



IN THE SMALL CLAIMS TRIBUNAL
ADJUDICATOR: DR PHYLLIS AQUILINA LL.D.

Sitting of Wednesday 30th November, 2016

Claim Number: 606/2012PA

ECO Group Ltd

vs

O'Reilly Michelle

The Tribunal,

Having seen the Notice of Claim filed on 4th September 2012 in virtue of which Plaintiff Company requested this Tribunal to condemn Defendant to pay the sum of two thousand eight hundred and twenty six Euro and ten cents (€2,826.10c) representing the price for various works and services which Plaintiff Company executed on Defendant's instruction, duly accepted on her part, as evidenced in the annexed invoices, marked as Doc.'EC1' to Doc.'EC3'. With costs and legal interest against Defendant.

Having seen the invoices marked Doc.'EC1' to 'EC3', dated respectively 29th July 2011 for €2839.50c, 15th Novembru 2011 for €141.60c and 15th March 2012 for €295.

Having seen the Reply with Counter-Claim which Defendant filed on 28th September 2012 in virtue of which Defendant pleaded that: (1) the Claim is unfounded and should be rejected as no sum is due on account of the fact that the works executed were not properly carried out, as will be proved in the course of the proceedings; and (ii) Defendant incurred damages as a result of the works which Plaintiff Company executed, and is therefore filing a counter-claim in that respect. In her Counter-Claim, Defendant requested this Tribunal to condemn Plaintiff Company to pay her the sum of three thousand four hundred and ninety four Euro and six cents (€3,494.06c), or a different sum, due by way of damages caused as a result of Plaintiff Company's failure to execute the contracted works according to the applicable standards. With costs, including those of the legal letter dated 22nd April 2012, against Plaintiff Company.

Having seen Plaintiff Company's Reply to the Counter-Claim wherein Plaintiff Company pleaded that this Tribunal shall reject Defendant's Counter-Claim because it did not cause any damages to Defendant as a result of the works executed, and that said works were properly carried out according to the applicable standards.

Having considered the extensive evidence produced in the course of these proceedings.

Louis Borg, a representative of Plaintiff Company, testified that Plaintiff Company provides services in relation to renewable energy and related materials. He explained that Defendant, and her engineer Paul Vassallo, had instructed his company to execute extensive works at her villa Mariner, Triq Santa Klara, Baħar iċ-Ċagħaq. These works included underground insulation, hydro-floor heating, installation of a gas boiler, chlorifier, storage tank and ancillary works. He declared that works were executed by 2007, and Defendant settled the price due therefor following certification by her engineer Paul Vassallo. The works contract included a two-year free maintenance engagement, but Plaintiff Company had actually not charged for maintenance works which it carried out over five years on the works executed at Defendant's villa.

Louis Borg explained that, at the time when these works were carried out, MRA was not yet set up. When MRA was set up, and started enforcing legislation on LPG, Defendant instructed engineer Fabio Stivala to certify her system. The witness exhibited this certification report as Doc. LB1¹, which however is neither signed nor authenticated. He also exhibited email correspondence between himself, Defendant, engineer Vassallo and engineer Stivala, as well as Defendant's response to Plaintiff Company's request for payment².

Louis Borg declared that Plaintiff Company had carried out the works listed in Invoice 'EC1', and then in November 2011, Defendant requested repair services for the chlorifier. According to the witness, the problem was coming from the water purifying system, because it was not sufficient to purify the water that was going in. He reported that when he opened up the chlorifier, he found 30cm of sediment.³ According to the witness, on 3rd March 2012, Defendant asked Plaintiff Company to remedy the dislocation of solar panels following a storm. By then, Defendant showed unwillingness to settle the pending invoices, so Plaintiff Company decided to carry out the day's work⁴, and cease, until settlement.

With reference to Defendant's counter-claim for damages, Louis Borg declared to have heard about this claim for the first time when Plaintiff Company was served with the Notice of Reply and Counter-Claim. He reported that Plaintiff Company was called several times to adjust the settings of the boiler because Defendant had not given it enough gas to function, and it would shut off as a precaution. All such services were given free of charge.

