MALTA

Court of Appeal
(Inferior Jurisdiction)

Hon. Judge
LAWRENCE MINTOFF

Sitting of the 25th September, 2024

Inferior Appeal Number 4/2024 LM

Steven R. Page
('the plaintiff')

vs.

Colin Aquilina, Charichelon Co. Ltd u ROCS Group
('the defendants')

The Court,

Preliminary

1. This appeal was filed by the respondent company **Charichelon Company Limited**, [hereinafter 'the appellant company'], from the decision delivered on the 30th of January, 2024, [hereinafter referred to as 'the appealed judgment'] by the Consumer Claims Tribunal, [hereinafter referred to as 'the Tribunal'], by means of which the Tribunal decided plaintiff Steven R. Page's claim against the respondents as follows:

"*1. Accept the defendant's first plea;*
2. Reject the defendant's all other pleas, and
3. To uphold and accede the plaintiff's request and order the defendant Charichelon Company Limited to refund the plaintiff the sum of €385.14 within two weeks."

The facts

2. On the 7th February, 2020, the plaintiff made a booking (number 786/2020) for a package which included: i) flights from Malta to Edinburgh scheduled for the 8th April, 2020, ii) a flight from Edinburgh to Dublin scheduled for the 12th April, 2020, and iii) a return flight from Dublin to Malta scheduled for the 16th April, 2020. All flights were due to be operated by Ryanair. Furthermore the plaintiff booked four nights accomodation in Edinburgh and four nights accomodation in Dublin, for a total cost of €2,138. The plaintiff contended that the outbound and the inbound flights from and to Malta were cancelled, and hence he was not able to reach his intended destination. The Ryanair flights from Edinburgh to Dublin operated as per Schedule, and hence Ryanair refused to refund the cost of that segment of the flights. On the 18th May, 2021, ROCS Group issued a cheque to plaintiff for the amount of €1,752.86, and on the letter accompanying the said cheque they made it clear that payment was being made in full and final settlement. The defendant company explained that the difference between the money paid by the plaintiff and the money he was being refunded represented the Ryanair segment of the flight which were not being refunded by the said airline, credit card charges and third-party supplier administration fee. The plaintiff cashed the cheque but

filed a claim with the Tribunal requesting that the defendants pay him the difference of €385.14.

3. The defendants replied that Colin Aquilina in his personal capacity is non-suited as he has no juridical relationship with the plaintiff who had contracted with Charichelon Company Limited. They further held that there is no company bearing the name ROCS Group, and that the company involved in this particular transaction with the plaintiff was Charichelon Company Limited. It was further explained that 'ROCS Group' is merely a brand name without a distinct juridical personality. The defendants also held that plaintiff's claims are unfounded in fact and at law. They explained that when the plaintiff approached them with the complaint about his booking, they offered to refund him the amount of €1,752.86 and that this payment had been accepted by the plaintiff, who went on and cashed the cheque. They further explained that they had done all they could to make sure the plaintiff recovers all the monies paid by him, and they had already issued a cheque for the amount of €1,752.86, however the claim they had made with Ryanair so that the plaintiff could be refunded the cost of the flight with the said airline between Edinburgh and Dublin, had been rejected since Ryanair had not cancelled its flight. The defendants further held that the terms and conditions laid out in the said booking should apply, where it is clearly stated that when a booking is cancelled, cancellation tariffs are to be imposed as laid out in the said terms and conditions.

The appealed judgment

4. The Tribunal made the following considerations in its judgment:

"Having seen the plaintiff's claim, filed on 27th July, 2021, wherein he seeks reimbursement of the sum of €385.14. This amount represents the balance remaining after he received a partial refund of €1,752.86 from his original payment of €2,138 for a holiday package, which included insurance fees. The necessity for reimbursement arose following the cancellation of the said holiday due to the COVID-19 pandemic.

