



**IN THE SMALL CLAIMS TRIBUNAL**

**Adjudicator: Dr. Claudio Żammit**

**Sitting of Monday 23rd September 2019**

**Claim Number: 6/18 CZ**

**David Moore**

**vs.**

**Goldcar Rental Malta**

**The Tribunal,**

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 17<sup>th</sup> July 2018 in virtue of which claimant premised:

I rented a car from Goldcar at Malta Airport. When I went to check the car with the Goldcar representative – Damon Turner – he presented me with a clean

and new damage sheet, suggesting there was no existing damage on the car – which he said was correct. It was dark and the car was dirty – I inspected it with him and noticed one major piece of damage on the wing, which I noted. I couldn't see anything else. I took the car, drove 20 minutes to my hotel and parked it in a secured underground car park for a week, before returning. When I returned the car, the same man – Damon – 'immediately' noticed several minor areas of damage. I disputed all of them, but we had to leave to catch a flight and he wouldn't let me leave until I had settled the charges – 997.69 Eur. He was abusive and threatening to my wife also.

Upon returning home I raised a claim with the Goldcar disputes process, asking for evidence of the previous damage sheets for the same car, as well as evidence that repair work had in fact been carried out after my charges. Neither have been produced after 48 hours of waiting.

The car was over 10 years old. It's clear that this is a rehearsed scam, and the same damages is being charged multiple times per vehicle.

After I raised the initial complaint, and had no evidence returned – I have received another charge on my credit card, for 405 Euro; no information or evidence has been supplied – they have just taken money from me without giving any reason why, 'after' everything had been completed in the car park and my deposit returned.

The Tribunal notes that claimant, for the above reasons claimed the payment from defendant of one thousand four hundred and forty Euro.

The Tribunal also considered the reply of defendant filed on the 15<sup>th</sup> March 2019, whereby defendant stated that claimant's claim is unfounded both in fact and at law and this for the following reasons:

- i. That first and foremost the claim is invalid insofar as it is made against 'Goldcar Rental Malta' which is neither a company registered at law nor is it a physical person.

- ii. That secondly and without prejudice to the above, the address that the Claimant indicated for the Claim to be notified is not the office of Goldcar Rental in Malta. Goldcar operates from its offices at Malta International Airport in Luqa, where indeed the Claimant came in order to hire the vehicle. As a result, the Respondent was not aware of having received the claim until the 13<sup>th</sup> March 2019, as can be confirmed by the affidavit of Christian Borg herein attached and marked as Document 1b.
- iii. That moreover the claim is invalid and unfounded both in fact and at law, and this for the reasons indicated below;
- iv. That the damages for which the Claimant was charged for (i.e. the amount of €997.69) were not present at the beginning of the rental period, that is on the 23<sup>rd</sup> June 2018 and contrary to what the Claimant is insisting in his claim, such damages occurred after and when the car was being used by Claimant. Said damages have indeed been recorded and acknowledged by Claimant at the end of the rental period on the 30<sup>th</sup> June 2018. All this is evidenced in the Vehicle Condition Report Form herein attached as Document 1c.
- v. That claimant refused to purchase the Goldcar Super Relax Insurance offered to him and had further declared that he had purchased a third party insurance cover to cover him from any damage or accident charges (see Document 1d). As a result, Goldcar Rental is exonerated from responsibility for any damages in line with clause 4 of the General Terms and Conditions, signed by the Claimant, which stipulates "Should you decide not to take the Super Relax Cover at the time of rental, the Excess amount on your rental will apply for any damages, engine failures, burnt clutches, breakdowns or theft of the vehicle. Any damages which are not reported in the condition report which is completed on the collection day will be considered as new damages and will automatically be charged from the customer's card (...) In the case of accident with another vehicle the whole amount of the excess will be withdrawn from the excess deposit regardless of the drivers responsibility for the accident" and therefore in any case, Claimant should address his claim to the insurance company in question.

- vi. The Claimant was asked to pay according to the Damage/Repair Price List, which was accepted and signed by the claimant after it being explained to him (See Damage/Repair Price List herein attached and marked as Document 1e).
- vii. The Claimant acknowledged the Excess Acceptance deposit of €1,100 by means of the Damage Excess Acceptance Declaration signed by him at the beginning of the rental period (See Damage Excess Acceptance Declaration dated 23<sup>rd</sup> June 2018 herein attached and marked as Document 1f).
- viii. Moreover as stated in the damage invoice dated 30<sup>th</sup> June 2018 (herein attached and marked as Document 1g) the Claimant authorised payment in the amount of €997.69 himself for the damages caused when he was making use of the vehicle in question by signing the damage invoice.
- ix. Finally, with reference to the amount of €405.00 the Respondent declares that this was an administration error and that the amount was immediately refunded to the claimant as can be seen from the document herein attached and marked as Document 1h.

Therefore, in light of the above, the Claimant's claim against Goldcar Rental should be rejected in its entirety and the Claimant be ordered to pay the expenses of these proceedings.

The Tribunal:

Having seen the documents filed by both parties;

Having therefore considered all evidence brought forward by claimant;

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 that:

In this action claimant is suing defendant to recover payments he paid to defendant after the latter, as a rental car provider, noticed certain damage in the vehicle rented which he said were caused while the vehicle was leased to claimant. Claimant is contesting these damages, apart for some damage in the wing, which he stated he had noticed even before hiring the vehicle. In fact claimant had authorised defendant to debit his card with €997.69 representing damages which defendant undertaking allegedly noted, but which plaintiff was contesting.