Defendant **Michelle O'Reilly** confirmed on oath that in 2005, she had instructed Plaintiff Company to carry out works of underfloor heating, solar water heating, gas storage system and water storage system in her villa, for the price of €35,000, which she

¹ Fol. 20-27

² Doc. LB2, fol. 28-31

³ Doc. EC2, fol. 4

⁴ Doc. EC3, fol. 5

settled in full. She explained that she had chosen Plaintiff Company to provide her these services on the advice of her engineer, Paul Vassallo, who had obtained quotations for his specifications from different companies. She testified that works started functioning around April 2007, when she and her family settled into the premises. She further declared that her engineer Vassallo had certified all these works to have been installed and working in good order⁵.

Defendant however complained that the solar water heater was not functioning efficiently, and had to run on electricity.

With reference to the invoices exhibited with the Notice of Claim (fol. 3), plaintiff confirmed that, despite being dissatisfied with Plaintiff Company's services because of problems with the underfloor heating system, she had instructed Plaintiff Company to carry out the works therein listed on the advice of engineer Fabio Stivala, whom she instructed to certify the system for MRA compliance. Plaintiff Company had carried out these works, and engineer Fabio Stivala certified them.

Defendant then mentioned an incident of a gas smell in her daughter's room, which happened following the execution of said works. She said that she spoke to her engineer, who communicated with Louis Borg and asked why the alarm had not gone off to signify the smell of gas. She reported that the gas chamber was found to be full of water, and that sealing works had to be carried out to close off a gas leak from the house. She further reported that the water storage system had broke down at that same period, and that Louis Borg refused to carry out a pressure test requested by her engineer.

Defendant claimed to be refusing to pay invoices exhibited as Doc.'EC2'⁶ and Doc.'EC3'⁷ because the works therein listed were never carried out, as Louis Borg for Plaintiff Company refused to execute them before she settled the outstanding invoice.

⁵ Fol. 40

⁶ Fol. 4

⁷ Fol. 5

Defendant declared that she had then instructed another company to replace the water storage tank, and also to repair the gas system. According to Defendant, this other company found two very big leaks, and had to replace the gas system.

In her second testimony⁸, **Defendant Michelle O'Reilly** explained that she had the advice of Engineer Paul Vassallo regarding the underfloor heating, and the water heating, at her house. She complained that there are 22 pipes going through the roof of her daughter's bedroom and another 22 pipes going through the flooring of the same room, rendering this room a sauna.

Defendant further complained that the water tank broke down in November 2011, and Plaintiff Company quoted them a price of €4,000 to replace this tank, which she considered as too expensive.

Defendant declared that Plaintiff Company would attend every year at her home to initiate the heating system, and Plaintiff Company billed her for that service, and other replacements done for parts which stopped functioning. She lamented that the thermostats regulating the heating of rooms never worked properly. She further lamented that then MRA required upgrades; she said she was reluctant to instruct Plaintiff Company to carry them out, but was advised to do so in view of the fact that it had installed the original system.

Defendant further complained that, although MRA's Engineer Stivala had certified this upgrade, no pressure test was carried out.

Defendant registered that when she instructed a new company to resolve the gas leak problem, because she was not convinced of Plaintiff Company's recommendation, she asked that a pressure test be conducted and two leaks were found, one in the main gas supply system, and another in the supply of gas to the fireplace.

⁸ 19.12.2015, fol. 107-110

Defendant declared that this new company quoted for a new gas pipe because the leak could not be fixed, the fixing of a new pipe through the ceiling and into the fireplace, the installation of 30 vacuum tubes solar collectors to render the solar heating system sufficiently productive, and a new chlorifier (when according to Defendant, it could have been replaced under guarantee).

Defendant declared that Plaintiff Company had not done the works for which it invoiced through Doc. 'EC2' and Doc. 'EC3' – she remarked that no repairs whatsoever were carried out on the panels, nor on the boiler, although she claimed that Louis Borg had informed her that invoice Doc. 'EC2' covered the works executed in connection with the thermostats.

Defendant confirmed that Engineer Vassallo was continuously advising her regarding these works, but she claimed that he was not in a position to assess the output efficiency of the solar panel system.