Having considered the response submitted by the respondent, Colin Aquilina on behalf of Charichelon Company Limited and ROCS Group, wherein he:

i. Preliminarily objects to his designation as the proper defendant in this matter. Mr. Aquilina contends that he, in his personal capacity, holds no juridical relationship with the plaintiff since the booking in question was made with Charichelon Company Limited and the ROCS Group. Accordingly, he argues that he should be declared non-suited.

ii. That, it is preliminarily observed that there exists no entity known as 'ROCS Group'. It is acknowledged that 'Charichelon Company Limited' is the entity engaged by the plaintiff in this regard and is endowed with distinct legal personality.

iii. That, without prejudice to the above, the plaintiff's complaint is unfounded in fact and at law.

iv. That, when the plaintiff presented his grievance regarding booking number 786/2020, the respondent entity extended an offer of €1,752.86 in settlement, which was accepted and received by the plaintiff, thus ostensibly settling his claims. Consequently, the plaintiff's current demands ought to be rejected.

v. That, without prejudice to the above, the terms and conditions associated with said booking shall prevail. These stipulate that in the event of cancellation, the designated cancellation fees as outlined in the same terms shall be applicable.

vi. Subject to the right of the respondent to file a further reply in fact or at law, as needed.

Having reviewed Colin Aquilina's sworn affidavit, all relevant documents and proceedings.

And having duly considered the testimonies given under oath.

Considers

That from the facts of the case it emerges that the applicant's primary complaint relates to the fact that he paid the sum of €2,138 for a holiday package and when the holiday was cancelled due to the COVID-19 pandemic he only received a partial refund

of €1,752.86 from his original payment. Therefore he seeks reimbursement of the sum of €385.14.

Colin Aquilina presented a sworn affidavit wherein he explained that the defendant did their best to obtain a refund and in fact they refunded the plaintiff the full amount save for €385.14 being the cost of the Ryanair tickets and other minor administrative costs. Colin Aquilina explained that whilst the flight out of Malta was cancelled, Ryanair did not cancel the flight from Edinburgh to Dublin, and thus they could not recover the costs of the flight tickets from Ryanair. Furthermore, the defendant insists on two preliminary points; i.e. that Colin Aquilina is not suited, and that the plaintiff accepted the refund of €1,752.86 as full and final settlement.

Considers

With respect to the first preliminary plea, in the case ***Pauline MacDonald vs Medistar Healthcare Services Limited et (Rik. Ġur. Nru. 700/14)*** *decided on 28th September, 2016 the Court said:* "Il-kriterji li jirrendu parti f'kawża bħala leġittimu kontradittur jirriżultaw ben ċari mill-ġurisprudenza: **Focal Maritime Services Company Limited vs Top Hat Company Limited** deċiża fid-9 t'April, 2008 mill-Qorti tal-Appell: "In linea ta' prinċipju ġenerali huwa, bla dubju, indiskuss illi d-deduzzjoni ta' konvenut f'ġudizzju trid, neċessarjament, titwieled minn rapport ġuridiku, sija jekk dan jemani minn kuntratt, leżjoni ta' dritt, minn intervent delittwuż jew akwiljan, ope successionis jew minn sitwazzjonijiet strutturalment komuni (ad eżempju, f'kondominju jew il-kreazzjoni ta' ċerti servitujiet). Li jfisser, b'konsegwenza, illi kawża ma tkunx tista' tikkonsegwi l-iskop tagħha jekk mhux fil-konfront ta' dak li miegħu l-attur, għal xi waħda mill-konnessjonijiet aċċennati, għandu relazzjoni ġuridika."

