



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Philip M. Magri LL.D; M.A. (Fin.Serv); M.Phil (Melit)

Sitting of Wednesday, 30th May, 2018.

Claim Number: 34/2017PM1

Darren Xuereb (ID. Nr. 503482(M))

Vs

**Anthony (ID Nr. 1043346(M)) and Carol-Ann (ID Nr. 0177104(L)) spouses
Vella**

The Tribunal,

Having seen the notice of claim in the above-captioned names dated 23rd January, 2017 whereby plaintiff, whilst premising that he acted as commissioner for the conclusion of the sale of defendants' property at Flat 11, Fingest, Block B, Mons. Innocent Zammit Street, Swatar as therein detailed requested the payment of the sum of two thousand three hundred euros (€2300) allegedly due to him as commission determined at 1% of the price agreed for the sale of the said property with costs,

including those of the judicial letter number 2997/16 and with legal interest until the date of effective payment against defendants.

Having seen that, by reply to the above-mentioned claim, dated 20th February, 2017, by which defendant objected to plaintiff's claim on the basis that it is unfounded in law and in fact given that plaintiff had never been instructed by defendants to act in their name, they had never appointed him to act in any role and, as a matter of fact, the sale had not been concluded through plaintiff's intervention.

Having seen that by decree dated 28th February, 2017 the Tribunal ordered that proceedings be heard and decided in the English language.

Having heard the testimony of plaintiff Darren Xuereb during the sitting of the 28th February, 2017.

Having heard the testimony of Aldo Minuti during the sitting of the 3rd April, 2017.

Having heard the testimony of defendant Anthony Vella during the sitting of the 14th June, 2017.

Having seen the note filed by plaintiff Darren Xuereb as well as the documents attached thereto (fol. 19 et seq.).

Having heard the testimony of Darren Xuereb during the sitting of the 9th November, 2017.

Having heard the respective testimonies of defendants Anthony Vella and Carol-Ann Vella during the sitting of the 15th January, 2018.

Having reviewed all the evidence filed in this case by the respective parties.

Having heard the submissions made by the respective legal representatives of the parties.

Having seen that the case was put off for the delivery of judgment.

Having taken into consideration all the circumstances of the case.

Having considered

That this court case clearly concerns a claim for the payment of commission allegedly due to plaintiff by defendants in connection with the sale of their home at the address Flat 11, Fingest, Block B, Mons. Innocent Zammit Street, Swatar.

From a legal point of view, the Tribunal notes that reference should necessarily be made to a number of judgments delivered by the local courts in connection with the elements required for a successful claim for payment of commission (*senserija*) in connection with the sale of immovable property. In this regard, it has been decided that:

Illi f'materja ta' senserija huma applikabbli principji esposti minn din il-Qorti fis-sentenza PA [NC] Bugibba Real Estate Limited vs Joseph u Anna, konjugi Portelli deciza 30 ta' Mejju 2003: "Illi in tema legali jigi osservati li biex jiskatta d-dritt ghas-senserija jridu jikkonkorru tlett elementi principali: (1) illi l-konkluzjoni tan-negozju prospettat; (2) Illi l-intromissjoni tas-sensar tkun giet rikjesta jew almenu accettata miz-zewg kontraenti; u (3) Illi l-attivita' tas-sensal tkun wasslet lill-partijiet ghal in idem placitum consensus. Fin-nuqqas ta' wiehed minn dawn l-ingredjenti ma tistax tigi sostnuta talba ghal hlas ta' senserija, imma jista' biss 'per equipollens' jinghata kumpens ghax-xoghol maghmul, fuq il-massima legali li omnia labor optat premium. (...) dejjem gie ritenut mill-Qrati taghna li biex wiehed ikollu dritt ghas-senserija hemm bzonn li s-sensar ikun wassal lill-partijiet ghall-ftehim definittiv fuq il-kondizzjonijiet kollha, kemm sostanzjali u kemm accidentali ta' l-operazzjonijiet, kif ukoll li s-sensar ikun gie accetat mill-partijiet involuti, jigifieri hemm bzonn li z-zewg partijiet ikunu qabbdu jew almenu accettaw lis-sensar bhala tali u

konsegwentement ma jirrikorrux l-elementi tas-senserija izda ta' semplici locatio operarum meta l-persuna tkun intromettiet ruhha b' inkariku ta' wahda biss mill-partijiet (Legend Real Estate Limited v. Paul Pisani decided by the First Hall Civil Court on the 29th October, 2004 and other case-law therein cited).

