



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Philip M. Magri LL.D; M.A. (Fin.Serv); M.Phil (Melit)

Sitting of Monday, 2nd November, 2020

Talba Nru: 99/2020 PM1

Brian J. Bailey (032047(A))

Vs

Hayden J. Vella & Hayden Auto Mechanic

The Tribunal,

Having seen the notice of claim filed on the 25th May, 2020 by which, for all the reasons indicated therein, the plaintiff asked for the compensation of damages allegedly due to him by defendant in view of the lack of proper work carried out by the same defendant on his vehicle.

Having seen the documents attached to the said notice of claim in support of the same.

Having seen the reply filed the defendant by which he pleaded that:

1. Preliminarily, that this matter has already been finally decided by the Consumer Claims Tribunal (CCT/33/18/MS) in virtue of a decision issued on the 29th May, 2019 (informal copy attached and marked Document HV1). The plaintiff filed no appeal against that decision. Defendant submits that there exist the elements of *eadem res*, *eadem personam* and *eadem causa petendi* which are necessary for the plea of *res judicata* to succeed.
2. In subsidium and without prejudice to the first plea, that plaintiff's claim is unfounded in fact and at law.

For these reasons, defendant respectfully asks the Tribunal to dismiss plaintiff's claim with costs against plaintiff.

Having seen the copy of the decision delivered by the Consumer Claims Tribunal in the names **Brian Bailey v. Hayden Vella – Hayden Auto Mechanic** on the 29th May, 2019 (Dok. HV1 attached to the reply).

Having seen the note filed by the Registrar to which were attached a written and signed statement by the plaintiff as well as other supporting documents. (fol. 52 et. seq. of the acts of these proceedings).

Having heard the testimony of Raymond Camilleri during the sitting of the 19th October, 2020 as well as having seen the copy of the acts filed by him during such sitting.

Having seen that during such sitting both parties declared that they do not have anything further to add in connection with the preliminary plea of *res judicata* and this after the plaintiff confirmed his detailed statement under oath.

Having seen that the case stands adjourned for the delivery of judgment limitedly to the preliminary issue of *res judicata* for today's sitting.

Having taken into due consideration all the circumstances of the case.

Having considered

That plaintiff is claiming the sum of five thousand euros (€5000) (“+damages+costs”) from defendant and this in connection with alleged damages suffered by his vehicle when this was supposed to be repaired by the same defendant as detailed in the same notice of claim. To this claim, defendant replied by preliminarily contesting the same through a plea of *res judicata* in that “*this matter has already been finally decided by the Consumer Claims Tribunal (CCT/33/18/MS) in virtue of a decision issued on 29th May, 2019 (informal copy attached and marked as document HV1). The plaintiff filed no appeal against that decision.*” The case was adjourned for today for judgment limitedly to such preliminary plea.

In connection with the plea of *res judicata* it has often and regularly been decided by the local Courts that, for the success of such plea, the defendant must be able to prove three elements: *eadem personae* (same parties), *eadem res* (same object of the suit) and *eadem causa petendi* (same merits):

“Hemm qbil generali kemm fid-dottrina u kif ukoll fis-sentenzi tal-Qrati dwar x'inhuwa mehtieg biex l-eccezzjoni tal-gudikat tista' tintlaqa'. Tlieta huma l-elementi li jmisshom jigu murija minn min iqanqal l-eccezzjoni biex din issehh. Dawn l-elementi huma l-istess oggett (eadem res), l-istess partijiet (eadem personae) u l-istess mertu (eadem causa petendi). Huwa siewi li wiehed izomm quddiemghajnejh ukoll il-massima li biex dik l-eccezzjoni tirnexxi jehtieg li t-tliet elementi jkunu jikkonkorru ghax, fin-nuqqas, ma jistax jinghad li l-haga hija l-istess (nisi omnia concurrunt, alia res est);

L-eccezzjoni tal-gudikat tissemma fl-artikolu 730 tal-Kodici tal-Organizzazzjoni u Procedura Civili bhala wahda li dwarha ghandha tinghata decizjoni b'kap ghalha, ukoll jekk tinqata' flimkien mal-mertu fid-

decizjoni ahharija.” (**Charles Cortis v Francis X. Aquilina** decided by the First Hall, Civil Court on the 25th September, 2003).

The Tribunal is therefore required to investigate whether the case cited by the defendant in his plea (a copy of which file was filed by the representative of the Consumer Claims Tribunal during the sitting of the 19th October, 2020) as decided by the same Consumer Claims Tribunal on the 29th May, 2019 concerned the same parties, the same object and the same merits as those raised by the claimant in these proceedings.

The Tribunal can only reply to this query in the affirmative. It is amply clear from the acts of the proceedings instituted in front of the Consumer Claims Tribunal that these were instituted by current plaintiff (Brian Bailey) against the current defendant Hayden Vella – Hayden Auto Mechanic). Hence the element of *aedem persona* is satisfied.

It also results that via such proceedings in front of the Consumer Claims Tribunal the claimant had similarly alleged that he had suffered damages as a result of defendant’s failure to carry out work on the plaintiff’s vehicle in a proper and/or timely manner. These same allegations were also reiterated in this case in connection with the same incident and the same vehicle bearing the mark Volvo. Even though, in this case the amount being claimed differs considerably from that mentioned in the proceedings decided by the Consumer Claims Tribunal, in both cases it transpires clearly that the said sum represents amounts which claimant believes should be paid or re-imbursed to him for defendant’s failure to repair his vehicle and for additional damages suffered by the same vehicle consequent to the alleged improper work carried out by defendant. As per the written statement filed by plaintiff (fol. 6 of these proceedings), plaintiff is claiming a number of amounts all derived from loss of use of the vehicle, vehicle license and vehicle insurance dues, costs incurred for reports and supplies required in connection with the defendant’s improper works. Such allegations were already the merit of the case filed in front of the Consumer Claims Tribunal (as results from document BB1 a fol. 103 filed in the acts of these proceedings). As per local case-law, even with regards to those items which were not originally included in the first case, the element of *eadem causa petendi* is not only formed through what is expressly discussed

but through all those elements which could have been discussed during the original proceedings:

“L-element ta' eadem causa petendi ma jifformax ruhu biss b'dak li gie espressament diskuss, imma anki b'dak kollu li seta' gie diskuss.”

