

COURT OF MAGISTRATES (MALTA)

Magistrate

Dr Rachel Montebello B.A. LL.D.

Application Number: 80/2018 RM

Alessandro Salemme

Vs

**Marcello Labor personally and on behalf of
TRTO Agency Ltd (C-77031)**

Today, 26th March 2019

The Court,

Having seen the application filed by plaintiff in the Registry of this Court on the 4th April 2018 where he requested this Court to condemn the defendants to pay that sum that is to be liquidated by the Court, which does not exceed the sum of ten thousand Euro (€10,000) representing works and services rendered by plaintiff unto defendants upon order of either or both defendants, after promises of works or other undertakings were not fulfilled.

With costs, including those relating to legal letter dated 18th May 2017 and with interests according to Law to run as from the date of the orders given, against defendants whose oath is being referred to.

Having seen the reply filed by Marcello Labor and TRTO Agency Limited (C 77031) on the 14th May 2018, where the following pleas were raised:-

1. *That preliminarily, the application filed is null and without legal effect due to the fact that plaintiff is neither resident and/or domiciled in Malta and has not appointed a mandatary present in Malta in order to represent him in the judicial proceedings instituted before this Court;*
2. *That without prejudice to the aforesaid, and also in a preliminary manner, Marcello Labor must be declared to be non-suited since he has no juridical relationship with the plaintiff;*
3. *That without prejudice to the foregoing, and also in a preliminary manner, the present action is premature since the plaintiff never called upon defendants in an official manner regarding the merits of this case. In fact, the only document that exists is a legal letter sent by plaintiff's legal counsel on the 18th May 2017 where reference was made to the payment of an amount of little more than € 4,000. Therefore independently of the result of these proceedings, defendants should not be made to bear the judicial costs.*
4. *That without prejudice to the foregoing, and also in a preliminary manner, the plaintiff must, in any event, prove his quantification in the sum of ten thousand Euro (€ 10,000). Defendant therefore reserves as of now his right to raise a further plea to the competence raionae valoris of thi Court;*
5. *That on the merits, defendant reject in the most absolute and categorical manner, the allegations made by plaintiff, as being unfounded in fact and at law, as would result furing the hearing of the cause, such that they must be rejected.*

6. *Saving further pleas.*

That consequently, defendant company is, in terms of Article 396 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), availing itself of plaintiff's claim and is hereby setting up a counter-claim due to the fact that, as shall be explained, it was same defendant company which suffered damages as a result of plaintiff's actions.

Therefore, defendant company that is, TRTO Agency Limited, pleads:

- 1. That in February of the year 2017, the exponent company entered into an agreement with Alessandro Salemme in order to commence some form of contractual relationship with the ultimate aim being that said plaintiff would be employed by the company;*
- 2. That until discussions were taking place between the parties in order to reach agreement on the conditions of employment of the said Alessandro Salemme, he began to attend training courses in order to be trained for the employment that he was being offered, which sessions were being paid in full by the company;*
- 3. That since until that time, Salemme was co-operating with the company, it decided, on the 2nd April 2017, to inform the competent authorities that it had nominated the said plaintiff as Ground Operations Manager;*
- 4. That the future of the company in fact depended exclusively on whether the company would manage to reach the necessary criteria in order to obtain the issue of a licence to offer air travel services with aeroplanes that it leased. In this regard, all the employees were being prepared for an important audit to be carried out by officials and representatives of*

Transport Malta, in order that it would be determined whether the company in question satisfied the criteria for the issue of the aforementioned licence;

5. *That in fact, a few days before the audit, the company transferred to Alessandro Salemme a payment in the sum of one thousand seven hundred and sixty three Euri (€ 1763), naturally upon agreement between the parties that during the said audit, Salemme would be on-site in order to assist the officials of Transport Malta in their audit, this being his responsibility;*
6. *That notwithstanding, a few hours only before the audit was due to be carried out, at around ten o'clock at night (22:00, Alessandro Salemme called the Director of defendant company, that is, Marcello Labor, and warned him that unless he would increase his salary by thousand Euro (€2,000) every month, he would not attend at the offices of TRTO Agency Limited the next morning in order to receive the officials of Transport Malta;*
7. *That as Alessandro Salemme knows full well, the licence that the defendant company required, could never be issued in its favour unless a Ground Operations Manager was present, and in fact, as would result during the hearing of the cause, the plaintiff, in the most abusive manner, used his position in order to manoeuvre a bullying tactic and/or arm twisting against the company;*
8. *That in fact, the company did not give in to this abusive pressure and Mr Labor requested Salemme to meet up after the audit is carried out, to determine whether it would be possible to find an amicable solution in order to continue working together, as would result during the hearing of the cause;*

