



SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Zammit

Sitting of Tuesday, 24th September 2019

Claim No: 135/18 CZ

Caroline Gafa'

vs.

Catherine Louise Drazinic

The Tribunal

Considered plaintiff's claim filed on the 9th April 2018, by means of which plaintiff claimed that defendant should pay the sum of three thousand two hundred and seventy-five Euro and sixty-five cents, with interest according to law from 7th February 2018 representing a pending bill of ARMS Ltd. regarding the tenement Flat 6, St. Mary Court, Wesgha Dun Guzepp Caruana, Marsaxlokk, which plaintiff acquired from defendant by a deed of 10th August 2017 in the acts of Notary Dr. Mark Cutajar, a copy of which is attached with the original claim as Doc. A.

With costs, including those for the judicial letter filed before the present case in terms of Section 166A of Chapter 12 of the Laws of Malta with reference number 300/2018, hereby attached and marked as Doc. B, and the garnishee number 230/2018, hereby attached and marked as Dok. C. Plaintiff also reserved in her favour to advance a demand for a reference to the oath of the defendant

The Tribunal, saw the reply of defendant, filed on 1st July 2018, whereby she declared:

1. Firstly, plaintiff has to prove that she has an interest at law to propose this claim; and defendant is claiming that there is no such interest. Ex admissis, if any, any payment is due to ARMS Ltd. and not to plaintiff and therefore there is a lack of interest at law, so much so that the bill with ARMS Ltd. is still pending, according to the plaintiff's own admission.
2. The claim is unfounded both at law and in fact, as will be proven in the course of the proceedings.
3. Reserving the right to file further defence pleas.

The Tribunal;

Viewed the acts of the case;

Viewed the decree of 28th May 2018 by means of which the Tribunal acceded to defendant's request for the proceedings to be held in English;

The Tribunal also considered the testimony of Reuben Bonnici¹, plaintiff², plaintiff in cross-examination³, and defendant⁴.

The Tribunal also considered the notes of submissions filed by both parties.

Considered:

The case concerns the water and electricity service found in an apartment which plaintiff acquired on 10th August 2017. When plaintiff went to ARMS Ltd. to transfer the meter onto her name, she realised that there was a pending bill of three thousand, six hundred and fifteen Euro and forty cents (€3,165.40), which was later reduced to three thousand two hundred and seventy-five Euro and sixty-five cents (€3,275.65) after a revision. These arrears represented electricity and water consumed before she became owner of the apartment.

Plaintiff tried to convince defendant to go to ARMS to find a solution, but they never met at ARMS. Defendant on the other hand states that she had paid all bills from ARMS. Witness Reuben Bonnici from ARMS however said that this was not the case, and that there was still an amount which was due to ARMS.

Defendant argued that plaintiff had no interest at law to propose this action, since the registered consumer for this meter was defendant's father, Nazzareno Farrugia, and also because plaintiff had not paid the relative arrears, and the bill was still payable to ARMS and not to plaintiff.

¹ Fol. 35

² Affidavit at fol. 38 et seq.

³ Fol. 49

⁴ Affidavit at fol. 53 et seq.

Plaintiff on the other hand countered this line of defence by stating that defendant had given a number of guarantees in the deed of sale, amongst which there was the guarantee given in Article 3.3 of the deed which stated:

All architect fees, building permit fees, road, drainage, and asphaltting contributions, and all fees and expenses of the contractors and suppliers for the construction of the property and any any bills or any other debts⁵ have been paid and that no claims for payment may be brought against the Purchaser, and the Vendor agrees to hold the Purchaser fully indemnified against any claims by any such person in relation to the Property.

Whilst the Tribunal acknowledges that the sum at issue has not yet been paid by plaintiff to ARMS Ltd., the scope of a clause such as the one just above cited is none other than to protect the purchaser against potential creditors. It is particularly important in this case that it has resulted from the evidence produced that ARMS Ltd. will not transfer the meter onto plaintiff's name until she has paid all arrears. This, coupled with the fact that defendant bound herself to indemnify plaintiff against claims by creditors, shows that plaintiff has a strong enough juridical interest to propose the present case. The indemnification clause cited is a quite general, all-encompassing clause which provides for no exceptions. The clause itself states that it applies to any bills or any other debts. The debt at issue, therefore, is no exception. Defendant has an obligation to hold plaintiff indemnified, and, given that ARMS are still insisting to recover this debt (as can be seen from Reuben Bonnici's testimony and from documents exhibited by plaintiff), plaintiff has an interest to seek payment from defendant, even though this payment is being sought before she actually pays ARMS herself. The deed of sale in fact does not state whether the right to indemnification should be before payment is effected by plaintiff (to ARMS in this case) or after. The obligation of indemnification in this case therefore includes the obligation to hold plaintiff harmless in front of ARMS, even before plaintiff actually effects payment, and this as long as plaintiff has already been exposed to a particular harm (the threat of

⁵ Underlining by the Tribunal

having her water and electricity service disconnected by ARMS). The plea of lack of juridical interest of plaintiff will therefore be rejected.

With regard to the merits of the case, it has been established by Reuben Bonnici, representative of ARMS, that the amount claimed in this case is still due, and the relative bills were exhibited. Defendant does not seem to contest these bills. She only states that ARMS were negligent because they failed to tell her about this bill in due time. The Tribunal therefore considers that defendant's second plea is to be rejected, because the claims made are not unfounded neither in law nor in fact.

The Tribunal is therefore deciding this case by acceding to plaintiff's claim. The Tribunal orders defendant to pay to plaintiff the sum of three thousand two hundred and seventy-five Euro and sixty-five cents only (€3,275.65) with interests from the date of the filing of this claim till the date of effective payment. The costs of the case, as claimed, shall be borne entirely by defendant.

Dr. Claudio Zammit

Gudikatur

Mary Josette Musu'

Deputat Registratur