



EUROPEAN SMALL CLAIMS PROCEDURE

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

Today, Monday 17 February 2025

Claim number: 14/2024 IS

CARL LINDSTROM (PERSONAL IDENTIFICATION NUMBER 79021323519)

VERSUS

MARTINGALE EUROPE LIMITED (C 92800)

THE TRIBUNAL,

Having seen the Notice of Claim filed by the plaintiff, who is the claimant in these proceedings, on 30 July 2024, in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, whereby the claimant claimed he held a gaming account with the defendant company and deposited a sum of money after which the defendant company informed him that it would seize operations for customers in his country of domicile and that he could retrieve his funds. However, the claimant claimed that he failed to receive these funds from the defendant company, which prompted him to file this action. Accordingly, the plaintiff seeks to recover SEK 526.60 from the defendant company, along with the interest rate and cost of these proceedings;

Having also seen that the defendant company was duly served with the acts of the case

on 4 December 2024 and did not file a reply (page 59);

Having considered all evidence brought forward by the respective parties;

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

Considers

In this case, the Tribunal must consider four factors: the applicable jurisdiction, the defendant's contumaciousness, the applicable law and the facts of the case.

Applicable jurisdiction

First, the Tribunal must clarify its jurisdiction in this case to justify the fact that this Tribunal can render judgment.

This Tribunal observes that the plaintiff is domiciled in Poland while the defendant company is domiciled in Malta. The Tribunal notes that Article 2 (2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure provides an exhaustive list of actions that are excluded under these proceedings. However, the Tribunal notes that the plaintiff's claim is not excluded and therefore, it must be regulated by this Regulation.

The Tribunal, then, considers Article 3 of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, which stipulates that jurisdiction must be determined according to Regulation (EC) No 44/2001 ('Brussels I'), now recast under Regulation (EU) No 1215/2012 ('Brussels I bis')).

In this regard, the Tribunal notes that first and foremost, the plaintiff's claim is not

excluded from the applicability of Regulation (EC) No 44/2001 ('Brussels I'), now recast under Regulation (EU) No 1215/2012 ('Brussels I bis') whereby this Regulation expressly excludes specific actions under Article 1 (2).

According to Article 4 of the Regulation above-mentioned, any person can be sued in the country where that person is domiciled. Based on the evidence presented by the plaintiff, the Tribunal cannot determine whether the plaintiff is a consumer. However, the Tribunal also points out that under Article 18 of this same Regulation, the plaintiff can still file the action in the country of domicile of the defendant company if he is considered a consumer.

It follows, therefore, that this Tribunal has jurisdiction to resolve this dispute.

The defendant company's contumaciousness

This Tribunal notes that the defendant company is contumacious in these proceedings. However, the Tribunal acknowledges that it is an undisputed principle that being contumacious does not mean the person will be automatically found guilty. Despite the defendant company's contumacious behaviour, the Tribunal must still examine all the evidence to determine whether the plaintiff's action can succeed.

Applicable law

It is now necessary to identify which law applies in this case. The Tribunal notes that the European Union does not provide one specific legislation that applies in online gambling services, but each Member State must regulate its own gaming services so long as they comply with the fundamental freedoms established under the Treaty on the Functioning of the European Union (TFEU), as interpreted by the Court of Justice of the EU.¹ Accordingly,

¹ European Commission, 'Online gambling in the EU', Online gambling - European Commission (accessed 15 February 2025).

the Tribunal must apply the Gaming Act, Chapter 583 of the Laws of Malta, and its respective subsidiary legislations.

The facts of the case

Now, therefore, the Tribunal must look at the facts of this case.

The Tribunal notes that the plaintiff provided a detailed explanation of when he deposited the funds in his gaming account held with the defendant company and that he never received the funds back despite contacting the defendant company for his funds to be returned, as evidenced from pages 33 to 43.

The Tribunal also notes that Article 19 of the Gaming Act, Chapter 583 of the Laws of Malta, provides that *“An operator, and any third party holding player funds for or on behalf of such operator, shall be responsible for safeguarding the player funds in accordance with the Player Protection Regulations, 2018 and any other applicable law.”* This main Act also defines an operator which clearly shows that the defendant company is considered an operator and therefore, has an obligation under Article 19. In addition, the Tribunal observes that the subsidiary legislation 583.08, Gaming Player Protection Regulations, provides under Regulation 5 that *“A player whose player funds are held by the authorised person enjoys a right of ownership over such funds notwithstanding that they may be registered in the name and title of, or are otherwise vested in, the authorised person”* whereby the term authorised person is defined by the main Act which includes the defendant company.

Accordingly, the Tribunal rules in favour of the plaintiff and orders the defendant company to return the amount of SEK 526.60, which are equivalent to approximately EUR 47, to the plaintiff's bank account, as per the details provided by the plaintiff to the defendant company.

Interest rate

The plaintiff is also requesting interest rate on the amount of SEK 526.60. The Tribunal notes that the Civil Code, Chapter 16 of the Laws of Malta, shall apply in this case since the applicable laws are the laws where the defendant company is domiciled, as explained above.

In this case, article 1141 (1) of the Civil Code, Chapter 16 of the Laws of Malta, shall apply because Article 5 (e) of the Commercial Code, Chapter 13 of the Laws of Malta, considers that any act with a commercial partnership, and therefore a company, is an act of trade, and therefore, such a transaction is a commercial obligation. Article 1141 (1) of the Civil Code states that *"Where the obligation is of a commercial nature, or the law provides that interest is to run ipso jure, interest shall be due as from the day on which the obligation should have been performed."* Therefore, the Tribunal notes that the defendant company must pay interest to the plaintiff on the above-mentioned amount of funds from the 31 March 2024, and therefore from the date the defendant company was notified by the plaintiff to return the funds to the plaintiff (pages 26, 37 and 38). This interest shall continue to run until the defendant company pays such amount of funds to the plaintiff.

The Tribunal also notes article 1139 of the Civil Code, Chapter 16 of the Laws of Malta, that provides that such interest shall be at the rate of eight per cent (8%) per annum.

Costs of the proceedings

The Tribunal notes that the plaintiff is also requesting the costs of the proceedings. The Tribunal notes that the plaintiff provided a list of costs incurred by him in his affidavit, which part of this affidavit is found on page 34.

However, the Tribunal could only find a copy of the receipt of the notary public fees (page

42), postage fees (page 43) and the fees he paid to file this action in Malta (page 7).

Therefore, the Tribunal rules in favour of the plaintiff for the costs of proceedings to be paid by the defendant company for SEK 1,002, equivalent to approximately EUR 90, and EUR 54.40.

The judicial cost of these proceedings will be decided in the *Decide*.

Decide

For the above-mentioned reasons, the Tribunal accepts the plaintiff's claim for the total amount of five hundred and twenty-six Swedish Krona and sixty Swedish Krona cent (SEK 526.60), which are equivalent to approximately forty-seven Euro (EUR 47), and orders the defendant company to pay the plaintiff the said amount of funds as per the details provided by the plaintiff to the defendant company, together with the interest rate of eight per cent (8%) per annum which started to run from the 31 March 2024 until the payment of the principal sum.

The Tribunal also orders the defendant company to pay the plaintiff the amount of one thousand and two Swedish Krona (SEK 1,002), equivalent to approximately ninety Euro (EUR 90), and fifty-four Euro and forty Euro cent (EUR 54.40).

The judicial costs associated with these proceedings shall be borne by the defendant company.

Avv. Ilona Schembri

Adjudicator