9. *That as a result of this, Salemme did not turn up for the audit, such that the company lost the opportunity to obtain the issue of the licence and had to wait eleven days so that eventually, the company began to operate as a licensed air operations company, and this after having had to identify a Ground Operations Manager;*
10. *That also as a result of this, the company stopped the payment that it had effected the preceding day to plaintiff; this after he had chosen to breach the conditions of the agreement that he had with the company;*
11. *That the defendant company entered into substantial expenses in order that in the first place it would be prepared for the audit scheduled for the 6th April 2017 and secondly, so that in case the licence is issued, it would commence operations immediately, as would result during the hearing of the cause;*
12. *That as a result of the abusive and entirely unacceptable actions of Alessandro Salemme, the licence was not issued and therefore TRTO Agency Limited lost all that it had been working for and it suffered substantial damages as a result of the delay in the issue of the licence;*
13. *That the amount of the damages caused may be quantified in little over sixteen thousand Euro (€16,000) as may be proven and explained during the hearing of the cause, but notwithstanding, the amount is being limited to fifteen thousand Euro (€15,000) in order that this Court can take cognisance of this counter-claim;*

Therefore for the above-premised reasons, the defendant company in reconvention humbly requests that this Court would:-

1. *Declare that the allegations made in the application commencing proceedings are wholly unfounded without any basis in law and consequently no sum of money is due to plaintiff.*
2. *Decide that plaintiff, that is, Alessandro Salemmé is a creditor of TRTO Agency, liquidate the amount together with expenses and other damages suffered by same defendant company as a result of the behaviour and actions taken by the plaintiff, in favour of the company.*
3. *Condemn Alessandro Salemmé to pay, within the period stipulated by the Court, the sum so liquidated together with other damages that this Court deems fit, to the company that is, TRTO Agency Limited.*

With costs and legal interest to run as from the date when the amount aforementioned fell due, until the date of effective payment of the global sum in its entirety, against reconvened plaintiff, whose oath is hereby being made reference to.

Having seen plaintiff's reply to the counter-claim set up by defendant, filed on the 12th November 2018, whereby plaintiff raised the following pleas:-

1. *That preliminarily, the claim in reconvention is not drawn up in an adequate manner, due to the fact that the reply to the plaintiff's claim serves, at the same time, also as the premises to the claim in reconvention without any distinction and without separate signatures. In fact, the first demand of the defendant is for the rejection of the plaintiff's demands. Thus, in so far as the claim in reconvention is defective in form, the procedure for reconvention is necessarily null.*
2. *That the claim in reconvention exceeds the competence of this Court rationae valoris as there is no limit to the value of the claim.*

3. *That without prejudice to the preceding pleas, in any case it was the defendant Marcello Labor personally and or nominee who unilaterally breached and stalled the agreements that he had reached with the plaintiff, also because he did not pay him for his work and for the expenses that he incurred, and therefore the plaintiff was no longer bound to keep on working for defendant.*
4. *That without prejudice, the facts indicated by defendant do not reflect the true facts and these are being contested, and during the hearing of the cause it will be shown more clearly how defendant is not faithful to the truth.*
5. *That the plaintiff did not cause any damage to the defendants or either of them in violation of any law. Therefore, since plaintiff did not violate any law with regard to the defendants, he is not liable to pay any damages which, in any case, would need to be proven.*

Having seen its order given during the hearing of the 24th October 2018 whereby it was decreed that the proceedings are to be conducted in the English language;

Having seen that during the hearing of the 29th November 2018, it was ordered that at this stage evidence is to be brought in support of the preliminary pleas raised respectively by the parties, that is the first plea raised by the defendant in his Reply and the first two pleas raised by the plaintiff in his reply to defendant's counter-claim;

Having seen that during the hearing of the 30th January 2019 the parties declared that they have no evidence to produce in support of the preliminary pleas raised by them respectively;

Having heard the oral submissions of both parties regarding the said preliminary pleas raised in these proceedings;

Having seen that the case was adjourned for today for delivery of judgement on the preliminary pleas respectively raised by the parties;

Having considered;

That this judgement shall determine the preliminary pleas raised by both parties in these proceedings, that is, the first plea raised by the defendant and the first two pleas raised by plaintiff in his reply to defendant's counter-claim.

