

Case Details

Case Details

National ID	link
Member State	Malta
Common Name	Bugeja vs Bugeja M. Travel Limited
Decision type	Court decision in appeal
Decision date	04/11/2015
Court	Court of Appeal (Inferior)
Subject	
Plaintiff	Andrew Bugeja et
Defendant	Bugeja M. Travel Limited
Keywords	accommodation, misleading actions, misleading statements, package travel

Directive Articles

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

Headnote

- (1) The Regulations, which implement the provisions of Directive 90/314/EC into Maltese law, apply regardless of whether the contractual relationship is a service or a sale.
- (2) Brochures are not equivalent to a contract under the Regulations (which implement the provisions of Directive 90/314/EC into Maltese law).
- (3) The contract does not need to be signed by both parties.
- (4) Organisers handing out brochures to consumers may sometimes be bound by such brochures.

Facts

On the 10th January 2013, the Small Claims Tribunal declared that the travel package that was sold to the plaintiffs by the defendant company was not of the promised quality.

The defendant company appealed to the Court of Appeal on the grounds that:

- i) The contractual relationship between the parties was that of a service rather than a sale, and that therefore the plaintiffs' action could not be upheld since they based their action on sale.
- ii) The plaintiffs' action could not be upheld because Article 1390 of the Civil Code (Chapter 16 of the Laws of Malta) merely offers the buyer to either reject the thing and demand damages, or to accept the thing with a diminution of the price, whilst the plaintiffs' demanded a full refund after having gone on the trip .
- iii) The Tribunal completely ignored the contract that was entered into between the parties.

Legal issue

- 1) Basing itself on Regulation 15.1 of the The Package Travel, Package Holidays and Package Tours Regulations (which implements Article 5 of Directive 90/314/EC into Maltese law) the court emphasised that the Regulations

apply regardless of whether the contractual relationship between the parties is based on a sale or a service.

2) Where a brochure is given to the consumer this is not considered a contract.

3) Moreover, it is not required that a contract is signed by both parties. Rather, the organiser who offers the travel package is obliged to ensure that the consumer is given a written copy of the conditions of the contract as per Regulation 9.1 (which implements Article 4(2) of Directive 90/314/EC into Maltese law), failing which he shall be guilty of an offence against the Regulations (Regulation 9.3).

4) The court reasoned that since the plaintiffs were given the brochure of a particular hotel, they were reasonably entitled to expect to be lodged at that particular hotel or at least one of a similar quality. Instead they were taken to another hotel which was of an inferior quality and which lacked certain facilities. The court also emphasised that it is the organiser's obligation to ensure that his client is comfortable in the hotel that is offered to him.

Decision

(1) Do the Regulations, which implement the provisions of Directive 90/314/EC into Maltese law, apply regardless of whether the contractual relationship is a service or a sale?

(2) Is a brochure equivalent to a contract under the Regulations (which implement the provisions of Directive 90/314/EC into Maltese law)?

(3) Does the contract need to be signed by both parties?

(4) Are organisers bound by the brochures that are given to consumers?

Full Text: [Full Text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The court dismissed the appeal of the defendant company and confirmed the Tribunal's decision which ordered the defendant company to pay €3,200 to the plaintiffs.