Defendant exhibited the initial bills of quantities and communications regarding the original works⁹, a quotations for works issued by 'M & E Installations' on 20th April 2012¹⁰, and Plaintiff Company's request for payment and invoice¹¹. Defendant also exhibited the legal reply sent on her behalf dated 2nd July 2012¹² in response to Plaintiff Company's claim for payment.

Under cross-examination, Defendant Michelle O'Reilly clarified that Engineer Paul Vassallo had prepared and issued the bill of quantities after consulting her. She also declared that she had signed no maintenance agreement with Plaintiff Company. She could not recall that Louis Borg for Plaintiff Company had on various occasions informed her that the filtering system was not being maintained. She however confirmed that, on some occasions, they had failed to fill the gas tank with gas although, according

⁹ Doc. MO1 to Mo7

¹⁰ Doc. MO8, fol. 131-132

¹¹ Doc. MO9, fol. 133-134

¹² Doc. MO10, fol. 135-137

to her, that was not the cause of gas smell in the regulator. She also confirmed that, on one occasion, she had called the Fire Brigade, and at the same time called Louis Borg, although she claimed she did not do so because she held him responsible for the fire.

Michelle O'Reilly confirmed that Plaintiff Company had put expansion foam to block the gas smell when the first gas leak happened, and she requested Plaintiff Company to remedy it. *'I confirm that Louis did whatever need to be done by way of maintenace of the system'*¹³. According to Defendant, the bill of quantities was modified in concurrence with Plaintiff Company, and the thermostat system was not working properly because the relay switch was not installed correctly.

Engineer Fabio Stivala testified that, in 2012, Defendant had commissioned him to inspect her LPG installations for compliance with MRA Regulations which were introduced in 2010. These regulations concern safety issues, and the witness declared to be MRA-approved to certify this compliance.

Engineer Stivala reported that, when he inspected the equipment, he had found that some improvements were required for Defendant's system to be compliant, and that he suggested additional safety precautionary measures.

Engineer Stivala confirmed that Plaintiff Company had actually carried out both the mandatory improvements, as well as the additional improvements, which he had recommended, and declared that he had issued a certificate to certify that Defendant's equipment was compliant with the applicable regulations. This certification regards only the outdoor system, from the gas tank to the external walls of the house, and not the inside thereof. With reference to Doc. 'LB1'¹⁴, Engineer Stivala said that this is the risk assessment report which he compiled prior to completing his report.

¹³ Fol. 142

¹⁴ Fol. 20 et seq.

With reference to Defendant's complaints that the system was not working well, Engineer Stivala declared on oath that *'these complaints only reached me by Ms O'Reilly about one to three months after I had certified that the equipment was in good working order'*¹⁵.

As regards the gas leak complaint, Engineer Stivala declared that the location of the source of the smell (*pipe leak*) was not easily identifiable, as the pipes were buried in the floor, and that he was aware that Defendant had instructed a different company to carry out the necessary repairs.

With reference to his recommendation that Defendant takes out a maintenance agreement for the gas system, Engineer Stivala confirmed this recommendation, stating also that the law requires that it be in place, only that he was not aware whether Defendant had taken up this recommendation.

Engineer Stivala declared under cross-examination that the mandatory changes he recommended were a change of the gas regulator into the new type including pipe safety triggering devices, and the inclusion of gas leak sensors and alarms into the tunnel through which LPG pipe flows. The non-mandatory addition was of a gas leak system inside the control room. As these works required intervention on the pipes, the witness declared he requested that a pressure test be conducted at the end of the installation. Stivala was not in a position to declare whether a pressure test had been carried out before.

Regarding the leakage sensors near the gas tank, Stivala declared that he knows about these sensors, and acknowledges that their installation would be good practice, but opted not to recommend them as they are very costly.

With respect to the pressure testing of the pipes, Stivala testified that he had asked Plaintiff Company to provide him with a certificate of pressure testing of the pipes in the

¹⁵ Fol. 46(c)

outdoor installation¹⁶, but it was never delivered to him. He declared that the first gas leak was repaired by Plaintiff Company, but the second was repaired by another company which carried out a pressure test and found that the pipe from the gas tank to the boiler did not hold the pressure. The other company carried out the pressure test to locate the leak, because it was situated under the turf where no sensors were installed.

