

*Claim Number: 6/2017 PA*



**IN THE SMALL CLAIMS TRIBUNAL**

**ADJUDICATOR: DR PHYLLIS AQUILINA LL.M. (Lond.), LL.D.**

**Today Tuesday 3 of April, 2018.**

**Claim Number: 6/2017PA**

**Emanuel Sacco on behalf of Masterwood Furniture**

**vs**

**Comeva S. L.**

**The Tribunal,**

Having seen the Notice of Claim filed on 19th July 2017 in virtue of which claimant premised that he ordered a machine ‘Edge Bander Compacta 4TR’ from respondent undertaking, which was delivered to Malta on 12th September 2016. He further declared that the machine was installed by a professional engineer and was immediately faulty. Claimant alleged that the machine was not supplied with the correct voltage circuit for Malta and developed damages in its motor and other parts. Claimant contended that he communicated immediately with respondent undertaking, and had to incur extra expenses to order the required parts to fix the problem, for which he was charged and incurred also additional expenses. Claimant therefore requested this Tribunal to condemn respondent undertaking to pay him the sum of one thousand four hundred and fifty Euro (€1,450), with interest, as well as the costs of this procedure.

Having seen the documents filed with the Notice of Claim, namely claimant's affidavit (fol.8-11); a Proforma Invoice dated 12th September 2016 which respondent undertaking issued for the sale of an Edge Bander Compacta 4TR costing €16,730 (Doc.ES1); Notice of Arrival of the machine, dated 21st December 2016 (Doc. ES2.1, fol. 13) and relative invoice for freight (Dok.ES2.2, fol.14); copies of electronic communications between the parties at the time of delivery of the machine, and subsequent thereto (Docs.ES3 to ES10, fol.15 to 47); an invoice from Teknomotor S.R.L. dated 24th April 2017 for the sale of HF Motor and its delivery (Doc.ES11, fol.48); Proforma invoice dated 24th January 2017 which respondent undertaking issued for the sale of inverters, timer, transformer and an autotransformer (Dok.ES12, fol.49); Freight invoice for delivery of merchandise from respondent undertaking (fol.51) and additional freight for additional weight (fol.55) and a statement which claimant's engineer drew up explaining that the machine had a *'wrong circuit supplied by the Manufacture company as it shows main supply is 380VAC' when 'the machine should be connected within 220 VAC and not 380 VAC, [though] Step down transformer which not exist on the machine'*<sup>1</sup>, and giving further details of the faults of the machine, the responsibilities of the manufacturer and his costs for services rendered to claimant in connection with this machine.

Having seen respondent undertaking's Reply dated 10th January 2018<sup>2</sup>, in which respondent undertaking rejects the claim, on the ground that claimant ordered the machining with 220V (3ph) voltage, and that respondent undertaking offered a solution to claimant, consisting in him paying only half of the price to repair the machine, which claimant accepted, and settled.<sup>3</sup>

Having seen the copies of electronic correspondence which respondent undertaking submitted to sustain its contestation, namely an e-mail which claimant sent to respondent undertaking dated 25th January 2017 in which he replied *'Money Sent'*<sup>4</sup>

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<sup>1</sup> Dok.ES15, fol.56

<sup>2</sup> Filed on 28<sup>th</sup> February 2018

<sup>3</sup> Fol.130 to 132

<sup>4</sup> Fol.134

opting to take delivery of replacement parts at half the price, as respondent undertaking offered him in an email dated 19th January 2017.<sup>5</sup>

Having seen the parties' declaration that they do not want an oral hearing to be held.

Considers that:

In this action, claimant is suing respondent undertaking for the costs he claims to have incurred to repair an industrial machine which he bought from respondent undertaking in 2016, and which respondent undertaking delivered to claimant's workplace. Claimant contends that respondent undertaking has erroneously delivered a wrong-voltage machine, because it worked on 380 V. when his electrical connections provided a 220 V.

In his sworn declaration, claimant declares to be a carpenter by profession, running a business under the tradename Masterwood Furniture. He explains that he had shopped around before opting for the machine in question, which he bought from respondent undertaking after visiting their offices in Spain, where the parties *'discussed in detail the technical aspects of the machine that I required, including the use I was going to make with it and also my electrical infrastructure'*.<sup>6</sup> He laments that the machine took longer than agreed to be delivered – more than one month's delay.

Claimant's contends that respondent undertaking delivered a machine which did not match his electrical system, for it uses a different electrical voltage than his power in Malta. He says that, on first installation, the Main Circuit Breaker tripped, and when respondent undertaking suggested he changes the Circuit Breaker, it did not trip any further but he could smell something burning and had to switch off the machine. Claimant relates that in January 2017, following these difficulties, he engaged the

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<sup>5</sup> Fol.137

<sup>6</sup> Fol.10

services of an engineer who noticed various shortcomings in the machine, and also that the literature accompanying the machine did not correspond to it. Claimant contends further that respondent undertaking recommended that he carries out alterations in the machine, for which they were refuting responsibility, and therefore he had no other option but to instruct his engineer to fix the machine. According to claimant, it was his engineer who came up with the solution of installing a transformer to change the voltage of the machine. He declares that, at this stage, respondent undertaking offered to send the necessary parts at half price. The inverters sent were not calibrated correctly.