Defendants' First Plea

Defendant, by way of the first plea raised in his Reply to the Application, pleaded that the application filed by plaintiff is null and devoid of legal effect as the plaintiff is neither resident nor domiciled in Malta and failed to appoint a mandatary who is present in Malta in order to represent him in judicial proceedings filed before the Court.

It is to be observed at the outset that undoubtedly, this plea is not founded on the lack of jurisdiction of the Maltese Courts and therefore, Article 742(1)(b) of Chapter 12 of the Laws of Malta, which determine the Courts' jurisdiction on the basis of the residence, domicile or presence in Malta of either of the parties, cannot apply in this case.

The Court would also point out that although the defendant claims that plaintiff is not resident in Malta, no evidence was adduced by him in support of this claim and nor does it result to the satisfaction of the Court from the acts of the proceedings that plaintiff was not actually present in Malta at the time when the application commencing the proceedings was filed. However, although

plaintiff did provide an address in Malta at which he could be notified for the purpose of these proceedings, it results that on two occasions, attempts to notify him with judicial acts at this address proved unsuccessful.

Having considered;

The Court notes that the plea raised by defendant attacks the validity of the act commencing proceedings, that is, the application filed by plaintiff on the 4th April 2018. The matter of nullity of judicial acts is regulated by the provisions of Article 789 of Chapter 12 of the Laws of Malta which stipulate that the plea of nullity is admissible in either of the following cases:-

(a) if the nullity is expressly declared by law;

(b) if the act emanates from an incompetent court;

(c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act;

(d) if the act is defective in any of the essential particulars expressly prescribed by law:

Provided that such plea of nullity as is contemplated in paragraphs (a), (c) and (d) shall not be admissible if such defect or violation is capable of remedy under any other provision of law.

The Court considers that while subparagraph (b) is clearly inapplicable in the present case, as such, the nullity contemplated in subparagraph (a) is excluded since the law does not expressly declare such nullity. It is observed that nowhere in our domestic Law is it stipulated that the act commencing the proceedings is to be considered null if it is filed by a person who is neither resident and/or domiciled in Malta and who is not represented by a mandatory resident in Malta.

As far as a violation of the form prescribed by law as a ground of nullity in terms of subparagraph (c) is concerned, the Court observes that the plea raised by defendant alleges nullity of the application filed by the plaintiff (“l-avviz intavolat”). Given that these proceedings have been instituted before the Court of Magistrates (Malta), the law requires nothing other than an “*application which shall be according to the prescribed form and take the form of a mere notice signed by the Registrar, containing the name and the surname of the plaintiff and of the defendant, the demand of the plaintiff, and the day and hour when the defendant is to appear, besides other particulars as may from time to time be prescribed.*”¹ Furthermore, the application commencing the proceedings cannot, on the basis of defendants’ preliminary plea, be considered to be null on the ground contemplated in the said subparagraph (c), also because evidently, the said plea touches a matter of substance rather than form.

This brings the Court to consider the ground contemplated in subparagraph (d), that is, the nullity of a judicial act which is defective in any of the essential particulars expressly prescribed by law. The Court observes that nowhere does Maltese Law expressly require that in order for judicial proceedings to be instituted before the courts, the plaintiff must be resident or domiciled in Malta at the time of filing of such act.

It would appear that from this perspective, defendants’ argument stems from the wording of Article 180(1) of Chapter 12 of the Laws of Malta which regulates the filing of written pleadings and specifies the persons who may file such written pleadings. The said Article 180(1) provides that:-

“... *written pleadings may be filed –*

¹ Article 171 of Chapter 12.