Engineer Stivala declared that *'since the complaint came in a few weeks after that I have certified the gas installation it is not easy to certify whether such a leak was there before the certification or whether it occurred throughout those weeks after the certification. I say that a leak can occur also due to subsidence which is when the ground moves and it carries down the pipe. I am being asked what kind of movement would be required in the flooring in order to cause a copper pipe such as the one that leaked was to dislodge and I say that you do not need movement in the force of an earthquake. I could observe that the case in question the gas installation is in an area which is surrounded by turf which as a result is irrigated daily'*.¹⁷ According to the witness, the flooding occurred because the manhole was cracked. He explained that the manhole is part of the gas tank, and would have been installed by whoever installed the gas tank.

With regard to the copper pipe, Engineer Stivala testified that, as he saw it, is compliant with regulations, even if he would have done it differently.

Plaintiff Company further produced **Dr. Andre Buttigieg**, an official of Malta Resources Authority. He declared on oath that he is a lawyer by profession. He exhibited a certificate dated 6th November 2013 certifying Defendant's LPG gas installation system.¹⁸ He explained that this certificate must be issued periodically, and that the initial certification was carried out on 1st September 2011¹⁹. Engineer Stivala completed both certifications.

¹⁶ Fol. 46G

¹⁷ Fol. 46F

¹⁸ Doc. MRA1, fol. 58

¹⁹ Doc. MRA2, fol. 66

Engineer Stephen B. Mifsud from Malta Resources Authority clarified that Doc.‘MRA2’ is Defendant’s license to store and use the gas system for home purposes. Doc.‘MRA1’ certifies that that gas system is safe. The initial certification was valid for two years, subsequently it had to be re-certified periodically, up to a maximum of every two years, and more commonly every year, depending on the certifying engineer’s opinion. He exhibited the compliance certificate dated 2nd October 2012²⁰ and another certificate dated 7th July 2011²¹.

In particular, Engineer Mifsud explained the MRA’s system for accepting certifications of gas systems. Non-compliances are split up into four categories – zero, one, two and three. MRA accepts non-compliances in the zero and one category, but not in the other categories. The witness declared to have himself vetted Defendant’s initial application, and found that the remaining non-compliances fell within the zero and one category, as all other non-compliances had been certified by Engineer Stivala to have been rectified.

Engineer Mifsud declared that, although the relevant law came into effect in 2008, MRA initiated the licensing procedure in January 2011.

As regards the pressure test, Engineer Mifsud said that he is not a competent person within the definition of law to answer this technical question, but he is aware from his training that this test should be applied for the routine inspection carried out. He remarked that the pressure test is found in the second, third and fourth inspection reports, but not in the first report. He explained this on the basis of the fact that this was not a new installation, and therefore the pressure test was not required for the report purposes.

Engineer Mifsud declared that *‘I am being questioned whether without a pressure test one can easily detect a leak and I say that yes there are other means and other tests*

²⁰ Doc. MRA3, fol. 82

²¹ Doc. MRA4, fol. 91

*that can be easily applied but ultimately the pressure test should be carried out. It is correct to say that upon commissioning a new system a pressure test should be applied and also correct to state that upon repair of pipes and replacement of pipes a pressure test should be applied*²².

Having considered the extensive submissions the counsels for the parties made, both in writing and orally before the Tribunal.

Considers further that:

This case concerns Plaintiff Company's demand for the payment of the sum of two thousand, eight hundred and twenty six Euro and ten cents (€2,826.10c) from Defendant, allegedly due by way of price for works executed on the water and gas heating system at her residential tenement in Baħar iċ-Ċagħaq in 2011 and 2012; and concurrently Defendant's counterdemand for the payment of damages allegedly caused through the lack of proper execution of works on the part of Plaintiff Company.