“Meta ma jirrikorrux l-elementi tas-senserija, allura l-persuna li tkun intromettiet ruhha b'inkarigu ta' wahda mill-partijiet, tista' jkollha jedd ghall-kumpens bhala lokatrici d'opera. Ghaldaqstant” tkompli l-istess sentenza “ma jistax ikun hemm lok la ghal senserija u langas ghal kumpens bhala mandatarju retribwibili, meta ma jkunx hemm inkariku jew accettazzjoni tas-servigi.” (Louis Fava v. Av. Dr. Philip Attard Montalto et. decided by the Court of Appeal on the 16th April, 2004 – emphasis added).

In particular it has also been decided that:

*Biex jigi kompletat il-kwadru fuq is-suggett tajjeb li jinghad ukoll illi "bniedem li sempliciment jaghti nformazzjoni bla ma jaghmel xejn aktar jew ma jadoperax ruhu ma jidherx li jista' jkun intitolat ghal xi kumpens ghas-servigi" - "Paolo Bonavia -vs- Carmelo Grech", Prim' Awla, Qorti Civili, 21 ta' Frar 1947 (emphasis added quoted with approval, amongst others, by the Court of Appeal (Inferior Jurisdiction) in the judgement **Harry Cefai v. Francis sive Tarcisio Galea et.** decided on the 28th April, 2003; **George Bonnici noe. v. Edwin Camenzuli** also decided by the Court of Appeal (Inferior Jurisdiction) on the 28th March, 2003 as well as in **Vol XXXIII pII p23; Vol XLIX pII p993**).*

From a factual point of view, in this particular case, defendants claim that at no point in time did they actually authorize the plaintiff to act on their behalf in order to solicit

prospective buyers for their property and that, in any case, the sale of the same property was not concluded through his intervention.

Defendant repeatedly confirms that “*claimant never made any contact with me with regards to brokerage fees. At no point in time was he involved in any of the negotiations that took place between myself and Aldo Minuti for the sale of the property.*” (fol. 17). On the other hand plaintiff argues that “*it was through my intervention that the price was reduced from the asking price of two hundred and ninety thousand (€290,000) to the price actually determined of two hundred and thirty thousand (€230,000)*” (fol. 34).

In this context and bearing in mind the opposing versions given by the respective parties to the case, the Tribunal finds that, in determining the case at hand, it must essentially rely on the version of facts offered by third parties without a direct interest in the case at hand and who are thus able to offer a more objective perspective as to the actual role played by the plaintiff, if any, for the conclusion of the deed of sale in connection with defendant’s property. In this connection, the version given by Aldo Minuti, the buyer of the said property, assumes particular significance more so given that Minuti himself had voluntarily accepted to pay the plaintiff the commission which he believed was due to him. Questioned about plaintiff’s role in the conclusion of the sale Minuti testified as follows:

I can say that Darren Xuereb’s main contribution in this regard was that of introducing me to Tony. The negotiations did take a few months and although I can say that I was involved directly in the negotiations Darren Xuereb often requested a follow up from my end. The price was indicated to me by Darren Xuereb and this was in actual fact the final price which I eventually accepted to buy the house. (...) I am being asked whether during the negotiations I was ever present at a meeting at which Darren Xuereb was also present and I can confirm that in actual fact negotiations took

place during meetings held at which only myself and Mr. Vella were present and Darren Xuereb would not be present for these meetings.

Minuti continues to testify to the effect that, apart from the above, plaintiff's involvement was largely limited to a condition pertaining to the movement of boundary walls included in the promise of sale.