Claimant furthermore contends that, following all this, a motor in the machine was burnt, and he had to change it, buying it from a different supplier at half the price (€505) which respondent undertaking asked for.

Claimant explained that he is therefore claiming a refund of the payment dispatched to respondent undertaking for the replacement parts, their shipping costs, the cost of the new motor (including shipping) and the engineer's fees, totalling to €1450.

Claimant declares finally that the machine is now functioning perfectly well.

Respondent undertaking denies any and all responsibility for damages on the grounds that this dispute was settled when it despatched the requested replacement parts for the machine at half price, and claimant accepted the offer.

Considers further that:

Unfortunately, this Tribunal is not privy to the content of the sale and purchase agreement concluded between the parties in regard to this 'Edge Bander Compacta 4TR'. No copy of the relative agreement was filed for this Tribunal's consideration. The Tribunal cannot therefore ascertain the terms and conditions of the sale in question.

In so far as the law applicable in this case is concerned, Maltese law of sale, **in art. 1390** of the **Civil Code**<sup>7</sup> provides that:

If the thing which the seller offers to deliver is not of the quality promised, or is not according to the sample on which the sale was made, the buyer may elect either to reject the thing and demand damages, or to accept the thing with a diminution of the price upon a valuation by experts.

Furthermore, **art. 562** of the **Code of Organisation and Civil Procedure**<sup>8</sup> provides that the burden of proving a fact falls, in all cases, on the party alleging it, saving where the law provides otherwise; whilst **art. 559** of the same Code imposes on the alleging party to produce the best evidence.

It is clear from the evidence produced, particularly claimant's sworn declarations, and the copies of electronic correspondence between the parties, that claimant accepted and made use of the machine which respondent undertaking delivered, even if claimant contends that it was made to operate on a higher-voltage electrical system than that which he had at his workplace. Given this course of action which claimant chose, the only remedy available to him in terms of the aforesaid **art. 1390** of the **Civil Code** was to request '*a diminution of price upon a valuation by experts*' and not to demand damages.

Furthermore, and independently of the said legal consideration, the Tribunal is not convinced, on a balance of probabilities level, as required in these proceedings, that respondent undertaking breached its seller's obligations in despatching the machine under examination. Considering that (i) this was a cross-border sale; (ii) claimant had the opportunity to actually see an identical machine in operation during fairs; (iii) claimant visited the business workplace of respondent undertaking and dealt personally with its representatives, discussing this matter, the Tribunal is of the view that claimant should not have presumed that respondent undertaking was knowledgeable about the electrical system features in Malta, and particularly at his workplace. More importantly, claimant

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<sup>7</sup> Chapter 16 of the Laws of Malta

<sup>8</sup> Chapter 12 of the Laws of Malta

should have checked that the machine's specifications were correct, and fitting, for his environment, before attempting to operate it, and should have instructed an engineer/electrical technician to set this machine in operation from the start. If the machine delivered lacked the necessary accompanying literature explaining connection proceedings, a competent technician/engineer would have correctly refused to carry out the connection procedure prior to receiving said reading material, and in that case claimant could entertain a claim for damages arising from loss of use, if he could prove that he incurred financial loss as a result of the delays.

The Tribunal is of the view that claimant initially tried to set the machine in operation on his own steam, despite not being an engineer/technician himself, and only resorted to professional assistance when the machine failed to operate, and was causing his workplace's circuit breaker to trip in continuity. On the other hand, a competent technical person would have realised from the start that the machine was set to operate on a different electrical system than the one which claimant held at his workplace, and would have stopped short of attempting to operate it, foreseeing the inevitability of the damages which the machine actually incurred following said undue operations.

Finally, and also without prejudice to the legal consideration outlined above, claimant did not file for this Tribunal's consideration a complete record of his electronic correspondence with respondent undertaking, and therefore failed in his procedural obligation to present the best evidence in support of his claim. In his dossier, there is no mention of respondent undertaking's offer to take back the machine delivered, and replace it with a new machine working on the same electrical system as claimant reported, at that stage, to have at his workplace. There is also no mention of his accepting respondent undertaking's offer to settle with paying only half the price of the replacement parts which he opted to order from respondent undertaking. Furthermore, the correspondence exhibited does not mention in any way the problems which claimant had with the 'motor' he claimed to have replaced, the stage at which they came about, the cause of its malfunction, and the causal link between its replacement and the act/omission of respondent undertaking.

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On the basis of these legal and factual considerations, the Tribunal concludes that this claim appears, on a balance of probabilities, to be unfounded both in law and equity, and in fact.

Thus, for the aforementioned reasons, the Tribunal rejects Claimant's Claim.

Either party is to bear his/its respective costs.

**Advocate Phyllis Aquilina LL.M. (Lond.), LL.D.**

**ADJUDICATOR**