



**EUROPEAN SMALL CLAIMS PROCEDURE -  
GOZO**

**ADJUDICATOR DR.  
KEVIN MOMPALAO**

Sitting of the 14 th March, 2012

Talba Number. 14/2011

Charles Debono and Teresa Debono

Vs

Thrifty Car Rental and by decree given on the 14<sup>th</sup>  
October 2011, changed to Thrifty Rent-a-car System Inc.

The Tribunal;

Having seen the claim of the plaintiffs presented according to Form A, in which the same are claiming that the amount of two hundred eighty seven Euros and sixty nine cents (€287.69) together with interests at the rate of 8% per annum from the date of the tenth (10<sup>th</sup>) July two thousand and nine (2009) and together with the costs, are due to them by way of damages suffered by them when a vehicle they rented from the defendant was not available to them with the consequence that they had to rent

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another vehicle from a third party and in doing so they incurred extra costs in the same amount as the damages claimed by them.

Having seen the answer presented according to Form C by virtue of which the defendant claimed that he had nothing to do with the contract in question and had no radical relationship with the plaintiff.

Having seen all the documents submitted by the parties.

Having seen the note of submissions presented by the plaintiffs.

Having seen its decree of the nineteenth (19<sup>th</sup>) September, two thousand and eleven (2011).

Having seen the application of plaintiffs of the fifth (5<sup>th</sup>) October of the year two thousand eleven (2011) and the decree consequent to it of the fifteenth (15<sup>th</sup>) October two thousand eleven (2011) by which the Tribunal acceded to the requests of the plaintiffs and changed the name of the defendant from Thrifty Car Rental to Thrifty Rent-a-car System Inc.

After having seen the request of the plaintiffs to have this new defendant serviced by the act at Pisa airport Italy and notwithstanding that an attempt has been made to this effect there was no clear confirmation of service of the acts.

Having seen its decrees of the sixteenth (16<sup>th</sup>) February, two thousand and twelve (2012) and of the seventeenth (17<sup>th</sup>) February two thousand and twelve (2012).

Having seen all the e-mails and communications made by Sicily By Car SPA.

Considers

That originally plaintiffs had instituted this case against Thrifty Car Rental which is not a legal person having a

distinct juridical personality to enable it to stand as a party to a suit. This would have meant that if plaintiffs stopped there the procedure would have to be dismissed since Thrifty Car Rental is not a legal entity capable of being a party to these proceedings. At a later stage, however, the plaintiffs had requested that the name of the defendant be changed to Thrifty Rent –a-car System Inc.

It results that the defendant company holds a franchise called Thrifty Car Rental. This franchise was awarded to Sicily-by-car SPA on the first (1<sup>st</sup>) August two thousand and ten (2010). The incident forming the merits of the case happened prior to this date but plaintiffs failed to indicate who was the person who held the franchise of Thrifty-car-rental prior to that date.

Plaintiffs then proceeded to act directly against the franchise owner Thrifty-rent-a-car System Inc. But it results that this company is not a company registered in any of the member states of the European Union to which the treaty applies. From a document which appears on Page. 19 of the acts, the letterhead of Thrifty-rent-a -car Inc appears to be in Oklahoma United States of America. The Tribunal also notes that the name of this company ends with the abbreviation Inc, which is the abbreviation for "incorporated", which term is normally associated with companies registered in the United States of America. Companies in Italy normally carry the abbreviations either SPA or SRL, depending as to whether they are public or private companies.

On the sixteenth (16th) of February two thousand and twelve (2012), in order to confirm this, the Tribunal had requested information about the registration of this company. By an e-mail bearing the same dates, Tommaso Dragotto of Sicily-by-Car SRL informed the Tribunal that this company is a United States based company and also provided the registered address in Oklahoma.

The Tribunal has considered all the other information submitted by the parties and also through e-mails which

are allowed by regulation (EC No 861/2007) which encourages the Tribunal to adopt modern ways of communication, therefore including emails.

The Tribunal also took cognizance of article 3 of the said regulation which states “*For the purpose of this regulation, a cross border case is one in which one of the parties is domiciled or habitually resident in a member state other than the member state of the court of the Tribunal seised.*” It appears that the defendant Thrifty-rent-a-car System Inc. is resident and conducting business in the United States of America and is not conducting any business in Europe. The fact that it has contracted with a European person to use its franchise does not in any way make such person an agent of the defendant or make the defendant as operating directly in Europe. For the sake of the argument even if this was the case, the plaintiffs failed to indicate the person who was responsible for the franchise at the time when the incident took place. But this is only being said *gratia argomendi*.

The plaintiffs asked to have the acts notified to this American based company at Pisa Airport (the same place where they had contracted to collect their vehicle) but it does not result that this company has any seat at the provided address since the franchise owned by this company had been awarded to Sicily-by-car Spa. In fact there is no response as to the service of the acts; which service of the acts the Tribunal considers to be unnecessary since no proof has been submitted that this company is domiciled or habitually resident in any of the countries signatories to the treaty. To the contrary it has been proved that this company is resident and domiciled elsewhere.

In the circumstances of this case, the Tribunal considers that it has no jurisdiction according to regulation number 861/2007 and consequently rejects and dismisses plaintiffs claim. Costs of these proceedings are to be borne exclusively by the plaintiffs. The Tribunal orders that this judgment be notified to the parties by the registrar as provided in regulations (EC) 861/2007.

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**< Final Judgement >**

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