IN THE SMALL CLAIMS TRIBUNAL

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

Sitting of Thursday, 11th May, 2017.

Claim Number: 164/2016PM1

George Olof Attard
(ID 607252(M))

Vs

Bubbly Trading Limited (C66720)
And
Elementary Holdings Limited (C66719) in solidum between them

The Tribunal,

Having seen the notice of claim in the above-captioned names dated 4th May, 2016 whereby plaintiff requests the payment of the sum of nine hundred euros (€900) per company for services rendered by himself as detailed therein together with the sum of twenty-five euros (€25) representing legal fees in connection with the legal letter dated 6th

November, 2015 with costs and legal interest from the date of this notice of claim against the defendant companies *in solidum* between them.

Having seen that, by reply to the above-mentioned claim dated 31st May, 2016, defendant companies argued that no sums were due to the claimant given that there had been no agreement for plaintiff to be remunerated for any services rendered by him except that, for the help proffered by him in identifying a suitable accountant and in liaising with Customs and the VAT Department, plaintiff had been offered five per cent (5%) shareholding in defendant company Elementary Holdings Limited which shareholding was renounced by the same plaintiff on the 20th October, 2015. They also argued that costs, including those in connection with letter dated 17th November, 2015, were to be borne by plaintiff.

Having heard the testimony given by plaintiff George Olof Attard and having reviewed the documents also filed by him during the sitting of the 14th November, 2016.

Having heard the testimony given by Walter Rizzo and having reviewed the documents also filed by him during the sitting of the 5th December, 2016.

Having heard the testimony given by Alessandro Provera and Stefano Lauri as well as the relative documents filed during the sittings of the 25th January, 2017, 1st March, 2017 and 11th April, 2017.

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

Having heard the oral submissions made by the respective legal representatives during the sitting of the 26th April, 2017 and having seen that the case was then put off for the delivery of judgment.

Having taken into consideration all the circumstances of the case.

Considers

That the current case stems from the plaintiff's claim for payment for services rendered by himself to defendant companies and consisting of the following: fees due to him as director within the respective companies, remuneration due to him for helping the company open bank accounts and in liaising on behalf of the company with the VAT and Customs Department. By way of reply defendants argue that no such payment is due as the parties had agreed that the plaintiff would be paid via the transfer of shares in his name and which shares plaintiff himself decided to give up.

That, from the strictly legal perspective, it is necessary to underline the following principles regulating the actions for compensation for services rendered such as the one hereby being considered:

> "*It has been established that the action is founded on two elements: the quasi-contract and the presumption that whoever renders services to third parties does so in the understanding that he will be paid. Apart from this, it has been longtime accepted that the compensation for services rendered is due not only 'jure actionis', that is, when it has been so agreed, but also 'officio judicis, that is, when from the circumstances of the case it transpires that whosoever carried out those services did so with the intention of getting paid or that payment was promised to him. In order to determine if a person had the idea or expectation of getting paid, one should determine the moment at which such services were rendered, this given that supervening circumstances cannot serve to create retrospectively a right for payment contrary to the original intention of the parties.*" (**Joseph Portelli et. v. Rik**

Limited decided by the Hon. First Hall Civil Court on the 16th December, 2003)[1]

That in this case it is amply clear that, beyond the different versions offered by the parties, the plaintiff was definitely carrying out his services with the clear and declared intention even 'a tempo vergine' of getting paid precisely through the sum claimed by him in this case. Reference is made to the email dated 28th May, 2014 (Dok. GA1 a fol. 38) which, although not addressed to the defendants or their representatives, provides a clear indication, if not of the agreement reached between the parties, of the plaintiff's intention as to the manner of compensation 'a tempo vergine' and before any of the parties had actually considered legal proceedings in view of the ensuing disagreement. The Tribunal thus finds it extremely hard to believe that this issue was not raised by the plaintiff for discussion and agreement with Lauri and Provera considering that, from the very start, the plaintiff's intention was clearly that of getting paid for his services not via a transfer of shareholding or via bottles of wine but precisely through a specific sum of money.

The Tribunal cannot but continue to note that plaintiff's behavior was also from the very start consistent with the claim raised in these proceedings and remained so consistent even after the defendants refused to pay him the sum claimed. Faced with the denial of his claim, the plaintiff desisted from making use of the rights so transferred to him as shareholder and director but rightly opted to renounce to such shares and to proceed for the compensation which, according to him, had been agreed in his favour. Plaintiff thus refrained from exercising those rights held by him *qua* shareholder but opted instead to remain consistent with what he had effectively informed Rizzo in 2014.