(a) *Personally by the party pleading in his own name, or by the person pleading in a representative capacity as ... attorney on behalf of the persons absent from the Island, either of Malta or Gozo, in which the written pleading is filed; ...*²

Although the Court is aware of the conflicting case-law in the matter of such plea and that the courts have, on occasion held that a judicial act commencing proceedings is to be deemed null if filed by a person who is at the moment of filing, absent from the Island³, it considers that contrary to what is being asserted by defendant in his preliminary plea, Article 180(1) should not be construed as requiring that at a time when a person is absent from Malta, he is precluded from suing or being sued unless in the person of a mandatory who is present in Malta. Indeed, Article 180(1) of Chapter 12 of the Laws of Malta clearly specifies the persons who may file written pleadings and does not exclude such acts being filed by persons who are not resident or domiciled in Malta; less so is it provided that such persons, in order to file the written pleading or represent them during the actual proceedings, must be resident and or domiciled in Malta or otherwise be represented by a mandatory present in Malta.

In the firm belief of the Court, the said Article 180(1) of Chapter 12 does not render the filing of a judicial act by a person who is absent from the Island in which the pleading is filed, null or ineffectual but rather, it requires that when a person who is absent from Malta is effectively pleading in a representative capacity, then any written pleadings are to be filed by that representative. This interpretation is not only derived but also further supported by the wording of the subsequent subparagraphs of the said Article 180(1) which, the Court considers, clearly convey that the scope of the said provisions is to define who

² Emphasis made by the Court.

³ **Commonwealth Educational Society Limited vs Adriana Camilleri**, Appell Civili [Inferjuri] deciz fit-2 ta' Gunju 2003.

is entitled to file written pleadings, and not who should or must file them, less so under pain of nullity, and is therefore not styled in exclusive terms.

This position is further supported by the provisions of Article 929 *et seq.* of Chapter 12 which regulate the appointment of curators to represent parties to proceedings who are absent from Malta. The Court observes that while there is no provision of law that expressly requires the appointment of curators to represent a person who is absent from Malta at the time of filing of judicial proceedings on behalf or against such person⁴, the provisions of Article 930 make it abundantly clear that the appointment of curators to represent persons who are not legally represented, is to be made by the Court when it is requested to do so, or when it deems it necessary in terms of Article 929(a)⁵.

The Court considers that read cumulatively, the provisions of Article 180(1) and Article 930 of Chapter 12 must be construed as requiring persons who do institute judicial proceedings or who are sued, in Malta, to be present in Malta. However, while any default of this requirement would not render the act which commences the proceedings null, such persons are eventually to be represented, if not by a specially-appointed mandatary, by curators to be appointed by the Court⁶. Here, in the Court's firm belief, comes into play the proviso to Article 789(1) which stipulates that the plea of nullity as is contemplated in *inter alia* paragraph (d), shall not be admissible if such defect or violation is capable of remedy under any other provision of law. Thus even if it could be conceded for argument's sake that the act commencing proceedings in this case, required plaintiff to be present in Malta, the act is, without any doubt, capable of remedy.

⁴ Article 929(a).

⁵ Applicable only to the superior courts.

⁶ This position was also adopted by the Court in the judgement **Avukat Carmelo Castelli noe vs Focal Maritime Services Limited** - deċiża fit-3 ta' Frar 2012 mill-Qorti tal-Appell Superjuri.

For the above-mentioned reasons, the Court does not consider that the ground of nullity contemplated in paragraph (d) of Article 789(1) is applicable in this case.

Having further considered;

That apart from the aforementioned legal considerations, the institution and or filing of judicial proceedings by persons who are not present in Malta and who are not represented by a mandatary in Malta, would give rise to the practical difficulty of notifying such persons with the acts of the proceedings, such as the notice of trial and other pleadings during the course of the proceedings, but undoubtedly, as already determined, this would not automatically lead to the nullity of the proceedings, less so to the nullity of the judicial act that would have commenced the proceedings, but it would require the mandatory appointment of a representative of the plaintiff in Malta to receive notice of written pleadings filed during the course of the proceedings in order to ensure the continuity of the *iter* of the proceedings, should it result that plaintiff, in this case, be effectively absent from Malta as alleged by defendant.