At the outset, the parties agree that Defendant had instructed Plaintiff Company to put up a gas heating system, with underfloor and ceiling piping, and a solar water heating system, at her residence. This instruction dates back to 2005. Defendant had engaged the services of an Engineer – Engineer Paul Vassallo – to advise and assist her in choosing and instructing a contractor for this purpose. In actual fact, Engineer Paul Vassallo (who did not testify in these proceedings) asked for quotations, advised Defendant to opt for Plaintiff Company, prepared a Bill of Quantities, and followed and supervised the execution of the works, and then certified the system.

Defendant claims that the system never worked as expected because, the solar water heating system was not producing enough energy to heat the water in the water tank, and the system would automatically switch over to electricity for the energy supply, and the thermostat system for the gas heating of rooms, which determined which room to

²² Fol. 81

heat through a system of relay switches did not function well as the thermostats would switch heat in a different room to that intended.

Plaintiff Company rejects these allegations of shortcomings. In actual fact, Defendant admits that she had paid Plaintiff Company the full price due for the original works executed, and did not enter into any maintenance agreement for the system with Plaintiff Company, or third parties. The parties agree that Defendant used to call on Plaintiff Company to operate the gas heating system at the beginning of the wintry season, and Plaintiff Company used to provide such service.

Plaintiff Company's Claim, and Defendant's Counter-Claim, are based on the works which were recommended in Engineer Fabio Stivala's compliance report following the setting up of Malta Resources Authority, and the enforcement of safety standards legislation.

Defendant argues that, even if such legislation was not enforced at the time of the original installation, Plaintiff Company was supposed to adhere to such standards and ensure that the system which it implanted at Defendant's residence was in full compliance therewith.

The Tribunal is however of a different view. Engineer Stephen Mifsud from Malta Resources Authority testified clearly that these legislative standards started being enforced on 1st January 2011, that is almost four years after Defendant and her family started using the gas system which Plaintiff Company had set up at her residence. Said setting up was ordered, scrutinized and accepted, on the advice of Defendant's chosen engineer, and she had settled full payment requested therefor.

The Tribunal must however consider whether the measures which Engineer Stivala recommended as a safety upgrade for Defendant's system (i) were the result of Plaintiff Company's failure to execute its works properly when it originally installed the gas and solar water heating systems; and (ii) were properly executed and completed.

In his testimony, Engineer Stivala was very clear and categorical on both heads. He declared that he recommended two mandatory changes as safety precautions, namely a change of the gas regulator into the new type including pipe safety triggering devices²³, and the inclusion of gas leak sensors and alarms into the tunnel through which LPG pipe flows. He also recommended a non-mandatory addition in the interest of safety, that is a gas leak system inside the control room. Engineer Stivala confirmed that Plaintiff Company had actually carried out such changes, and that he had personally certified them as properly installed and functioning well. He further recommended that Defendant enters into a maintenance agreement so that the system be seen over regularly. In her cross-examination, Defendant declared that the system has been maintained by the new company (M & E) for the past four years²⁴, but admittedly was not so maintained prior to 2011/2012 except for Plaintiff Company's interventions at the beginning of each wintry season.

In so far as gas leakage sensors and copper pipes are concerned, Engineer Stivala confirmed that the way Plaintiff Company had set up the system, without gas leakage sensors, and with copper pipes as installed, was fully compliant with the applicable laws and regulations.

With regard to the gas leakage incidents, Engineer Stivala reported that Plaintiff Company had attended, and remedied, the first leak, whilst the second leak was reported to him weeks after he had certified the gas installation as properly installed and functioning well. The Tribunal notes that Engineer Stivala had issued his certificate without being provided with a pressure test, the importance of which was repeatedly stressed by Defendant in the course of these proceedings. As for the second leak, Engineer Stivala declared that *'since the complaint came in a few weeks after that I have certified the gas installation it is not easy to certify whether such a leak was there before the certification or whether it occurred throughout those weeks after the certification.*

²³ Which the Tribunal understands did not exist, or was not in common use, at the time of the original installation

²⁴ Fol. 142

*I say that a leak can occur also due to subsidence which is when the ground moves and it carries down the pipe. I am being asked what kind of movement would be required in the flooring in order to cause a copper pipe such as the one that leaked was to dislodge and I say that you do not need movement in the force of an earthquake. I could observe that the case in question the gas installation is in an area which is surrounded by turf which as a result is irrigated daily’.*²⁵

From this testimony, the Tribunal deduces that Engineer Stivala could not link the leaks directly to any shortcoming in the works which Plaintiff Company had executed, neither in the original installation, nor in the course of its upgrade. On the contrary, he stressed that the area where the gas installation was situated used to be irrigated every day, and thus possibly causing movements in the ground surface dislodging the pipes installed thereunder.

