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Update on the District Court's decision on a motion to cancel leave for service outside of the jurisdiction

On February 20, 2019, the Hon. Judge Merav Ben-Ari of the District Court (Central-Lod) rendered a decision on the Respondent's motion requesting the cancellation of leave granted for service outside of the jurisdiction in **Class Action 45354-02-18 Hirshfeld v. Traveljigsaw Limited**.

The Applicant, Hirshfeld, filed a motion to certify a claim as a class action against the Respondent, Traveljigsaw Limited, a British company which operates the website Rentalcars.com (hereinafter: the "**Website**"). The Website allows users from around the world to view car rental options which are published by car rental companies in 180 countries.

According to the Applicant, he used the Website to reserve a rental car at the Zurich airport from the Enterprise Rent-A-Car company. During the reservation process, and pursuant to the Respondent's request, the Applicant entered his flight details so that flight delays could be tracked which would impact the collection time of the rental car. The Applicant also paid the rental fee in its entirety in advance.

On the scheduled date for the collection of the rental car, the Applicant's flight was delayed which resulted in his delayed arrival at Enterprise's counter. Enterprise told the Applicant that it could not provide a vehicle to the Applicant because all of the company's vehicles were provided to other customers – and this despite the fact that the Applicant entered his flight number in the framework of the reservation. Consequently the Applicant rented a car from a different car rental company.

The Applicant argued that during the reservation process the Respondent created a false

representation that providing the flight details would enable the tracking of the flight and information on delays so that the car rental company could know to wait for the customer. According to the Applicant, the Respondent's false representation constitutes a breach of the Israeli Consumer Protection Law.

The Respondent filed a motion to cancel the leave which was granted for service outside of the jurisdiction which the Court rejected **for the following reasons:**

The requirement was satisfied under regulation 500(4)(a) of the Civil Procedure Regulations which provides that the "contract was executed within the territory of the State". The offer was sent from a computer located in Israel and the acceptance was executed by the delivery of the voucher and the email confirmation to the Applicant's computer in Israel. Thus, the contract was created in Israel.

The requirement was satisfied under regulation 500(7) of the Civil Procedure Regulations which provides that the "claim is based on an act or omission within the territory of the State." This finding was based on the approach in the case law which provides that advertising on a website which is directed to the Israeli public is considered to be an "act or omission" carried out within the State.

With respect to the Respondent's argument that the Israeli law does not apply due to the choice of law clause, the Court held that it could not be established that the sentence included in the terms of the Applicant's reservation constitutes a choice of law clause, and further, it was also not clear whether it was sufficiently brought to the customer's knowledge. In any event, the Court established that at the motion stage of the proceeding it was not appropriate to adjudicate the foreign law question in detail and the issue would be clarified during the trial.

The Small Claims Court in Jerusalem established that a reservation on the website for a nonrefundable transaction on Booking.com could be cancelled in accordance with the provisions of the Consumer Protection Law

On March 11, 2019 the Senior Registrar Avigail van Creveld rendered her judgement in the Small Claims Court matter 16299-11-18 Weiss v. Tinko Ltd. (Booking.com was not a party in the proceeding).

On December 4, 2017, the Plaintiff Mr. Weiss made a reservation through the website Booking.com (hereinafter: "**Booking**") for a hotel room in January 2018. Already at the reservation stage a message on the website stated with regard to the transaction: "low rate no money back". The Plaintiff completed his reservation at 2:17. The reservation confirmation provided that payment would be made directly to the hotel and indeed the invoice that was sent to the Plaintiff was the hotel's invoice and not one from Booking.

A few minutes after completing the transaction, the Plaintiff cancelled the reservation and he received a confirmation on the cancellation from Booking which explained to the Plaintiff that in accordance with the cancellation policy as stated at the time of the reservation the Plaintiff was not entitled to a refund but that Booking would contact the hotel in order see if it would be possible to make an exception to the cancellation terms in this case. Approximately one month later the Plaintiff contact the hotel requesting to cancel the reservation and the hotel denied this request.

The Plaintiff filed a claim against the hotel for the cancellation of the transaction and a refund. In his claim he argued that he erred in tying his selection during the reservation when he selected a single room instead of a double room. He argued that the transaction was a distance sale transaction pursuant to section 14C of the Consumer Protection Law 5741-1981 (hereinafter: the "**Consumer Protection Law**") which can be cancelled within 14 days from the time when the reservation was carried out. In any event, the cancellation was executed merely five minutes after the reservation was completed, thus no damage was caused to the Defendant. Accordingly, the Plaintiff argued that he was entitled to a refund as well punitive damages of NIS 10,000 pursuant to the Consumer Protection Law.

The Defendant argued that the claim should be dismissed because of the Plaintiff's lack of a cause of action and/or privity since the reservation was made and cancelled through Booking to which the Plaintiff should direct his claims. The Defendant further argued: in any event the Consumer Protection Law does not apply to the circumstances of the case; and that on the date of the Plaintiff's scheduled stay the Defendant received a message from Booking on the Plaintiff's expected arrival and accordingly the room that the Plaintiff reserved was saved for him; and that in accordance with the terms of the reservation - terms which Booking established - the reservation was not refundable due to its reduced price.

The Court rejected the Defendant's argument mentioned above on the reservation and cancellation being done through Booking without the Defendant knowing about the cancellation until the time when the Plaintiff was scheduled to begin his stay. The Court rejected this argument based on the finding that Booking contacted the Defendant just two days after the cancellation of the reservation (within the 14 day period under the Consumer Protection Law) in an attempt to cancel the reservation. It also arises from this fact that the relevant cancellation policy in this case is the Defendant's cancellation policy – which in practice refused to permit the cancellation notwithstanding the fact that Booking did not object.

The Court also rejected the Defendant's lack of privity argument since there was a direct representation or a kind of implied contract between the Plaintiff and between the Defendant for the following reasons: the funds were transferred directly to the hotel and

the invoice for the transaction was issued by the hotel to the Plaintiff; the Defendant's representative who came to the trial proceeding is Booking's representative at the hotel resulting in an "equivalence" between the parties on this issue. On this point the Court also stated that the Defendant, not Booking, established the cancellation terms and that further the Defendant abstained from filing a third party notice against Booking.

The Court also gave weight to the fact that the service was provided in Israel and that it was correct to allow the circumvention of the territorial and mandatory provisions of the Consumer Protection Law notwithstanding the Plaintiff's waiver of the cancellation right.

Accordingly, the Court, pursuant to section 14 of the Consumer Protection Law, ordered the cancellation of the transaction and the Defendant's refunding of the cost of the transaction minus a NIS 100 cancellation fee (as provided in the Consumer Protection Law). The Court also ordered the Defendant to pay the Plaintiff's legal costs of the proceeding.

The Court denied the Plaintiff's request for the awarding of punitive damages because it stated that the Plaintiff failed to prove that the Defendant received the demand letters that he sent before the filing of his claim. The Court also rejected the filing of punitive damages because the matter was an honest legal dispute and not a clear and intentional breach of the provisions of the Consumer Protection Law.

Sincerely,

Fischer Behar Chen Well Orion & Co

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