



SMALL CLAIMS TRIBUNAL

ADJUDICATOR
DR JOHN BONELLO, B.A., LL.M.(IMLI), LL.D.

Sitting of Monday, 27 th June, 2016

Case Number: 1701/2010JB

Number: 1

Link Projects Limited (C17938)

vs

Suzanna Hayes

and by virtue of a decree of the 28th April 2016

**Dr Victor J. Bugeja was appointed Deputy Curator to represent Suzanna Hayes,
and by virtue of a decree of the 13th June 2016 Suzanna Hayes assumed
the acts of the case instead of the said Deputy Curator**

The Tribunal,

Having seen the Notice of Claim filed by Plaintiff Company on the 6th December 2010 whereby they demanded that Defendant be ordered to pay the sum of one thousand seven hundred and eighty two euro and fourteen cent (€1,782.14) which sum represents balance in price of materials supplied and labour in relation to decking works carried out in premises at Hal-Lija by Plaintiff Company on Defendant's request, with costs and interest;

Having seen that the case was put for hearing for the sitting of the 16th February 2011 (a fol 3);

Having seen the reply filed by Defendant on the 23rd May 2011 (a fol 47) whereby, she pleaded as follows:

1. The claim is unfounded in fact and at law as the decking supplied and installed by Plaintiff Company is of poor quality and not fit for the use for which it was required;
2. Without prejudice to the foregoing, that the amount being claimed is excessive;
3. Plaintiff is availing herself of this procedure to file a counter-claim.

Having seen the counter-claim filed concurrently with Defendant's reply (a fol 48) whereby she requested the Tribunal to order Plaintiff Company to pay the sum of two thousand two hundred and twenty-six euro and ten cent (€2,226.10) which sum represents a partial payment made by Defendant to Plaintiff Company on account of decking supplied and installed at Hal-Lija, with interests and costs;

Having seen the reply filed by Plaintiff Company on the 13th June 2011 (a fol 50) whereby, they pleaded:

1. That the premises and nature of the claim put forward in Defendant's counter-claim presuppose the repudiation of a contract of works existing between the Parties and therefore its termination. In view of the foregoing, the counter-claim cannot be acceded to as this would entail an examination of the transaction of the *negotium* between the Parties which examination falls beyond the competence of this Tribunal;
2. Without prejudice to the foregoing, the claim is unfounded in fact and at law;
3. That the material supplied by Plaintiff Company is intended for outdoor use;
4. That works have been properly performed by Plaintiff Company.

Having heard the evidence;

Having considered the final oral pleadings;

Having taken cognisance of the records of the case;

Having considered;

By means of this action, Plaintiff Company is demanding that Defendant be ordered to pay the sum of €1,782.14 which sum represents balance of price of materials supplied and labour in relation to decking works carried out by Plaintiff Company on Defendant's request in premises at Hal-Lija. On her part, Defendant is stating that Plaintiff Company's claim is unfounded in fact and at law as the decking *de quo* is of poor quality and not fit for the use for which it was required. She is also pleading that the amount claimed is excessive and has also set up a counter-claim whereby she requested the Tribunal to order Plaintiff Company to pay the sum of two thousand two hundred and twenty-six euro and ten cent (€2,226.10) which sum represents partial payment made to Plaintiff Company on account of the works. Plaintiff Company is rebutting the counter-claim by stating that the nature of the counter-claim falls beyond the competence of this Tribunal, that the claim is unfounded in fact and at law; that the material supplied by Plaintiff Company is intended for outdoor use; and that works have been by executed properly.

Having considered;

Mandy Balzan testified (a fol 56) and stated that Plaintiff Company had installed *circa* 30m² of decking at Defendant's residence. She confirmed the amount claimed and confirmed that the installation was completed in August, 2009. Following the installation, Defendant complained that in the course of the installation, a product intended for interior use had been applied to the decking. Ms Balzan explained that Defendant was under a wrong impression

and explained that cans found by Defendant in her resident were re-used as the oil comes in large containers that are impractical for use and therefore contents is poured in smaller (reused) containers. Defendant subsequently complained that she was not satisfied with the work and refused to pay the balance of price. When she took the stand again (a fol 74), Ms Balzan confirmed that iroko material such as that used in Defendant's premises was still being used by Plaintiff Company despite Defendant's allegations to the contrary.

Perit David Vassallo testified (a fol 6) and explained that he was the perit responsible for the works, acting for Defendant. He confirmed that the decking supplied was suitable for outdoor use. He said that Defendant had contacted him and informed him that she was not satisfied with the finished product. He said that following further interventions by Plaintiff Company, he could confirm that the finished product was acceptable.

Chris Guercio, installer with Plaintiff Company also testified (a fol 76) and explained how the works had been carried out. Ray Azzopardi, another employee with Plaintiff Company testified (a fol 90) about the exchanges he had with Defendant after the installation of the decking.

Defendant testified (a fol 102) and confirmed that Perit David Vassallo had overseen the works. She said that it had been agreed that iroko wood would be used following discussions with Plaintiff Company. She said that she was not satisfied with the works and lodged a complaint with Plaintiff Company while exhibiting several emails in support of her claims.

Robin Jagers testified (a fol 169) and said that around a year after the material had been installed he had met Perit Mifsud Parker and asked him to inspect the decking. He recalled that the perit had opined that the only solution was that the decking would be replaced as it was in a very bad state. He explained the interventions he had done to restore the wood while acknowledging that his experience is limited to a few projects.

Perit David Mifsud Parker testified (a fol 172) and confirmed that Robin Jagers had asked him to inspect the decking. He said that iroko can only be used outdoors once treated. Under cross-examination he said that a composite material would be better for decking than iroko, which is a solid material.

Matthew Calascione testified (a fol 255) and explained the procedure that was followed for the installation.

Having Considered;

From the records of the case, it is clear that Defendant had specifically asked for iroko wood which is a natural material and (as Perit Mifsud Parker has stated) unlike a composite material, may be subject to change. Needless to say that this will affect the general appearance of the finished product. As to the products used in the installation and, in particular, the oil used, it is clear that the liquid was put in a reused can but there is no reason to doubt that the contents were suitable for the material that had been laid.

The Tribunal had the opportunity to consider the evidence put forward by the Parties and is of the view that while the finished product may not be acceptable for Defendant, there is no doubt that Plaintiff Company has laid the product that had been ordered. In this context, the Tribunal is of the view that the first and second pleas raised by Defendant ought to be

rejected. On its part, Plaintiff Company (through the evidence given by Mandy Balzan) has confirmed the amount due and there is no reason for the Tribunal not to uphold the claim.

Having Considered;

In view of what has been stated with regard to the principal claim, there is no basis for a refund and consequently the counter-claim made by Defendant ought to be rejected as it is unfounded in fact and at law.

For these reasons, the Tribunal hereby decides this case by rejecting Defendant's pleas, upholds the claim put forward by Plaintiff Company and consequently orders Defendant to pay the sum of €1,782.14 with interests from date of service of the notice of claim. In view of the foregoing, rejects the counter-claim put forward by Defendant while upholding Plaintiff Company's pleas. Expenses are to be borne by Defendant.

Dr John Bonello
Adjudicator

Adrian Pace
Deputy Registratur