In the matter between ***Frankie Refalo et vs Jason Azzopardi et*** *decided on the 5th October, 2001, the Court of Appeal held that: "*Jekk dan in-ness jiġi stabbilit, il-persuna ċitata setgħet titqies li kienet persuna idoneja beix tirrispondi għat-talbiet attriċi, in kwantu dawn ikunu jaddebitawlha obbligazzjoni li kienet mitluba tissodisfa dan in kwantu l-premessi għaliha, jekk provati, jistgħu jwasslu għall-kundanna mitluba f'każ li jinstab li l-istess konvenut ma jkollux eċċezzjonijiet validi fil-liġi x'jopponi għaliha. Dan, naturalment ma jfissirx li jekk il-Qorti tiddeċiedi li l-konvenut kien ġie sewwa ċitat in kwantu jkun stabbilit li l-interess ġuridiku tiegħu fil-mertu kif propost mill-attur illi hu kellu neċessarjament ikun finalment tenut bħala l-persuna responsabbli biex tirrispondi għat-talbiet attriċi kif proposti, kif lanqas ifisser li l-istess konvenut ma jkollux eċċezzonijiet validi fil-mertu, fosthom dik li t-talbiet attriċi kellhom fil-fatt ikunu diretti lejn ħaddieħor ukoll in kwantu dan ikun involut fl-istess negozju u li allura seta' jiġi wkoll ċitat bħala leġittimu kontradittur fil-kawża."

In view of this, the Tribunal is of the opinion that Colin Aquilina shall be declared non suited because his involvement in this transaction was limited to matters of administrative nature and could not reasonably give rise to the appellant to believe that Colin Aquilina was transacting in his personal capacity. Indeed, the letter was sent to the plaintiff together with the cheque as signed by Colin Aquilina in his capacity of Chief Executive Officer of the company clearly indicating that he was acting on behalf of ROCS Group.

With respect to the second preliminary plea, the Tribunal will abstain from determining it since ROCS Group has no juridical personality. On the other hand, Charichelon Company Limited is a legitimate defendant.

That on the merits, the Package Travel and Linked Travel Arrangements Regulations, S.L. 409.9, transposing the provisions of Directive 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, it is provided that if before the start of the package the trader responsible for the package cancels the package, travellers are entitled to a refund and compensation where appropriate.

The Tribunal is of the opinion that the plaintiff is justified in demanding a full refund and the defendant's plea that they could not refund the portion pertaining to the Ryanair tickets is not sound at law because that is part of the business risk that they must assume.

That on the matter raised by the defendant that the plaintiff accepted the partial refund in full and final settlement, the Tribunal refers to the matter between ***Johann Schembri proprio et nomine – vs – Charlot Mifsud nomine****, decided by the Court of Appeal, the Court held:* "għalkemm in linea ta' massima hu preżunt li min jaċċetta cheque lilu mibgħut fit-termini "in full and final settlement", u jgħaddi biex isarrfu, jiġi li aċċetta dak il-ħlas f'dawk l-istess termini preċiżi, eppure, jekk jiġi muri li huwa tempestivament ipprotesta għall-pagament b'dik il-modalità, l-aċċettazzjoni minnu ta' dak iċ-ċekk u s-sussegwenti tisrif tiegħu ma kellux, imbagħad, jiġi rinfaċċjat lilu bħala xi abdikazzjoni tad-dritt tiegħu għall-ħlas tal-bilanċ dovut."

In the matter between ***Aceline Entertainment Ltd vs Price Breakers Ltd*** *decided by the Court of Appeal on the 11 October, 2012 (Appeal Number 150/2011/1: the Court referred to jurisprudence and held:* Tabilħaqq, il-pagament akkompanjat bid-dikjarazzjoni illi dan kien qed isir "għas-saldu" ma hux biżżejjed biex jassolvi għal kollox ir-rapport kreditur-debitur u l-estinzjoni tal-obbligazzjonijiet da parti tad-

debitur. Dan irrikonoxxietu wkoll is-sentenza **Agius Marble Works vs AX Construction Ltd,** Qorti Ċivili Prim'Awla deċiż fit-8 ta' Marzu, 2005 per Imħallef Giannino Caruana Demajo.