At the outset, the Tribunal must determine the first plea of defendant undertaking, in that it stated that the case as initiated against 'Goldcar Rental Malta' is not valid. Defendant undertaking brought forward this plea without, however, indicating who would be the proper person against whom the case had to be filed. Claimant was correct in citing 'Goldcar Rental Malta' because that is the name he got on the invoices and documents he signed. Claimant is a lay person and as such would not appreciate the difference between a brand name and a legal person. The Tribunal therefore declares that the first plea is rejected.

Secondly, defendant undertaking is stating that Goldcar Rental operates from Malta International Airport, and not from the address where it was served with these proceedings. While it does not seem to be contested that defendant undertaking operates from Malta International Airport, the Tribunal notes that the address on defendant undertakings' letterhead is 'Triq is-Siggiewi, Qrendi', which is truly where claimant tried to serve these proceedings on defendant undertaking. Claimant is not to blame for trying to serve these proceedings in the address at Qrendi, since this is the address which defendant undertaking provided. The second plea will therefore also be rejected.

The Tribunal has considered that in its defence, defendant undertaking is relying exclusively on the pre-produced set of documents which claimant was requested to sign. Defendant did not produce any photographs of the car at issue before the rental. Apart from these, defendant did not provide any evidence to show that all the fine print in the various documents it exhibited, was duly explained to defendant. It is most clear that on the 30<sup>th</sup> June 2018, claimant was compelled to

sign the damage sheet, and this due to the fact that he was in a hurry to board a plane, and this was not the ideal time to explain everything to defendant. The Tribunal notes that the defendant undertaking did not substantiate its claims for damages through the testimony, even in written form, of its personnel. Defendant undertaking did not produce sufficient evidence to show that the damages in the car were present before claimant took the vehicle. It did not produce, for example, the person who inspected the vehicle with claimant before claimant actually picked the car up. Defendant undertaking is only insisting that the claim had been recorded and acknowledged by claimant at the end of the rental period, when he was forced to sign, in a hurry, the declaration indicating the damages. This is a very convenient document for defendant undertaking to rely on; however for the Tribunal this document is not sufficient for defendant to prove its case.

Moreover, defendant undertaking did not produce evidence to show that it had explained all the terms and conditions sufficiently well to claimant. The Tribunal moreover notes that the terms and conditions set by defendant undertaking, particularly those found in Doc. CB2 filed by defendant undertaking, are predominantly biased in favour of defendant undertaking.

The Tribunal is even more concerned at the fact that claimant was told that he should pay a certain amount of money, and signed a declaration stating that he knew about the damage done; however defendant undertaking did in no way prove that the sum of money therein indicated was actually used to repair all the alleged damages. The amount of money (€997.69) indicated in Doc. CB6, signed by claimant was arbitrarily decided upon by defendant undertaking without any consultation with the industry and/or surveyor. Indeed, defendant company relies on a standard damage/repair price list, as found in Doc. CB3 filed by defendant company where, for example, damage to a boot door is set at 180 Euro, without even indicating whether the damage consists of a one-inch scratch or a five-inch scratch. For the Tribunal, this is sheer abuse.

Even more concerning for the Tribunal, is the plea raised by defendant undertaking indicating that claimant had not purchased Goldcar Super relax insurance (i.e. the insurance package offered by defendant undertaking at a cost which would be over

and above the rental price of the car). According to defendant undertaking, it is exonerated from providing for the alleged damages in the car, because claimant did not buy defendant undertaking's insurance. This plea should also be rejected, because defendant undertaking cannot advance any pretence it seems fit only because defendant undertaking did not purchase its insurance.

The Tribunal therefore is not convinced that the document signed by claimant at the end of the lease would close any avenue available to the claimant, as defendant undertaking is claiming. If there was a particular damage, such as that noticed by claimant in the vehicle's wing, defendant undertaking should not have presented to him a clean and all-clear damage sheet prior to pick-up of the vehicle.

From an examination of the facts and evidence in the file, therefore, the Tribunal considers that there is not sufficient evidence to show that, on a balance of probability, defendant undertaking is correct. Apart from failing to produce sufficient evidence on whether it fixed the vehicle, and how much were the costs, defendant company advanced certain claims such as 'Damage Administration Fee - €123'<sup>1</sup>, which is totally arbitrary and unfounded.

There is one point in which defendant undertaking is correct, and which claimant seems not to have contested. This is the fact that the sum of €405 was erroneously taken from claimant's account, and it was refunded by defendant undertaking.

On the basis of all these considerations, the Tribunal upholds defendant undertaking's ninth (9<sup>th</sup>) plea, and while abstaining from delivering judgment on that part of claimant's claim wherein he claimed €405, the Tribunal is rejecting all other defendant undertaking's defence pleas, and consequently upholding claimant's claim, except for the sum of €495 just mentioned; and the Tribunal therefore orders defendant undertaking to pay to claimant the sum of nine hundred and ninety-seven Euro and sixty-nine cents (€997.69), with legal interest with effect from today until the date of full and effective payment.

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<sup>1</sup> In Doc. CB 6.

Defendant undertaking shall pay all the costs of these proceedings.

**Dr. Claudio Żammit**

**Adjudicator**

Mary Josette Musu'

Deputy Registrar