This conviction is further reinforced by the decision of the First Hall of the Civil Court in the judgement **Zealand Holdings Inc vs Il-Bank esteru Amsterdam Trade Bank N.V**⁷ which held that:-

“Dan ma jfissirx pero’ illi jekk parti tinsab sprovvista minn rappreżentanza f’Malta, allura dan iwassal immedjatament għal nullita’ tal-proċeduri. Din in-nullita’ mhix imposta u anqas tirriżulta mil-liġi. B’daqshekk ma jfissirx pero’ illi sitwazzjoni simili tista’ tithalla jew tiġi permessa u l-kawża tkompli miexja. Li kieku l-kwistjoni tar-rappreżentanza tirrigwarda l-konvenut, il-liġi tagħti indikazzjonijiet ċari dwar x’jista’ jsir biex il-proċeduri jitkomplew għax wara kollox hu primarjament fl-interess tal-attur li l-proċeduri jitkomplew fil-

⁷ Deciza 29 ta’ April 2014.

konfront tal-persna li kontra tiegħu tkun saret il-pretenzjoni. Il-liġi tagħti l-fakolta' tan-nomina ta' kuraturi biex jirrappreżentaw lill-assenti. Fil-każ invers pero', meta l-attur innifsu hu assenti, hu fl-interess tiegħu sabiex juri l-interess guridiku tiegħu li jeħtieġ li l-atti jiġu proċeduralment korretti biex jiġi sodisfatt l-interess reali tal-istess attur fl-azzjoni u jiġi assigurat fost affarijiet oħra illi f'Malta hawn rappreżentant li jista' jippreżenta atti fil-Qorti jew jirċievi jew jiġi notifikat bl-atti u ordnijiet jew digrieti tal-Qorti u jiġu salvagwardjati spejjeż ġudizzjarji skont l-Artikolu 1005 tal-Kap 12.”⁸

Having established that the presence of the plaintiff in Malta for the filing of the act that commences proceedings is not required for the validity of the said act and neither for the continued validity of the proceedings, the Court would also point out that this position is not incompatible with EC Regulation 2012/1215, which is founded on the essential underlying principle that the jurisdiction of the courts of the Member States is generally based on the defendant's domicile or on a close connection between the court and the action, and not on the plaintiff's presence in the court of the Member State where the action is filed.

The Court therefore finds that the application filed by plaintiff commencing these proceedings, cannot be held to be null and consequently, the first preliminary plea raised by defendant in this case is unfounded and is being duly rejected.

Preliminary Pleas to Defendants' Counter-Claim

⁸ Vide in addition:- **Mediterranea Distribuzione Srl vs Dr Richard Galea Debono bhala stralċarju ta' IFIX Trade Limited** – decided on the 16th July 2012 by the First Hall, Civil Court.

Plaintiff raised two preliminary pleas in his reply to the counter-claim set up by defendant in the Reply filed on the 14th May 2018: firstly, the nullity of the counter-claim and secondly, the incompetence of the Court *rationae valoris*.

The Courts considers that although sequentially, the plaintiff's second plea to the competence of the Court was raised subsequently to the plea of nullity, the said plea of nullity would nevertheless take precedence in the order of pleas to be determined, since, as held in the judgement of the Court of Appeal in the names **Dr Carmelo Galea vs Silvio Zammit et** ⁹:-

“Huwa certament fl-ordni logiku illi din il-Qorti tghaddi biex tinvesti l-ewwelnett din l-eccezzjoni ta’ l-appellat ghaliex, kif ritenut, “l-eccezzjoni ta’ l-irritwalita` ta’ l-istanza, li tammonta ghan-nullita` ta’ l-istanza, mhux biss hija kwestjoni essenzjalment preliminari bhal ma hija dik ta’ l-inkompetenza, imma anke tirbah lil dik ta’ l-inkompetenza. Ghax jekk hi nulla l-istanza, allura t-tribunal, ghandu jew m’ghandux gurdizzjoni, ma jistax jiehu konjizzjoni tal-kawza, stante li ma jkunx debitament investit biha, u lanqas jista’ jiehu konjizzjoni ta’ l-eccezzjoni ta’ l-inkompetenza” (“Joseph Galea et -vs- Nutar Dottor Antonio Galea”, Appell Civili, 27 ta’ Gunju, 1955)”

Having considered;

That as far as the first plea is concerned, plaintiff submits that the form in which defendants’ counter-claim was filed, is inadequate for the purposes of law since the defendant’s pleas serve also as the premises for the counter-claim, without any distinction whatsoever between the two and without having being signed separately.

⁹ Appell Inferjuri, deciz fil-15 ta’ Lulju 2009.

That Article 398 of Chapter 12 of the Laws of Malta, in the matter of the procedure for reconvention, provides that:-

“(1) The defendant who desires to set up a counter-claim shall set up his claim in the written reply to the application, whether sworn or not.

