

Case Details

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National ID	Appell Civili Numru 315/2006/1
Stat Membru	Malta
Common Name	David u Rosanna Ellul vs Flyaway Tours
Decision type	Oħrajn
Decision date	17/10/2008
Qorti	Qorti ta' l-Appell
Suġġett	
Rikorrent	
Intimat	
Kliem Principali	

Directive Articles

Package Travel Directive, [Article 3, 2](#). Package Travel Directive, [Article 4, 5](#). Package Travel Directive, [Article 4, 7](#).
Package Travel Directive, [Article 5, 1](#).

Headnote

Liability to compensate in case of a change in Hotel without informing the consumers

Facts

Plaintiffs booked a holiday in Egypt in August 2005 with Flyway Tours. Plaintiffs had advised Flyway Tours that they wanted to book their hotel with a hotel of the Sheraton chain of hotels as they had previously used such hotels and were pleased with the level of service and accommodation provided. In fact plaintiffs opted for the Sheraton hotel in Cairo as indicated on the Flyaway Brochure which clearly indicated the hotel as "Gezira Sheraton 5 Star".

When plaintiffs arrived in Egypt they realised that the hotel was not part of the Sheraton chain of hotels. When they arrived at the hotel, consumer discovered that it was once part of the chain but that this was no longer the case. Plaintiffs complained about the service provided by the hotel, particularly about the first room where they were accommodated, the food provided and the level of service in general. Plaintiffs said that they were in general very disappointed and their holiday ended up in a 'disastrous' fashion. Plaintiffs claimed the full costs for the air flight and for the hotel accommodation.

During the hearing of the case before the First Court (the Small Claims Tribunal) it resulted that the hotel was sold to Accor another chain of hotels but that defendant company had failed to inform plaintiffs of this change. Plaintiffs stated that on arriving at the hotel they immediately notified defendant's representative in Cairo with their complaints.

Legal issue

Deċiżjoni

The first court upheld in part the claim for damages made by plaintiffs by awarding them the cost of hotel accommodation but not the cost of the flight. The first court held that plaintiffs were entitled to be given the service as advertised in brochure. Defendant company could not advertise the name of a particular brand when it results that this is not the case. Doing this seriously misleads the customer by giving him the impression that he is buying a

service provided by a certain brand when this is actually not the case.

Defendant company in its appeal argued that it should not be held responsible because the management of the hotel in question had passed to new owners emphasising that in any case the hotel had retained its five star classification.

The Court of Appeal noted that the choice of the hotel by plaintiffs was based on what was stated in the travel brochure provided by defendant company, and that therefore what was stated in the brochure was equally binding on both parties. The Court referred to the provisions of the Package Travel Regulations and the specific obligations of the package organiser to inform plaintiffs of any changes, which information must include those details as may enable the consumer to establish in a clear and precise manner whether the package offerings are to his liking. The Court said that defendant company had acted in breach of its legal obligations when it failed to inform plaintiffs that the hotel was in question was not according to what was advertised in its brochure in that the hotel was now not being managed by Sheraton group. The Court noted that it was the duty of defendant company to inform plaintiffs of such a change and that defendant company had provided the accommodation it had advertised in the brochure. The Court referred to the general principles under the Maltese Civil Code – specifically article 1133 – whereby a person is liable for damages if he fails to abide with his commitments unless it results that he was unable to do so because of circumstances beyond his control. The court said that in this case defendant company failed to inform plaintiffs of the change in the ownership of the hotel. The Court confirmed the decision of the first court in its entirety.

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