*The Tribunal further refers to the matter between **Agius Stone Works Limited vs AX Construction Limited** (App. Number 1887/2001/1) decided by the First Hall, Civil Court on the 12th October 2012 and **Agius Marble Works Limited vs AX Construction Limited** (Appeal Number 1886/2001/1) decided by the Court of Appeal on 31 October, 2007 (S.T.O. Prim'Imħallef Vincent De Gaetano, Imħallef Albert J. Magri and Onor. Imħallef Tonio Mallia).*

That this Tribunal is of the opinion that the defendant did not present any evidence to show that the plaintiff accepted the partial refund as 'full and final settlement'*. As seen above, even if the plaintiff signed the letter prooposed by the defendant, that would not have been an automatic confirmation that the consumer-seller relationship had been concluded. In addition, the close proximity between the date when the cheque was cashed and the plaintiff's request for the refund of the remaining sum show to the satisfaction of the Tribunal that the plaintiff did not intend to forego the remaining sum.*

The Tribunal rejects the remaining arguments put forward by the defendant.

DECIDE

For the reasons set out above, the Tribunal decides and definitively resolves to:

1. *Accept the defendant's first plea;*
2. *Reject the defendant's other pleas and*
3. *To uphold and accede the plaintiff's request and order the defendant Charichelon Company Limited to refund the plaintiff the sum of €385.14 within two weeks.*

Costs to be supported by Charichelon Company Limited."

The Appeal

5. The appellant company filed its appeal application on the 16th of February, 2024, whereby it requested this Court to confirm the part of the Tribunal's decision where the Tribunal accepted the defendant's first plea, and to revoke and cancel the part of the appealed decision where the Tribunal

rejected the defendant's all other pleas, and ordered it to refund the sum of €385.14, with the costs of both instances against the claimant.

6. The appellant company held that its grievance is clear and relates to the consideration made by the Tribunal regarding the fourth plea raised by the appellant, that the claimant had received payment in the form of a cheque which was accepted and cashed by him in full and final settlement of his claims. The Tribunal concluded that despite the fact that the cheque was offered in full and final settlement, the claimant had not waived his right over the amount being claimed in these proceedings, since there is close proximity between the date when the cheque was cashed and the filing of these proceedings. The appellant company held that it is a well-established principle that a creditor who has accepted a payment with the express condition that payment is being made in full and final settlement, cannot unilaterally and subsequently change the modality of the payment, and it furthermore cited several local judgments in support of this position. The appellant company contended that there should be no doubt that the cheque sent to the claimant was cashed, and that payment was made in full and final settlement, as this fact was clearly indicated in the letter accompanying the cheque. It also held that the fact that the claimant filed these proceedings two months after cashing the cheque is irrelevant, since if he had other claims, at that stage he had the option to refuse the cheque. The appellant company held that the claimant could not unilaterally change the mode of payment offered to him from one in full and final settlement, to one on account, and that he could not accept payment on a condition which is different from that under which the payment was offered. It said that the

claimant had to choose, either to refuse the payment, or to accept it under the same conditions it was offered. The appellant company concluded that from the facts of this case, there do not seem to have been any exceptional circumstances which should have led the Tribunal to depart from the established position that once a payment has been offered in full and final settlement, the creditor cannot accept it with reservations, and in any case, from the evidence of the case, it is evident that the claimant accepted the payment without any reservation. The appellant further held that there does not seem to have been any mistake on the part of the claimant when he accepted the payment, or that the acceptance by him of the payment was the result of any malice or deception.

The appellees' reply

7. The appellee in his reply stated that the appeal is null and void, and should be rejected by this Court with costs against the appellant company, since the amount being claimed is of less than one thousand two hundred Euros (€1,200), and the ground raised by the appellant company does not fall within the limited grounds for appeal listed in article 22 of the Consumer Affairs Act in respect of claims up to that amount. Article 22 of the Consumer Affairs Act (Cap. 378 of the Laws of Malta) states that where the claim is for less than one thousand two hundred Euros (€1,200), an appeal shall lie only on (i) matters relating to the jurisdiction of the Tribunal; (ii) regarding any qeustion of prescription; (iii) where the Tribunal has acted contrary to the rules of natural justice and such action has prejudiced the rights of the appellant. The appellee contends that upon reading the application of appeal filed by the appellant

company, it is clear that the appeal is not based on any of these grounds, and whereas it may be stated that the third sub-article of article 22 extends the right of appeal to all other grounds, this sub-article applies only where the claim exceeds one thousand two hundred Euros (€1,200). Hence the appellee requested this Court to declare the appeal null, as it does not fall within the grounds of appeal stated in the law. He also stated that this Court is free to declare that the appeal is frivolous and vexatious, and to order the payment of a penalty as stipulated by law.

