendant company for the amount of two thousand and five hundred Euros (EUR 2,500.00), but the claimant also claimed that the sofa was not up to the standard promised by the defendant company and the claimant is requesting to be refunded the amount of two thousand and five hundred Euros (EUR 2,500.00) from the defendant company;

Having also seen that the defendant company was duly served with the acts of the case on the 4 October 2021 (page 36) and filed a reply on the 11 October 2021 (page 38 et seq);

Having considered all evidence brought forward by the respective parties;

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

As the claimant, the plaintiff explained to the Tribunal that she bought the sofa from the defendant company and was damaged (page 9). Additionally, the plaintiff submitted various documents to support her claim (pages 10 to 28).

The Tribunal must now examine the plaintiff's claim in light of the jurisdiction, applicable law, and facts involved.

### Jurisdiction

It is essential to clarify the jurisdiction of this Tribunal over the case. With the plaintiff's domicile in Malta and the defendant company's registration in Italy being uncontested, the jurisdiction will be determined in accordance with European Union law.

Regulation (EU) No. 1215/2012 of the European Parliament and Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), known as the Brussels I bis Regulation, stipulates under Article 18 (1) that the consumer may bring an action in the country where they are domiciled. Therefore, it was possible for the plaintiff in this case to file an action before this Tribunal.

### Applicable law

In light of the plaintiff's claim and defendant company's reply, the Tribunal determines

that this is a consumer-trader relationship, as defined by the Consumer Rights Directive, as also amended in recent years.

This Tribunal must now address the specific applicable law between the parties in this case. Article 6 of Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) stipulates that the law applicable to the relationship between a consumer and a trader is the law of the consumer's habitual residence. In this case, it is undisputed that the plaintiff is a consumer; therefore, Maltese law applies.

This Tribunal notes that domicile and residence have different meanings; domicile refers to where a person intends to build a forever home, whereas residence refers to where a person wishes to work and temporarily reside. In this case, the plaintiff is both domiciled and resident in Malta, as evidenced by her claim, where she holds a Maltese identification number, lives at a Maltese address, and bought the sofa in Malta for her home.

#### The plaintiff's claim

The plaintiff alleged that the sofa was damaged, as evidenced by the summary of events marked as Document A (page 9) and the copy of the photo on page 25. Additionally, the plaintiff provided a copy of the defendant company's declaration regarding sofa manufacturing, found on page 10. In its reply (page 44), the defendant company admitted that the sofa was manufactured with defective materials, stating, *"In the same date, the pictures of the sofa mod. CICLAMINO, the warranty and the commercial invoice were sent out to the technical dept. of the Company, and it was found out that the supply of the material used for the manufacturing of the sofa mod. CICLAMINO for Mrs. GALEA EMANUELA, had resulted defective. Our company immediately admitted the problem."*

Since both the plaintiff and the defendant company agreed that the sofa's material was defective, the consumer, in which case is the plaintiff, had the right to protect her rights under the Consumer Affairs Act, Chapter 378 of the Laws of Malta. Since Maltese law shall govern the relationship between the parties in this case, as analysed above, Chapter 378 of the Laws of Malta, should govern the relationship between them.

Per Article 74 (1) of this Maltese Act, consumers have various options for redress. According to this article, *"In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract, under the conditions set out in this article and in article 75."*

However, Article 74 (3) makes it clear that, in this case, the seller must remedy or replace the defaulted good as the first remedy for the consumer. In this case, the defendant company had offered to replace the sofa, which the Tribunal can observe from the various evidence brought forward: an email presented by the plaintiff found on page 14, the correspondence that took place between the plaintiff's daughter and the defendant company found on pages 26 to 28, the defendant company's reply, part of which is found on page 44 and also from the correspondence presented by the defendant company which took place via messages between the plaintiff's daughter and the defendant company, a copy of which is shown on page 50 to 52. Therefore, the plaintiff's argument that the *"customer declined the sellers' offer since she did not receive the genuine product that she was promised and she can not trust the company again"* cannot be upheld by this Tribunal. Furthermore, the Tribunal was unable to comprehend the plaintiff's request when the plaintiff's daughter, who appears to have been in touch with the defendant company, as indicated by the plaintiff herself on page 9, informed the defendant company on 20 September 2020 that the plaintiff would accept the defendant company's offer and accept another sofa for replacement; a copy of this email is found on page 61. Although the email

is signed by the plaintiff, the plaintiff's daughter's email was used to communicate with the defendant company. The Tribunal notes that the plaintiff had other problems with the sofa but that her claim in this case is limited to the fabric.

