

## Case Details

### Case Details

National ID	Appell Civili Numru 684/2007/1
Member State	Malta
Common Name	HPS Trading Limited vs Dr. Martin Debattista u Celia Debattista
Decision type	Other
Decision date	30/10/2009
Court	Qorti ta' I-Appell (Appellate court)
Subject	
Plaintiff	
Defendant	
Keywords	

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 5](#).

### Headnote

The Court of Appeal did not uphold the appeal lodged by the consumer who refused to pay the outstanding payment of € 2,073.14 for the business's work and material of an under floor heating system in the consumers' home.

The consumer argued that there was a lack of conformity with the contract based on article 73 of the Consumer Affairs Act. The business held against this, that the source of fault could not be identified since a third party was involved into the works in the apartment.

The Court stated that in the absence of a precise attribution of a causal link – and this because the consumer did not allow the business to determine the source of the fault - it is not just that abstractly one can therefore attribute the fault to the business.

### Facts

Plaintiff company HPS Trading Limited filed a claim against defendants before the Small Claims Tribunal requesting payment of €2,073.14c being the outstanding amount due by defendants for work and material of an under floor heating system in defendants' home. Defendants rebutted that plaintiff company had acted in breach of its obligations under the Consumer Affairs Act and the work done was not in accordance with the required standards of performance.

A representative of plaintiff company testified that defendants had informed him that the living room of the apartment was not being heated properly. Following tests performed by plaintiff company it resulted that there was a fault in the electrical system. However plaintiff company was not prepared to assume responsibility since subsequent to the work it had performed defendants had separately engaged the services of a tile layer and of an electrician both of whom performed work in the same apartment. Plaintiff company argued that therefore one could not exclude that the fault may have been the result of bad workmanship by either the tile layer or electrician.

The Small Claims Tribunal (being the tribunal of first instance) in finding for plaintiff company noted that plaintiff company had offered at its own expense to remove the tiles so as to investigate the origin of the shortcomings and had offered that if subsequently it resulted that it was at fault, it would then pay for the necessary repairs and damages suffered. Defendants however did not accept this proposal because similar tiles were not available on the

market and that such work would create substantial inconvenience to them given the work involving the removal of the tiles and having them put back.

The Tribunal decided to uphold plaintiff company's claims and ordered defendants to pay the outstanding balance of €2,073.14 with costs and interests. The Tribunal said that plaintiff company had offered to undertake the necessary investigations to verify the source of the fault offering to pay for the damages if it resulted that it was at fault. In the circumstances the Tribunal held that defendants had not acted reasonably when they refused to accept plaintiff company's proposal.

Defendants appealed the decision of the Tribunal before the Court of Appeal (inferior jurisdiction) contending that contrary to what the tribunal of first instance held, the defect in the under floor heating system did not originate from the work of a third party, but was attributable solely to plaintiff company. Defendants contended that the defect was inherent in the product supplied by plaintiff company and that this consequently resulted in a breach of article 73 of the Consumer Affairs Act as there was a lack of conformity with the contract made between plaintiff company and defendants.

#### Legal issue

The Court of Appeal (inferior jurisdiction) said that when the works were performed by plaintiff company there was as yet no electricity in the apartment and that the fault emerged only once electricity was installed in the apartment. The Court said that defendants were contending that there was a lack of conformity with the contract this on the basis of article 73 of the Consumer Affairs Act and that consequently defendants were refusing to pay plaintiff company.

The Court said on the basis of the principle of equity it was not acceptable or right that whilst defendants were attributing to plaintiff company non-conformity with the contract, the defendants were not prepared to afford plaintiff company the chance to investigate and establish the precise source of the defect and therefore the link, if any, with the works undertaken by plaintiff company. The Court observed that it is easy for one to have recourse to specific provisions of the law which presuppose that the trader is at fault and place the burden of proof on the trader. The Court said that in the absence of the a precise attribution of a causal link – and this because defendants did not allow plaintiff company to determine the source of the fault - the Court held that it is not just that abstractly one can therefore attribute the fault to plaintiff company. The Court of Appeal consequently decided not to uphold the appeal lodged by defendants Debattista and confirmed the decision of the Tribunal with costs against defendants.

#### Decision

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#### Related Cases

No results available

#### Legal Literature

No results available

#### Result