Such testimony fails to confirm plaintiff's version that his role was crucial even in the context of determining the selling price of the property. On the other hand, it indicates clearly that his role was limited to introducing Minuti to the defendants by providing him with the necessary contact details and an indication of the asking price and to his involvement in connection with the movement of boundary walls for which he was personally responsible. Faced with such a version, on cross-examination, plaintiff argued that "*Aldo Minuti might have been mistaken in this regard and Aldo Minuti can testify again*" (fol. 35). However, the Tribunal finds that, at least on a balance of probabilities, the correct and true version of events is that as precisely confirmed by Aldo Minuti during his first and only testimony in these proceedings and that therefore plaintiff had no crucial role in the conclusion of the sale saving for providing eventual buyer with particular information such as the contact details of the defendant. The Tribunal believes that such a testimony serves well to exclude any direct involvement on the part of the plaintiff in the negotiations which led to the conclusion of the sale, saving for the provision of such information. Moreover such a version lends considerable credibility to that offered by the defendant Anthony Vella that "*I had never contacted or been contacted by Mr. Xuereb so that he would act as my agent for and on my behalf with regards to the transfer of my property*" (fol. 45) and that "*I was never involved in any meetings which involved myself, Mr. Minuti and Mr. Xuereb except meetings pertaining to the removal of the party wall as Mr. Xuereb had bound himself to do in terms of the two thousand and eleven deed. Asked by the Tribunal I can confirm that there was no involvement on the part of Mr. Xuereb in the negotiation of the deed of sale particularly the negotiation of the price which was eventually stipulated for such sale. (...) I can even*

confirm that we were not even on speaking terms in view of everything that had passed between us before.” (fol. 48 – here defendant is referring to an incident when plaintiff had previously pulled out of the sale of property without informing him).

Taking all of the above into due consideration the Tribunal hereby concludes as follows:

1. It is true that, in line with the above and in particular with the testimony given by Aldo Minuti, plaintiff’s role in the conclusion of the sale was limited to providing the prospective buyer with information concerning the sale, including therefore the seller’s contact number. It also results clearly from Aldo Minuti’s testimony that the plaintiff was also involved with the issue pertaining the movement of the boundary walls. This involvement was however limited to his own personal capacity and in view of his own personal obligations undertaken in favour of the seller.
2. The plaintiff himself, whilst alleging that he was fundamental in the conclusion of the sale, particularly in the reaching of an agreement as to the price of the sale, failed to explain in sufficient detail how his role proved fundamental or crucial to the conclusion of the sale. One would have expected that, had this been the case, the plaintiff would have recalled meetings held at which he would have been present and during which the issue of the price or other particular aspects of the sale were discussed and agreed upon or, failing this, the salient aspects of the communications affected by him with the respective parties in order to ensure the smooth conclusion of the deal. The Tribunal notes that plaintiff’s own testimony is significantly lacking in such aspects.
3. In view of the above, the Tribunal finds that the version given by defendant Anthony Vella and confirmed by Aldo Minuti is certainly more credible and that therefore, at no point in time, did the defendants commission the plaintiff to act in any way on their behalf in connection with the sale of the property. The fact that,

as also results from Minuti's testimony, the plaintiff was actually following up proceedings in connection with the sale through the same Minuti (rather than himself spearheading any negotiations in this regard) is also indicative of the fact that there was practically no direct communication from his end with the plaintiff. This lends credibility to the Anthony Vella's version that, at the time, they were not even on talking terms.

4. The Tribunal therefore finds that, on a balance of probabilities, at no point in time did the defendants commission or otherwise request the plaintiff to act on their behalf in connection with the sale of the property. The plaintiff merely made use of the information which he possessed in connection with the sale through his own previous personal experience and passed it on the Minuti.
5. In line with the above-quoted judgements, it is also not sufficient for a successful claim for payment of commission in connection with the sale of property if one merely provides either or both parties with information concerning the sale, moreover, failing an appointment requested or approved by the principal in this regard. The fact that Aldo Minuti voluntarily decided to pay him a commission for his help does not in itself confirm or justify plaintiff's claim that defendants should also pay him a similar amount given the above facts as determined by the Tribunal.
6. Also in such particular circumstances, as have also been proved through these proceedings, the plaintiff would also not be legally entitled to any compensation for services rendered.

Hence in view of the above, the Tribunal finds that it cannot accede to the claim made by the plaintiff.

The Tribunal thus determines and decides this case by rejecting all claims raised by the plaintiff and by upholding the plea of defence raised by the defendant and thus orders plaintiff to pay all the legal fees and costs in connection with these proceedings.

Av. Dr. Philip M. Magri