(2) The counter-claim shall be set up after the defence to the original claim made out as required by law; and the defendant shall, with respect to the counter-claim, observe, as far as practicable, the rules established by this Code or by any other law for the written pleading by which the proceedings were first instituted.”

This provision of law must be read in conjunction with the provisions of Article 789(1)(c) and (d) of Chapter 12¹⁰ which, it would appear, would apply to regulate the determination of plaintiff’s present plea of nullity. The Courts observes that the counter-claim set up by defendant is indeed contained in the same document as the reply, without separate signatures having been appended each to the pleas and to the counter-claim; however it considers that this feature of the judicial act in question does not amount to a defect either in form or in the essential particulars of the act, in such a manner that would bring about the nullity of the same act. Indeed, although Article 178 of Chapter 12 provides that written pleadings and the applications whether sworn or not shall be signed by the advocate and also by the legal procurator, if any, the Law itself continues to provide in the matter of reconvention, that the counter-claim is to be set up “in the written reply to the application”¹¹ and “after the defence to the original claim” without any further essential particulars of form or substance which are to be observed. In this case, it is evident that the reply and counter-claim are indeed signed cumulatively by both an advocate and legal procurator.

¹⁰ (c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act; (d) if the act is defective in any of the essential particulars expressly prescribed by law.

¹¹ Emphasis made by the Court.

As regards the allegation made by plaintiff that the defendant's reply to the Application serves simultaneously as reply and counter-claim without any distinction whatsoever, the Court makes the following observations.

The defendant's reply and the counter-claim set up by him in the same act, are clearly distinguished by the paragraph immediately succeeding the sixth plea raised in the reply, which reads as follows:-

“Illi fid-dawl ta’ dan, is-socjeta` esponenti qieghda tipprevalixxi ruhha mill-azzjoni promossa fil-konfront taghha mill-istess attur sabiex ai termini tal-Artikolu 396 tal-Kodici ta’ Organizzazzjoni u Procedura Civili (Kapitolu 12 tal-Ligijiet ta’ Malta), tressaq talba rikonvenzjonali u dan minhabba li kif ser jigi spjegat, kienet hi stess li sofriet danni minhabba l-azzjoni u l-ghagir (sic.) tal-attur.”

Although the Court does note that in the same act, immediately afterwards the above-cited paragraph, the defendant states *“Ghaldaqstant, is-socjeta` esponenti u cioe` l-istess TRTO Agency Limited tecepixxi¹² (sic.)”*, it is evident that the use of the word *“tecepixxi”* is due to a *lapsus calami*. There is no doubt in the Court's mind that since the defendant thereafter immediately proceeded to list the premises on which the said counter-claim is being founded, the said term was erroneously used instead of *“tesponi”* and therefore, defendant's his reply observes all procedural requirements for the setting up of a valid counter-claim.

It is also observed that although by means of the first demand in the counter-claim, defendant reiterates his request for plaintiff's claim to be rejected by the Court, this cannot have any bearing whatsoever on the validity of the same counter-claim and, contrary to plaintiff's assertion, does not render the counter-claim defective in any of its formal let alone substantive requirements.

¹² Emphasis made by the Court.

After all, it has been consistently held that the Court, in the interest of substantive justice which must always be deemed to prevail over excessive formalism in procedural requirements, should approach with due caution and circumspection any plea intended to defeat the validity of judicial acts which is founded on an alleged violation of form, when such violation does not affect the substance of the action or prejudice the defence on the merits of the case¹³.

In conclusion, the Court considers that while in this case, there has been no violation of form that would lead to the nullity of the counter-claim set up by defendant, in any event no prejudice whatsoever could be deemed to be caused to plaintiff even if the judicial act in question had violated the form required by Law (which in any event is not required under pain of nullity) or had been lacking in any essential particulars. It is evident that plaintiff proceeded to raise pleas on the merits of the counter-claim and thus clearly understood the nature of the judicial act filed by defendant without consequence, and acted accordingly.

The Court therefore concludes that there is no nullity of the form prescribed by Law for the setting up of defendant's counter-claim, in terms of paragraph (c) of Article 789(1) of Chapter 12, and nor is the act lacking in any essential particulars even if not required on pain of nullity, in terms of paragraph (d) or any other paragraph of the said Article, and consequently reject plaintiff's first preliminary plea of nullity.