(SAMMUT CROCIFISSA ET vs SPITERI JOSEPH decided by the Court of Appell (Superior Jurisdiction) on the 10th October, 2003).

Undoubtedly all the elements claimed in these current proceedings constitute alleged damages or losses suffered by claimant and for which the plaintiff believes that the defendant is to be held responsible, damages and losses for which claimant had already filed the relative action in front of the Consumer Claims Tribunal. In view of the above it also amply clear that both the merits and the object of the current case are identical to those already raised (or which could have been raised) and finally decided by the Consumer Claims Tribunal.

For the sake of completeness, the Tribunal notes that it is the claimant himself who confirmed, via his declaration of facts, that these proceedings were intended by him in order to somehow contest the conclusive findings of the Consumer Claims Tribunal. He not only filed himself a copy of the judgment delivered by the Consumer Claims Tribunal on the 29th May, 2019 with all his notations and comments (including explanatory notes to the Tribunal decision) (fol. 56 of the acts of these proceedings) but also presented a time-line which provides that, after the “*Consumer Affairs judgment* (was) *delivered to me*” on the 3rd June, 2019,

“Ph Cons Affairs and (sic) advised I consider decision unacceptable and asked for advice regarding appeal procedure. I was advised only 20 days to appeal, which must be in Maltese by professional lawyer. Phoned Ct of Appeal and advised I would need Legal Aid to Appeal. Told to download, complete and deliver forms to L.A. with all proofs.

10/6/19 Took Legal Aid application into Valletta but assistance rejected.

21/6/19 Emailed MCCA A Angela Coleiro to complain re lack of justice & help.

28/6/19 2nd email to Angela Coleiro re finding me some help with this issue.

1/7/19 Rcvd Call from MCCA A to advise can do nothing about given decision, but advised I might be able to challenge via SCT.”
(fol. 53)

The time-line continues with the procedure adopted by plaintiff in filing the current proceedings in the erroneous belief that he could contest a final decision delivered by the Consumer Claims Tribunal by pursuing a further action in front of this Tribunal as well as the eventual payment by defendant of the sum liquidated in claimant's favour by the Consumer Claims Tribunal. In this connection, the Tribunal refers to art. 3 of the **Small Claims Tribunal Act** (Chapter 380 of the Laws of Malta) which details the competence of this Tribunal. It is amply clear from the same that the Tribunal does not constitute a Court of Appeal and certainly does not have the necessary powers to allow it to over-rule a final decision delivered by any other judicial entity or Tribunal including the Consumer Claims Tribunal and which decision should thus, be deemed a *res judicata*. Moreover, art. 20 of the **Consumer Affairs Act**, whilst detailing the competence of the Consumer Claims Tribunal to hear claims by consumers against traders also in connection with the provision of services, continues to expressly provide under subarticle (2) of the same that:

“The jurisdiction of a tribunal shall not be exclusive, and it shall be at the option of the consumer whether to bring an action against a trader before a tribunal or before the ordinary courts; so however that –

(a) where an action has been brought before a tribunal by a consumer, it shall not be competent for the consumer to bring an action arising out of the same claim also before the ordinary court;” (emphasis added)

In terms of 2, the term ‘ordinary court’ includes also the Small Claims Tribunal. Art. 22 of the **Consumer Affairs Act** also provides for the procedure to be followed for an appeal from a decision delivered by the Consumer Claims Tribunal, a procedure which the plaintiff failed to adopt and certainly cannot procedurally adopt via a claim in front of the current Tribunal.

Consequently, given that the current claim concerns a case which has already finally decided by the Consumer Claims Tribunal, the current Tribunal is precluded from indulging further into the merits of the current case and can only proceed to uphold the preliminary plea as raised by defendant. One can understand that claimant felt aggrieved by the decision delivered by the Consumer Claims Tribunal but as has also been decided by our Courts, this does not suffice to render ineffective the plea of *res judicata*. Once the claimant himself allowed the decision to become final and definitive by not appealing from the same, he can hardly complain about the irrevocable nature of the obtained final decision:

Meta s-sentenza tghaddi f'gudikat, ghax ma tigix appellata jew ritrattata, jew ghaliex, jekk appellata jew ritrattata, tigi konfermata, hija ssir irrevokabbli; u ma jkunx aktar lecitu li tinfetah diskussjoni fuqha, lanqas jekk tkun, forsi, ingusta. Ghax jekk min hu interessat ma juzax mir-rimedji li taghtih il-ligi biex iwaqqa sentenza bhala nulla, ma ghandux raguni jilmenta mill-inflessibilita` tal-principju ta' l-irrevokabilita' tas-sentenza. (MAGRO ANNA vs PSAILA EMMANUELA NOE ET decided by the Court of Appeal (Superior Jurisdiction) on the 6th December, 2002)

The Tribunal thus decides this case by upholding the preliminary plea of *res judicata* raised by defendant, consequently rejects the claim raised by plaintiff with all costs to be borne by the same plaintiff.

Avukat Dr. Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Gudikatur