Considerations

8. Prior to considering the grievances raised by the appellant company in its appeal application filed on the 16th February, 2024, the Court shall first consider the pleas raised by the appellee, who is requesting this Court to consider that the appeal is null because the grievances raised therein, do not fall within the provisions of the law. Indeed, sub-article 22(2) of the Consumer Affairs Act states that:

> "(2) An appeal shall lie in the following cases:
>
> (a) On any matter relating to the jurisdiction of the Tribunal; or
> (b) On any question of prescription; or
> (c) Where the Tribunal has acted contrary to the rules of natural justice and such action has prejudiced the rights of the appellant."

9. Sub-article 22(3) of Cap. 378 of the Laws of Malta states that:

> "A right of appeal on all grounds shall also lie where the amount of the claim in dispute, calculated in terms of article 20(1) exceeds one thousand two hundred euro."

10. In this particular case it is clear that article 22(3) of Cap. 378 of the Laws of Malta is not applicable, since the claim is for an amount which is lower than the threshold imposed by law. Therefore the Court has to examine whether the grievances raised by the appellant company, fall under any of the provisions of sub-article 22(2) of Cap. 378 of the Laws of Malta. It is clear that the grievance does not relate to the jurisdiction of the Tribunal, nor does it pertain to the issue of prescription. The Court is of the opinion that neither can it be held that the grievance in question pertains to issues of natural justice, and a brief examination of the acts of the proceedings held before the Tribunal reveals that the defendants were given ample opportunity to present their defence and the evidence in support of their claims. To this end, the Court refers to a judgment given by the Court of Appeal (Inferior Jurisdiction) in a judgment of the 10th January, 2003 in the names **Jean Schembri u Mary Borg *vs.* Queen's Dry Cleaners**, wherein the Court held that:

> *"Tabilħaqq l-aggravju ma jinkwadrax ruħu f'dawk il-każijiet limitati fejn hu konsentit appell lil din il-Qorti minn deċiżjoni tat-Tribunal. Dan għar-raġuni illi skont l-artikolu 22(2) tal-Kap. 378, appell jista' jsir biss meta t-Tribunal ikun aġixxa kontra d-dettami tal-ġustizzja naturali, u dik l-azzjoni tkun ippreġudikat b'mod gravi l-jeddijiet ta' min jappella.*
>
> *Konċettwalment, ġustizzja naturali tfisser l-applikazzjoni u l-ħarsien tal-prinċipju bażiku essenzjali tas-smigħ xieraq. Ma għandux ikun dubitat minn eżami tal-atti illi d-ditta intimata ngħatat smigħ xieraq mit-Tribunal u kellha l-opportunità li tippreżenta l-każ tagħha permezz ta' Risposta u tipproduċi l-provi."*

11. In yet another judgment decided by the Court of Appeal (Inferior Jurisdiction) on the 27th May, 1999, in the names **Johann Camilleri *vs.* Ronald A. Cachia, Phoenicia Laundry and Dry Cleaning**, the Court held that:

> "*It-Tribunal għamel l-apprezzament tiegħu, u tajjeb jew ħażin, din il-Qorti ma tistax tissindakah ħlief jekk jirriżultalha li, effettivament, kienet saret it-tip ta' vjolazzjoni ta' prinċipji ta' ġustizzja naturali li għalihom tirreferi l-liġi.*"

12. This Court is therefore prevented from considering the grievance raised by the appellant company by virtue of the aforementioned provisions of the law. For these reasons, the Court is rejecting the appeal, and confirming the decision given by the Tribunal in its entirety.

Decide

For the above reasons, the Court decides to reject the appellant company's appeal, and confirms the appealed decision in its entirety.

All expenses in respect of the present proceedings in both instances, shall be borne by the appellant company.

Read.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur