

In the matter of an Arbitration

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; **23rd July 2020**

Between;

XXXXXXX XXXXXXXX

(the '**Consumer**')

And

World Express Logistics Ltd.

(the '**Trader**')

DECISION

Preliminary

This is a case arising from the coronavirus pandemic. The trader is a freight forwarding company based in Malta. The consumer resides in Spain. Briefly, the trader was engaged by the consumer to deliver her personal belongings to Madrid from Malta. The charges were agreed and paid for by the consumer. This dispute relates to an additional sum of EUR 112.50 which is billed as '*Warehousing rent*' under the trader's invoice dated 14th May 2020. I understand the disputed amount has been paid by the consumer and this claim is about reimbursement of the charges paid by the consumer.

It is clear from the personal belongs transported on behalf of the consumer that the consumer deals with the trader as '*a consumer*' and not as a business user. I believe I should make this observation at the outset because the trader deals with both business users and consumers alike. I do not know in what proportion the trader deals with each but looking at the trader's website, it does appear that the trader predominantly deals with commercial users. [

This distinction is important in the context of EU legislation. It is important because EU legislation affords greater protection to contracting parties when dealing as '*a consumer*'. I propose to return to the protection in this case, if any, afforded from this status below. For present purposes, both Malta and Spain are members of the European Union.

It would also appear that the consumer has previously used the trader's services.

I should also point out that the parties have agreed to resolve their dispute through the rules of the London Arbitration Centre on condition that the decision of the ADR official is binding. Finally, in this

preliminary section I should mention that the rules of the London Arbitration Centre provide that the dispute shall be resolved in accordance with the laws of England and Wales.

The relevant communications between the parties

The negotiations between the parties began on about 24th February 2020 with the contract being concluded on the same day.

I propose to extract information relevant to the dispute from the communications between the parties;

Email dated 24.2.2020 timed at 10.06 (trader to the consumer)

Agents are requesting the below info(but if you are exporting the same plt as when imported , I can check the detials from the import file)

QUOTE Can you please provide us gross weight for the below request

Also please confirm if personal effects and if possible please provide us dimensions

Email dated 24.2.2020 timed at 10.31 (Consumer to trader)

Yes, the export info is the same plt has when importer. Exactly the same.

Emailed dated 24.2.2020 timed at 13.02 (trader to consumer)

Many thanks for your below request, for which I am pleased to quote as follows:

1 - Plts - 2.12cbm - 180 Kgs From your door Malta up to Kerbside including Tail Lift 28 - Spain:

€ 525.00 + vat

Rates are inclusive of Local Charges.

Rates exclude VAT where applicable.

Commodity of goods being non-hazardous general cargo.

Subject to length/width does not exceed 2.40 mtrs.

Subject to goods being well packed, stackable, in free circulation and no customs entry is required.

All EXW charges will be according to supplier's shipment details.

Truck Free time 1 hr; applicable charge thereafter is EUR 45 / hr payable as per terms of shipment.

*** Insurance is not included*

*** The carriage of goods is subject to MIFA Standard Terms and Conditions*

*** Door delivery excludes use of Fork Lift at delivery address. For such service, an additional charge of € 40 is applicable.*

*** Door delivery excludes any unloading/dismantling of loose boxes from pallets. For such service, please ask for rates applicable.*

*** Waiting time of over 30 minutes for local deliveries for reasons beyond our control will be charged @ € 30 / hr.*

*** Payment terms are strictly CASH.*

*** All Quotations are based on Freight payable in Malta.*

*** Validity is 1 month unless instructed in writing.*

Please advise if you would like us to proceed

Email dated 24.2.2020 timed at 13.21 (Consumer to trader)

Ok I agree. Let's schedule the pick up for tomorrow ? I only have until 28th Feb to leave the apartment.

10

I read on the conditions that the Payment should be by cash. So, I pay at the moment of the collection.

How much cost a single insurance? For more details please call me. Regards

Email dated 24.2.2020 timed at 14.36 (consumer to trader)

Hi,

The receiver will be myself. How long time do you expect that the things will arrive at destination? I will be in Madrid. So, the receiver will be the same. XXXXXXXX XXXXXXXXCalle Cochabamba 3. 3 derecho. 28016. Madrid SPAIN

Phone: +34 610677833.

Regards

Emailed dated 24.2.2020 timed at 15.21 (trader to consumer)

If your cargo will depart Malta this week it would arrive destination on the 12 March.

So I Have arranged for cargo to be loaded on next week trailer ets Malta 07 March eta Destination 19 March, like that you will have your boyfriends help

Emailed dated 20.3.2020 timed at 15.46 (trader to consumer)

Hi Dear,

Hope you ok.

Our agents have advised us that they have been informed that for now delivery is suspended as the delivery place is closed for the time being due to COVICD 19 , and do not know when it will re-open.

Will inform to proceed with delivery immediately once thing settle down.

Email dated 20.3.2020 timed at 17.03 (consumer to trader)

Hi Philippa, I just talked with my boyfriend that I previous that these would be happen.

I totally understand. Here in Madrid we almost closed for everything.

Keep me update please.

I hope that the situation in Malta stay under control.

Best wishes

Juliana

Emailed dated 12.5.2020 timed at 10.12 (trader to consumer)

Hi Juliana,

Hope all is well.

Kindly note that storage charge from 19.03 till yesterday is EUR 155. Consider an additional Eur 3.50 for each additional day till goods are delivered at ground floor level at consignee. Please proceed with payment attached our bank details, kindly advice once done so we proceed with the delivery as per above agent is charging storage charge daily.

Thanks Pippa

Email dated 13.5.2020 timed at 09.13 (consumer to trader)

Hi Philpa, Everything is fine.

I don't understand why you are cover me extra expenses if I don't have any fault about the late on delivery. I am not responsible for this once I was here in Spain since 16th March waiting for the delivery. The Pandemic restrictions rules and the lock boarder's is also not my fault. In my opinion, I already pay for the service since the collect day. So, I received a call from Madrid saying that I need to pay Italy. I am not contract the service to Italy, I contract you and I already pay. Please dissolve this problem quickly because I am still waiting for my personal belongs.. Regards Juliana Gadelha

Emailed dated 13.5.2020 timed at 9.18 (trader to consumer)

Hi Juliana

I have asked my agent already if this charges can be waived, this is not our charge but the agent in Madrid, will ask again and see if they can at least give a discount but they will not release cargo before this is settled as we are being invoiced for the storage charges.

Thanks Pippa

Emailed dated 14.5.2020 timed at 16.49 (trader to consumer)

Dear Juliana,

As per below mail from our agent they can not waive the charges but offered a discount.

QUOTE

Kindly note that unfortunately will not be waiving off storage costs and charges still remain

Goods have been stored in Madrid warehouse since 19.03.

What we can offer from our side to help is a discount on this, based as a commercial decision in view of our business relationship.

Till Monday 18.05, storage charge is Eur 112.50

UNQUOTE

Once funds are received we shall proceed with the delivery.

I'm sorry about this as I do understand you but please note this is not a charge we did but our agent is charging for the storage.

Thanks & Regards Pippa

Email dated 14.5.2020 timed at 18.49 (consumer to trader)

Hi Philippa,

Ok. I am not satisfied with this disclosure, but as I want to recovery my personal belongs, I will pay, but to do this, I still need an invoice with the all information that I mentioned on my last email. Please, revise.

Anyway, at the end of this novel, I will proceed with the legal process to recover this amount, once I strong believe that I am right.

Just to reafirm, I am in Madrid since 2nd March and we scheduled the delivery for 16th March, so if the stuffs arrived in Madrid on 19th March, I don't understand why they don't delivered?!!! One more prove that the only part that not follow the contract terms we're them.

So, now I am waiting for the invoice with all the values and vat info with the Italian or Spanish company to proceed with the transference.

Regards

Juliana Gadelha

Emailed dated 14.5.2020 timed at 19.38 (trader to consumer)

Dear Juliana,

Please find attached invoice and our bank details, storage would be paid until Monday so once you forward proof of payment we shall instruct agent to deliver cargo.

Kindly note I really do understand you and I did push to waive the charge with the agent but once they refused I had no choose but to invoice you as agent are invoicing us for the rent, you know me I really try to make sure I give a good service and keep the client I happy and with the Covid personally I think people should be more understanding with every once finance situation but from the agent side for them it is business and space was taken warehouse.

I have requested them to forward the documents you require.

Thanks & Regards Pippa

Emailed dated 14.5.2020 timed at 20.30 (trader to consumer)

Thanks for understanding that I was on your side

From the beginning when they mentioned storage rent I fought not to be charged as this was a circumstance that surely was not your fault you were always ready to accept the delivery.

But as you said humanity has changed so much, were at this moment so many people are passing through bad situations losing their jobs / working less you would think that people would be more understanding and have more of a heart like us but some people think only business money as you said.

Thank you & I will make sure they send me the proof of storage in Madrid so hopefully you claim back and you receive full refund.

Take care & Best Regards Philippa

Findings of Fact based on the relevant communications between the parties

I find as a fact that the contract was concluded at 13.21 on 24th February 2020 upon the terms set out in the trader's email dated 24th February 2020 timed at 13.02 and subject only to the consumer's term that the goods must leave her apartment by 28th February 2020. I understand the goods were collected before 28th February 2020 so no issue arises from this.

The significance of this finding is that the trader is contractually bound to perform the contract in accordance with the terms agreed by the consumer at 13.21 on 24th February 2020 (as varied by the consumer's term) and the consumer is contractually bound to pay the trader's charges agreed by the Consumer at 13.21 on 24th February 2020.

I also find as a fact that the service provided by the trader to the consumer *was subject to MIFA Standard Terms and Conditions* which were incorporated by reference when the trader express term that **** The carriage of goods is subject to MIFA Standard Terms and Conditions.*

See *Olley v Marlborough Court Hotel [1949] 1 KB 532* which established that for a term to be considered incorporated into a contract, notice of that term must be given before or during the time of contracting.

I also find as a fact that delivery to the consumer on 12th March 2020 was not a contractual term because this date was given to the consumer after the contract was concluded and expressed as an indication only subject to when the cargo departs. The consumer states in her complaint form that the predicted date for delivery was 16th March 2020. I am not sure whether she is correct about the dates but nothing turns on this other than there was no contractual delivery date.

I find as a fact that the consumer paid the trader EUR 112.50 on or before 14th May 2020.

Information provided by the trader following reference to ADR

Following reference to ADR, I asked the trader to provide further information about their case. By email dated 1st July 2020, I made the following request for information:-

- 1. Please kindly provide evidence of the EUR 112.50 charge for 'ware housing rent' in the invoice to the consumer dated 14th May 2020. This evidence might be a Third Party invoice or remittance advice, bank statement or any other evidence showing the amount paid or charge incurred by your company.*
- 2. Please clarify precisely which term under the MIFA Standard Terms and Conditions you rely upon as the basis for the invoice to the consumer dated 14th May 2020.*

In the complaint summary form, you rely upon clause 13 (iv) L. If this is correct you should confirm that you have read the clause and specifically confirm that you would like us to adjudicate upon this clause as the basis of the invoice to the consumer.

The trader's response to my request for further information

The trader responded by emailed dated 8th July 2020 in which the trader supplied copies of email communication passing between the trader and their agents. The trader also provided a copy invoice from DSV S.P.A to Eurobridge Shipping Services Limited which shows the consignee as the consumer.

The invoice is dated 30th May 2020. The due date is shown as 31st July 2020.

The description of the invoice reads;

Storage costs from 19th March 2020 to 18th May 2020 in the sum of EUR 90.00.

I have considered the email communication passing between the trader and their agents which I have been referred to by the trader. The relevant communication, I have set out below;-

Email dated 12th May 2020 timed at 2.56 PM (Eurobridge to the trader)

Hi Philippa,

Agent received the below

QUOTE

"Ms. Juliana just called me now, asking to deliver tomorrow or Thursday and she and her family will open the palet in order to carry it to the floor by themselves, so no need of help-person in this way"

UNQUOTE

Please advise if any payment was made and confirm how to proceed

Thanks

Emailed dated 13th May 2020 timed at 9.50 AM (trader to Eurobridge)

Please find another mail just received from my client.

QUOTE

I don't have any intention to pay nothing. You cannot cover to me the Pandemic costs. I contract a service and pay on the first dsy and they delivered the package in Madrid since 29th March, so why they are cover expenses since today ! So, they could keep the stuff to them. I don't care. I don't have to pay nothing.

Regards

Juliana Gadelha

UNQUOTE

Please check if charges can be waived with your agent.

Thanks

Email dated 14th May 2020 timed at 16.17 (Eurobridge to the trader)

Good afternoon Philippa,

Hope you are well

Kindly note that unfortunately agent will not be waiving off storage costs and charges still remain

Goods have been stored in Madrid warehouse since 19.03 which is quite some time.

What we can offer from our side to help is a Eur 15 discount on this, based as a commercial decision in view of our business relationship.

Please note that as per below Eur 2.50 will be incurred

Will await from your side

Thanks

Email dated 14th May 2020 timed at 16.42 (Eurobridge to the trader)

Hi Philippa,

Till Monday 18.05, storage charge is Eur 112.50 (including discount of Eur 15)

Please advise

Thanks

Emailed dated 14th May 2020 timed at 19.24 (trader to Eurobridge)

Hi,

Please find below mail from the client requesting the below documents, kindly forward.

QUOTE - Proof of claim from the storage/stowage company to WEL

- Service ticket with the daily storage fee and overall costs to justify those charges. Including the name of the storage/stowage company and its VAT number.

I need the invoice with all the expenses details by days (once that the delivery to Madrid already done since 29th March) and seems that Madrid didn't asking for extra pays only Italy. I need these because I will claim this expenses in the future, after receive my personal belong at European Commission platform claims.

Waiting for resolution

UNQUOTE

Thanks to roved the above as earliest possible so we settle this situation.

Regards Pippa

Emailed dated 15th May 2020 timed at 08.03 (trader to Eurobridge)

*Dear, you may proceed with delivery imporant to forward the requested documents for my client
Thanks Pippa*

Emailed dated 18th May 2020 timed at 10.42 (trader to Eurobridge)

Good morning,

Please adivse when delivery is planned for as client has paid till today.

Also please forward all the below requested documents

- Proof of claim from the storage/stowage

- Service ticket with the daily storage fee and overall costs to justify those charges. Including the name of the storage/stowage company and its VAT number.

I need the invoice with all the expenses details by days (once that the delivery to Madrid already done since 29th March) and seems that Madrid didn't asking for extra pays only Italy. I need these because I will claim this expenses in the future, after receive my personal belong at European Commission platform claims.

The above documents are very important as client is forwarding to the lawyer.

Thanks & Regards Pippa

Email dated 20th May 2020 timed at 08.38 (Eurobridge to the trader)

Good morning Philippa,

Hope you are well

Kindly note that goods were delivered yesterday

Waiting for documentation and further info from agent. Once in hand will forward immediately

Thank

Email dated 28th May 2020 timed at 11.10 (Eurobridge to the trader)

Good morning Philippa,

We have been advised that invoice will be available between tomorrow and Monday, since such invoices are issued at the end of the month

Pressuring them to send it immediately

Thanks

Email dated 29th May 2020 timed at 15.36 (Eurobridge to the trader)

Good afternoon Philippa,

Kindly note that unfortunately invoice will be available by Wednesday 03.06

Tried pressuring them to send it but to no avail, as invoices are issued via their system.

Will keep you updated

Thanks

Emailed dated 29th May 2020 timed at 10.42 (trader to Eurobridge)

Hi Dear,

Have you told them that this a an EU Complaint which has a time frame given for us to reply, im sure an invoice can be issued before we all know how invoices are issued.

Thanks for your help as I know its not from your part.

Regards Pippa

Email dated 3rd June 2020 timed at 13.37 (Eurobridge to the trader)

Good afternoon Philippa,

Please find attached requested invoice from our agent.

They are charging us Eur 90 instead.

Kindly note that an invoice of said amount will be issued on your account.

Tanks!

Findings of Fact based on the relevant communications between the trader and their agents

I find as a fact that the storage charges to the trader amount to EUR 90.00. The storage charges were incurred between 19th March 2020 to 18th May 2020.

I also find as a fact that the invoice to the trader (or trader's agent) for the storage charges was raised on 30th May 2020. I accept what the trader tells me that the invoice from the agent in Italy who charged the trader's co loader. From this I assume the co loader to be Eurobridge Shipping Services Limited.

I find as a fact that the consumer's goods were stored in a warehouse in Madrid from 19th March 2020. I have not been informed, nor have I been able to ascertain, why the consumer was not allowed to make alternative arrangements to collect her belongings. The only information I have been able to ascertain from the communication between the parties is that the *delivery place* is closed (See Email 20th March 2020 from the trader to the consumer).

I have not been informed of the contractual arrangements between the trader and their delivery agents. I have not been able to ascertain how, if the delivery place is closed, a charge can be raised by the trader's agents for being closed. I have not been showed any communication between the trader and their agents prior to 12th May 2020.