With regard to the works executed on the boiler in November 2011, Plaintiff Company explained that it intervened on Defendant’s request, and found damage in the chlorifier because of the bad quality of water supplied at Defendant’s house, and because there was an extensive deposit of sediment as a result of which the water purifying system was not working as expected. In this respect, the Tribunal finds Defendant’s declaration on oath that she did not recall Plaintiff Company’s representative drawing her attention that the water filtering system was not functioning well as not credible, taking into account her extensive and determining involvement in the choice, installation, maintenance and functioning of these systems.

With regard to the works allegedly carried on the solar panels system in March 2012, Plaintiff Company’s representative declared that these works were required on account of the panels’ dislocation during a storm. Plaintiff Company however did not specify details of the works allegedly executed on that occasion, and Defendant denies that any works were carried out then, insisting that Plaintiff Company had refused to take further instructions from her pending settlement of the outstanding invoices.

²⁵ Fol. 46F

The Tribunal finally notes that Defendant opted not to produce the Engineer whom she instructed to assist and advice her regarding this project, Engineer Paul Vassallo. The Tribunal is of the view that Engineer Vassallo could have given technical sustenance to Defendant's pleas, had he corroborated her opinions and conclusions.

On the basis of the aforesaid, the Tribunal is morally convinced that Plaintiff Company executed, in a fit and proper manner, and to the satisfaction of the technical experts involved, the works listed in Invoice number 2286 dated 29th July 2011, and the service indicated in Invoice number 2357 dated 15th November 2011. The Tribunal is however of the view that Plaintiff Company's claim, had also discharged the service listed in Invoice number 2437 dated 15th March 2012, is not sufficiently proved.

In so far as Defendant's Counter-Claim is concerned, the Tribunal is not convinced that Defendant suffered damages, or incurred loss or expenses, as a result of Plaintiff Company's failure to provide the contracted services according to the applicable rules and standards of the trade. Defendant not only accepted and paid for the system originally installed, but kept asking for Plaintiff Company's services whenever needed, up until the two gas leaks occurred. Defendant raised her claim for the first time as part of her contestation of Plaintiff Company's request for payment, even if Defendant alleges to have incurred extensive losses as a result of Plaintiff Company's failure to execute its contractual obligations. Furthermore, Defendant did not produce best evidence of the expense allegedly incurred in that regard, producing only the newly-instructed company's quotations²⁶. In the circumstances, and on the basis of Engineer Stivala's technical opinion that there is no direct and immediate causal link between Plaintiff Company's works and the gas leaks, particularly the second gas leak, the Tribunal is of the view that Plaintiff Company cannot be held responsible for the expenses which Defendant claims to have incurred to carry out modifications in the gas heating and solar water heating systems.

²⁶ Fol. 130-132

Therefore decides that:

The Tribunal upholds Plaintiff Company's claim limitedly for the sum of two thousand five hundred and thirty one Euro and ten cents (€2,531.10c), representing the total sums invoiced on 29th July 2011 (Doc.'EC1') and 15th November 2011 (Doc.'EC2') respectively, and rejects it for the remaining sum claimed, and thus condemns Defendant to pay in favour of Plaintiff Company the sum so due of two thousand, five hundred and thirty one Euro and ten cents (€2,531.10c), with interest from today up till final settlement. In regard to Defendant's Counter-Claim, the Tribunal upholds Plaintiff Company's plea on the merits, and rejects said Counter-Claim.

In so far as the Claim is concerned, either party shall pay its own costs. Defendant is to bear all costs due in connection with her Counter-Claim.

Avukat Phyllis Aquilina LL.D.
ADJUDICATOR