Nevertheless, this Tribunal notes that according to the defendant company, no one could travel to Malta because of the COVID-19 pandemic, so the defendant company could not deliver the sofa to the plaintiff as promised. According to the defendant's reply, it admitted that it had promised to provide the sofa by October 2020 (page 45). However, when it submitted its reply on 12 October 2021, it still had yet to deliver the sofa to the plaintiff. The defendant company's behaviour is governed by Article 74 (3), resulting in the plaintiff's right to request the price reduction or termination of the contract. In fact, this Tribunal notes that Article 74 (3) of the Consumer Affairs Act stipulates, among others, that

*“The consumer shall be entitled to either a proportionate reduction of the price in accordance with article 76(1) or the termination of the sales contract in accordance with article 78A in any of the following cases:*

*(a) the seller has not completed repair or replacement or, where applicable, has not completed repair or replacement in accordance with article 75(3) and (4), or the seller has refused to bring the goods into conformity in accordance with sub-article (4);*

*(b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;”*

Given the circumstances, the plaintiff cannot request the termination of the contract, as Article 78A (2) of the Consumer Affairs Act stipulates that *“Where the consumer terminates a sales contract as a whole or, in accordance with the proviso in the preceding sub-article, in relation to some of the goods delivered under the sales contract:(a) the consumer shall return to the seller, at*

*the seller's expense, the goods,"* and neither the plaintiff nor the defendant company indicated that the plaintiff returned the sofa to the seller at the seller's expense.

However, the plaintiff should be entitled to a price reduction since the evidence, as explained above, clearly shows that the material used for the sofa in question was defective. According to Article 76 (1) of the Consumer Affairs Act, *"The reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer compared to the value the goods would have if they were in conformity."*

Neither the plaintiff nor the defendant company indicated any price reduction. Consequently, the Tribunal must assess other legislation objectively under the circumstances. Subsidiary legislation 123.01, Deduction for Wear and Tear for Plant and Machinery Rules, specifies how any price reduction will be calculated. This subsidiary legislation falls under the Income Tax Act, Chapter 123 of the Laws of Malta, which defines income tax as the tax imposed on physical or legal persons based on income. Although this subsidiary legislation falls under the Income Tax Act, it is the only detailed legislation that specifies how assets shall be reduced. The Tribunal must, therefore, examine this subsidiary legislation to be objective when calculating the sofa's price reduction over the years. Furthermore, this subsidiary legislation is being applied because Maltese law is applicable in this case, as stated above. This subsidiary legislation indicates that furniture depreciates at 10% per year. According to the attached copy of the receipt found on page 11, the plaintiff purchased the sofa in July 2019, and the defendant company delivered it on 2 October 2019, despite the defendant company stating on page 44 that it delivered the sofa on 4 October 2019. However, it is an undisputed fact between the parties that the delivery of the sofa took place at the beginning of October 2019, and the Tribunal will accept what is stated on the receipt because it is an official document that the defendant company did not contest when it received a copy of the said receipt. As to the payment

for the sofa, the copy of the receipt on page 11 shows that the total amount the plaintiff paid for the sofa was two thousand and five hundred Euros (EUR 2,500.00). On the invoice of the defendant company, found on pages 53, 60, and 71, fifty Euros (EUR 50.00) appear to have been deducted. This Tribunal will consider the receipt as showing the official amount as the defendant company did not contest this copy of the receipt when it received it and also because the plaintiff mentioned the amount of two thousand and five hundred Euros (EUR 2,500.00) in an email exchange sent by her daughter to the defendant company, a copy of which is found on pages 54 and 55, and the defendant company never disputed it. The Tribunal concludes, based on the subsidiary legislation discussed herein and the total value of the sofa, that the depreciation value is 250 Euros (EUR 250.00) per year. As a result of the evidence presented by the parties, the plaintiff received this sofa in October 2019 and was ready to accept a replacement by October 2020. Therefore, Article 73 of the Consumer Affairs Act, which allows for a price reduction, shall apply after the said mentioned date of October 2020 because it was from that date onwards that the defendant company did not fulfil its obligation and was therefore liable to refund the customer, in this case the plaintiff, the sum of the total purchase price less the reduction in price. Due to the depreciation value of two hundred and fifty Euros (EUR 250.00) per year, the defendant company must pay the plaintiff two thousand two hundred and fifty Euros (EUR 2,250.00).

### **Decide**

Considering the above reasons, the Tribunal accepts the plaintiff's claim for two thousand two hundred and fifty Euros (EUR 2,250.00), and the defendant company must pay the plaintiff the said amount.

The defendant company shall also pay all the judicial costs associated with these proceedings.

**Avv. Iona Schembri**

Adjudicator