Having further considered;

That plaintiff also pleaded to the competence of this Court to take cognisance of defendant's counter-claim, *rationae valoris*. The plea is based on the premise that, since defendant requested the Court to liquidate the damages suffered by

¹³ Vide: **Antonia Zahra vs Raymond Borg** (Civil Court, First Hall), decided on the 29th September 2015 and the relevant case-law therein cited.

him without indicating the limit of the value of the claim, the claim exceeds the limit of competence of the Court of Magistrates (Malta).

In this matter, the provisions of Articles 747 et seq. of Chapter 12 of the Laws of Malta, are relevant. Article 747(1) stipulates as follows:-

(1) An uncertain or indeterminate value shall always be deemed to be outside the jurisdiction of a court of limited jurisdiction.

Clearly, the civil jurisdiction of this Court as the Court of Magistrates (Malta) is limited by virtue of the provisions of Article 47 of Chapter 12:-

(1) A magistrate shall sit in the Court of Magistrates (Malta), and such court shall, as a court of first instance, hear and determine all claims of an amount not exceeding fifteen thousand euro (€15,000), against persons residing or having their ordinary abode in any part of the Island of Malta.

(2) Such court shall also take cognizance of all other causes expressly assigned to it by law.

Although in terms of Article 748 of Chapter 12, the law deems that in the case where the value of the claim is indeterminate or uncertain, the value of the thing in issue is determined by the demand:

(a) when the demand is for the payment of a fixed sum;

(b) when the demand is for a thing the value of which is determined in the title which gives cause to the action, or in any other writing binding upon the parties, or by common repute, or by the market price.

In this case, although it may be argued that the demand of the defendant in his counter-claim, at first glance, is not for the payment of a fixed sum, given that

the Court is expressly called upon to liquidate the amount claimed by defendant and to condemn plaintiff to pay such liquidated amount, the Court cannot ignore the fact that in the premises forming part of defendant's counter-claim, it is clearly stated:-

“Illi l-ammont ta’ danni kkawżati jista jigi kwantifikat għal ftit aktar minn sittax-il elf Ewro (€16,000) u dan kif ser jigi pruvat u spjegat waqt is-smiegh tal-kawża, minkejja liem, l-ammont qiegħed jigi limitat għal-ħmistax-il elf Ewro (€15,000) u dan sabiex din l-Onorabbli Qorti tkun tista tieħu konjizzjoni ta’ din it-talba rikonvenzjonali.”

Although one might argue that this premise does not form part of defendant's “demand” and therefore that the “demand” is not for the payment of a fixed sum, the Court is of the firm belief that as the Court of Magistrates (Malta) in its civil jurisdiction, it is not bound by the requirements stipulated by Law for the formal and essential validity of the sworn application as are contemplated in Article 156(1) of Chapter 12 of the Laws of Malta. In effect, as already pointed out, in proceedings before the Court of Magistrates, the law requires nothing, even for the validity of the setting-up of a counter-claim, other than an “application which shall be according to the prescribed form and take the form of a mere notice signed by the Registrar, containing the name and the surname of the plaintiff and of the defendant, the demand of the plaintiff, and the day and hour when the defendant is to appear, besides other particulars as may from time to time be prescribed.”¹⁴

Consequently, given that defendant clearly and expressly stipulated in the body of the judicial act containing his counter-claim, that he was expressly limiting the value of his claim to the sum of €15,000, the Court deems that the requirements of Article 748(a) of Chapter 12 have been duly complied with, such that the value of the counter-claim is determined by defendant's demand

¹⁴ Article 171 of Chapter 12.

which has been limited purposely in order that this Court may take cognisance of said counter-claim.

Therefore the plea to the competence of the Court *rationae valoris* is unfounded and is being rejected.

Decide

For these reasons, while the Court:-

1. Rejects defendant's first preliminary plea to the nullity of the Application filed by plaintiff;
2. Rejects plaintiff's preliminary plea to the nullity of the counter-claim set up by defendant; and
3. Rejects also plaintiff's second preliminary plea to the competence of the Court *rationae valoris*,

it orders the continuation of the hearing of the cause.

The costs of the proceedings determined by this partial judgement are to be borne by both parties as to one third (1/3) by defendant and two-thirds (2/3) by plaintiff.

Read and delivered

**Dr. Rachel Montebello
Magistrate**

**Graziella Attard
Deputy Registrar**