[1] "*Huwa stabilit li l-bazi ta' azzjoni ghal servizzi moghtija triegi fuq zewg sisien: jigifieri, fuq il-kwazi kuntratt u fuq il-prezunzjoni li min jaghti servizz lil haddiehor jaghmel hekk bil-fehma li jithallas ta' dak li jaghmel. Minbarra dan, ilu zmien twil accettat li l-hlas ta' servigi jista' jkun dovut mhux biss jure actionis, jigifieri meta huwa miftiehem, imma wkoll officio judicis, jigifieri meta mic-cirkostanzi jkun jidher sewwa li min ta dak is-servizz ried li jithallas tieghu jew kien imwieghed hlas ghalih. Biex wiehed jasal biex jara jekk persuna kellhiex il-fehma jew l-istennija li tithallas, ghandu jitqies il-waqt meta nghataw tali servizzi, ghaliex ic-cirkostanzi li jsehhu wara ma jservux biex joholqu b'lura dritt ta' fehma li ma kinitx l-intenzjoni tal-partijiet li joholqu*."

From their end Alessandro Provera and Stefano Lauri did not show any evident resistance to the transfer of the shares previously held by the plaintiff but, on the other hand, accepted such transfer without any condition and without qualifying the same with reference to the compensation that thus remained due to the plaintiff, given also that no profits were registered by the companies and no dividends were distributed (vide testimony given by Stefano Lauri on the 1st March, 2017). In the formal reply to plaintiff's claim defendant companies argue that for his help plaintiff was offered the shareholding within the companies. However, during their testimony, the position adopted by both Lauri and Provera was to the effect that "*no agreement had actually been reached in regards to any payment for compensation of services rendered by him*" (vide testimony given by Alessandro Provera on the 25th January, 2017). Then again, with reference to the email dated 4th October, 2015 (fol. 28), it transpires that the position with which plaintiff was faced at that stage was that no compensation was due to him as no agreement had been reached in this regard. Plaintiff thus opted to resign from his post as director in view of the disagreement and to surrender his shareholding in order to avoid sharing losses in the company. The defendants thus contradict themselves by, on the one hand claiming that no agreement had been reached whilst, at the same time claiming that an agreement had been reached for compensation via share transfer.

The Tribunal is of the view that the consistent attitude shown by the plaintiff whereby (a) '*a tempo vergine*' he had informed the accountant as to what his compensation would consist of and (b) upon realizing that defendants were refusing to pay him, he opted to transfer back the shares so acquired by him in anticipation of proceeding via legal means for his due compensation, is clearly indicative of the fact that the version of events as provided by the plaintiff should definitely be considered as the more credible. As explained above Provera and Lauri's versions contradict the defence raised by respondent companies to the extent that they argue, through their testimony (and just through the initial part of their statement of defence), that no agreement had been reached and that therefore no compensation is due whilst their defence then continues to the effect that plaintiff refused

the compensation offered by them and accepted by him. Even in this regard no resistance was made to the transfer of the shares by plaintiff and neither Provera nor Lauri seem to have been preoccupied to ensure that this transfer takes place with a qualification or condition as to the remuneration which thus remained due to the plaintiff. This aspect once again lends further credibility to plaintiff's version of events.

Having considered all of the above and having heard the respective testimony 'viva voce' of all parties, the Tribunal thus concludes that an agreement had effectively been reached between the parties as to the nature of the services to be rendered by plaintiff and to the compensation due to him for such services in the amount claimed by plaintiff.

That, it has also been decided by our Courts that it is only failing a specific agreement that the compensation due can be liquidated by the Court through technical estimates or arbitrio boni viri (**Schembri Anthony Et Vs Busuttil Aldo** deciza mill-Onor. Prim'Awla tal-Qorti Civili fit-28 ta' Mejju, 2003). In this case, given the agreement reached and also given that plaintiff carried out all of his services for the benefit of the companies (which are still running) as agreed with Lauri and Provera, the Tribunal finds that there is no room for tampering of the amount claimed.

In addition to the above, and for completeness' sake, the Tribunal also finds that the amount claimed by the plaintiff constitutes appropriate consideration for all the services rendered by him, also taking into account the evidence given by Walter Rizzo in connection with the provision of the registered address services, which evidence is in line with the content of the email dated 4th October, 2015 sent by plaintiff. The sum claimed also takes into due consideration that no agreement was reached limitedly to this aspect of the services provided as confirmed by plaintiff himself.

It is clear that plaintiff did play an important if not instrumental role in the timely setting up of both companies and that the companies are still benefitting from the services rendered by him. Hence, the Tribunal, having considered all of the above will proceed to accede to

plaintiff's claim, saving for the sum of twenty-five euros (€25) claimed in connection with a legal letter – a copy of which was never filed - whilst rejecting all the defences raised by the defendants.

The Tribunal thus determines and decides this case by upholding plaintiff's claim, rejecting the defences raised by defendant companies and thus orders defendant companies to pay to plaintiff the sum of one thousand eight hundred euros (€1800) in solidum between them with interest at the legal rate as from the date of notice of claim, excluding the sum of twenty-five euros (€25) also claimed. Costs in connection with these proceedings are also to be borne by defendant companies 'in solidum' between them.

Avukat Dr. Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Gudikatur