I find as a fact that the goods were released to the consumer for delivery after 8.03 AM on 15th May 2020. On the basis of the above facts, and from my findings from the communication between the trader and the consumer, I find that the trader sought and obtained payment of EUR 112.50 from the consumer on or before 15th May 2020 before storage charges were billed to the trader in the sum of EUR 90.00 on 30th May 2020.

The trader's legal basis for the EUR112.50 billed to the Consumer

In relation to my request dated 1st July 2020 for the trader to clarify which clause was relied under MIFA Standard Terms and Conditions as the basis for the invoice to the consumer dated 14th May 2020, the trader stated that they had highlighted yellow the relevant clauses on page 11/12 of the conditions attached to their email response.

I set out below the clause and wording highlighted yellow;

(Clause 13) **LIABILITY AND LIMITATION OF LIABILITY**

The Company shall not incur any liability whatsoever for claims arising from:

any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

This clause does nothing more than limit the liability of the trader if a claim was presented by the consumer against the trader for any cause (see below under conclusion). It is the trader who has presented a claim against the consumer. The trader **claims** EUR 112.50 and has presented an invoice in the sum dated 14th May 2020. The fact that the consumer has paid the invoice amount and has now made a *claim* in legal proceedings for re-payment of EUR 112.50 does not mean she is precluded from

bringing the claim in legal proceedings under the clause relied upon by the trader because what we are concerned about is the legal basis under which the trader has claimed EUR112.50 from the consumer in the first place. It's the *claim* by the trader which is the relevant consideration not what the consumer *claims* in legal proceedings which have followed. This is a misunderstanding on the part of the trader.

Whilst it is no part of my function to act as advocate for any party it seems to me that the trader may have better justified the claim for reimbursement of storage charges under clause 4 v. or clause 9 (i) (h) or possibly clause 14 of MIFA Standard Terms and Conditions.

I say *may* because on the date the trader raised the invoice for EUR 112.50 on 14th May 2020, there was no corresponding charge until 30th May 2020 when the trader was billed EUR 90.00. I do understand that the storage had to be finalised with delivery to the consumer before an invoice could be raised for the amount of storage due but this does not justify an invoice to the consumer in excess of what is allegedly due in any event. To put this another way, on 14th May 2020, the trader had no legal basis for the EUR 112.50 charge to the consumer.

If there was no legal basis for the EUR 112.50 then any *lien* which the trader could have claimed under clause 15 of MIFA Standard Terms and Conditions for this amount must be an *unfair* contractual term within the meaning of section 62 of the Consumer Rights Act 2015.

Section 62 (4) states;-

(4)A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

Clause 15 is not fair in the circumstances of this case. If the term is unfair, the term cannot be relied upon by the trader. In my view, the trader was wrong to raise and invoice EUR 112.50 on 14th May 2020 and it was unfair not to release the goods to the consumer before payment of these charges. The trader has not, as far as I am aware, returned the EUR 22.50 overpayment billed to the consumer.

Conclusion

In conclusion on the one side, the trader has billed the consumer the wrong amount, at the wrong time and on the basis of incorrect provisions of the contract between the parties. On the other side, there is clearly an invoice for storage charges in the sum of EUR 90.00 and it clear that the trader would have been entitled to an indemnity under one or more of the MIFA Standard Terms and Conditions.

I accept that the trader has essentially been *caught in the middle* in circumstances of the coronavirus pandemic which no one could have foreseen, however, I find on balance that the trader should have acted differently and I therefore reject the claim by the trader for the amount of EUR 112.50. I find this was an improper charge.

The reason why I have decided to take this approach is because I believe that the consumer was billed in substance for the delivery agent being closed. The storage in Madrid was neither requested nor wanted. If anything, the consumer has a proper claim for her being denied access to her possessions during the period the delivery agent being closed although this might be precluded by clause 13 of MIFA Standard Terms and Conditions.

This means if the charges for the local delivery agent being closed are improperly raised against the consumer then the same applies to the invoice to the trader. I have deliberately ensured this decision is made available to the parties before the due date of the invoice to the trader shown as 31st July

2020. This is to enable the trader to form their own opinion on the validity of the charge which has been described as storage charges but which in essence relate to charges by the delivery agents in not being able to carry out their function because of the coronavirus pandemic.

ORDER

IT IS HEREBY ORDERED that the Trader pay the Consumer the sum of EUR 112.50 within 14 days of the date hereof.

Date 23rd July 2020



Signed

Mr Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited



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