



**THE SMALL CLAIMS TRIBUNAL
EUROPEAN SMALL CLAIMS PROCEDURE**

**Adjudicator
AVV. JULIANA SCERRI FERRANTE**

Wednesday, 15th January 2020

Claim number 3/2019SFJ

Gilbert Grech
25, Flat 3,
Triq il-Kappella tax-Xagħra,
San Pawl tat-Tarġa, Naxxar

vs.

Orlando Periti
Sede Centrale
88841, Isola di Capo Rizzuto
Località Sovereto, snc

The Tribunal:

Saw the Notice of Claim filed by the claimant on 25th April 2019 pursuant to Regulation 861/2007 establishing a European Small Claims Procedure in which the claimant contended:

"We bought a sofa in real leather from the mentioned company. After a few months of use it started to deteriorate alarmingly. We contacted the defendants and came to my house to see the sofa and said that the sofa's material was not real leather. He also said that he is to replace the sofa with a new one in real leather. His promise never materialised and we had to open a claim with MCCA. Defendant also promised MCCA to rectify the issues with the claimants in Malta to no avail. We have no option but to take this forward to court. I was sold a real leather sofa when in fact it is made from cheap material I want the money back or a new sofa in real leather."

Saw that according to the Notice of Claim, the claimant was claiming the amount of **two thousand Euros (€2,000.00)**.

Saw that the defendant was served with the Notice of Claim on 30th July 2019 as appears from the notice of service.

Saw that the defendant filed neither a Reply nor any submission whatsoever.

Saw that in the Notice of Claim, the claimant opted to dispense with a hearing.

Read all the documentation.

Exposition

The Tribunal observed that in support of the Notice of Claim, the claimant produced photographs of the alleged sofa as well as an unauthenticated copy of a letter sent to the defendant in which he outlined his complaint. It seems that this letter was sent to the defendant by registered mail.

Furthermore, the claimant provided a photograph of the invoice which indicates that the claimant paid two thousand and one hundred Euros (€2,100.00).

The claimant produced copies of e-mail correspondence exchanged in relation to the sofa in question as well as in relation to the promised replacement. According to this e-mail correspondence, the defendant accepted fault.

The Tribunal saw the photographs and read the e-mail correspondence presented. These documents, although not strengthened by the claimant's sworn testimony, make it quite clear that the claimant purchased a sofa from the firm run by the defendant, which sofa was advertised as being made out of real leather but apparently was not so manufactured. Judging by the relative e-mail correspondence, it is also clear that the defendant admitted the claimant's claim insofar as he promised that the sofa would be replaced by another sofa which would be made out of real leather.

The Tribunal notes that in civil cases, the adjudicator must decide the case according to his convictions emanating from the balance of probabilities. In the present case, the Tribunal firstly observes that the claimant could have gone a step further and substantiated his claims through submission of a sworn statement. However, the Tribunal notes that in spite of the fact that the defendant was served with the Notice of Claim, he never opposed this claim in any way.

The Tribunal observes that Article 9(1) of Regulation 861/2007 states: "*The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.*"

The Tribunal further observed that the Preamble to the Regulation delegates to national law questions relating to the standard of proof. However, the Preamble emphasises that the objective of the Regulation is "*to simplify and speed up litigation concerning small claims in cross-border cases*".

Nonetheless, given the defendant's failure to oppose the claim, the admission via e-mail and acceptance to change the sofa as well as given the photographs presented, which clearly show a deteriorating sofa as explained in the Notice of Claim, the Tribunal is satisfied that the claimant's claim meets the standard of proof applicable in the civil sphere according to Maltese law.

Decision

Therefore, the Tribunal accepts the claimant's claim and thus orders defendant to pay the claimant the sum of two thousand Euros (€2,000.00).

As the claimant claimed no legal interest, the Tribunal is precluded from awarding interest.

The Tribunal orders the defendant to pay the costs of the case.

Avv. Juliana Scerri Ferrante
B.A., L.P., Mag. Jur. (Int. Law), LL.D.
Ġudikatur