



Court of Magistrates (Malta)
Magistrate Dr. Simone Grech B.A., LL.D.

Application No. 42/18

Jonathan Camilleri

Vs

Leopold Franz Mizzi and Rebecca Mizzi

Today, 22nd October 2019

The Court,

After having taken cognizance of the Application filed by Jonathan Camilleri on the 23rd February 2018 by virtue of which he requests the Court to condemn defendants to pay him the sum of five thousand, nine hundred and thirty five cents (€5,900.35) representing the balance due for turnkey services rendered to the defendants including materials which were ordered and delivered to defendants upon their own authorization.

After having taken cognizance of the Reply by Leopold Franz Mizzi and Rebecca Mizzi by virtue of which they plead that the request by the Plaintiff for the balance due be rejected except for the sum of EUR 1,578.53c for the following reasons: a) the plaintiff worked 192 hours and not 318 hours; b) the rate of payment agreed was EUR 15 per hour; c) the sum of EUR 380 for the expenses of tools is not due; d) there is no value added tax on the materials which was bought by him as this was already included in the price of the materials; e) defendants already paid the sum of EUR 5,000 and this has to be deducted from the total sum due; and that as regards the expenses, the defendants had already offered to pay EUR 1,578.53 to plaintiff.

After having taken cognizance of the Plaintiff's affidavit and the documents attached to it;

After having taken cognizance of the defendants' affidavits and the documents attached to them;

After having taken cognizance of the report by Engineer Martin Pizzuto;

After having heard the cross-examination of defendant Leopold Frnaz Mizzi;

After having taken cognizance of the document exhibited by virtue of the note dated 14th May 2019;

After having taken cognizance of the notes of submissions presented by the parties;

After having taken cognizance of all the records of the proceedings;

Considers:

By virtue of these proceedings the Plaintiff is requesting the Court to condemn the Defendants to pay him the sum of EUR 5,900.35c, representing the balance still due to him in lieu of turnkey services and materials bought on behalf of defendants. The defendants are contesting this claim and state that the balance which is still owed and which they are willing to pay plaintiff is that of EUR 1,578.53.

From the evidence submitted by the parties during the hearing of these proceedings there result the following facts:

- The Defendant Leopold Franz Mizzi and the Plaintiff knew each other through the industry they worked in.
- Defendant Leopold Franz Mizzi asked plaintiff to carry out some works for him at his house in Hal-Balzan which work including electrical works, plumbing and the laying of tiles.
- The parties met on site so as to determine the extent of the works to be carried out and they agreed verbally that the plaintiff will be paid at an hourly rate.
- The works were carried out but plaintiff claims that he is still owed a balance by defendants which is the subject matter of this lawsuit.

- The defendants raised a number of issues to contest the amounts claimed by plaintiff.

Considers

The Court is being faced with a different version of the events which culminated in this lawsuit. The Court thus makes reference to the various caselaw existant on the matter. For instance, in the decision in the names of Maria Xuereb et vs Clement Gauci et decided by the Court of Appeal on the 24th March 2004, it was stated that:

“Huwa pacifiku f’materja ta’ konflitt ta’ versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni tal-provi quddiemha:

- 1. Li taghraf tiset minn dawn il-provi korroborazzjoni li tista’ tikkonforta xi wahda miz-zewg versjonijiet bhala li tkun aktar kredibbli u attendibbli minn ohra; u*
- 2. Fin-nuqqas, li tigi applikata l-massima “actore non probante reus absolvitur”.*

Vide also “Fogg Insurance Agencies Limited noe vs Maryanne Theuma”, Appell, Sede Inferjuri, 22nd November 2001.

Fi kliem iehor il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, ghandhiex teskludi lill-ohra, anke fuq il-bilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f’kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant (Kollez. Vol L pII p440).”

On the same lines is the judgement given by the First Hall of the Civil Courts on the 30th October 2003 in the names of George Bugeja vs Joseph Meilak:

“Jinsab ravvisat fiddecizjoni fl-ismijiet “Farrugia vs Farrugia”, deciza minn din il-Qorti fl-24 ta’ Novembru, 1966, li “il-konflitt fil-provi huma haga li l-Qorti jridu minn dejjem ikunu lesti ghalha. Il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita’ u speċjalment dawk tal-konsistenza u verosimiljanza, ghandhiex teskludi lil-lohra, anke fuq il-bilanc tal-probabilitajiet, u tal-preponderanza tal-provi, ghax dawn, f’kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant”.

Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijiet

forniti lilu, imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghallkonvinciment.

Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta' dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli. Kif kompli jinghad fl-imsemmija kawza "Farrugia vs Farrugia", "mhux kwalunkwe tip ta' konflitt ghandu jhalli lill-Qorti f'dak l-istat ta' perplessita' li minhabba fih ma tkunx tista' tiddeciedi b'kuxjenza kwieta u jkollha taqa' fuq ir-regola ta' in dubio pro reo".

In the judgement given by the First Hall Civil Court in the names Emanuel Ciantar vs David Curmi nomine decided on the 28th April 2003, it was stated that

"Huwa ben maghruf f'materja konsimili illi mhux kwalunkwe konflitt, kontradizzjonijiet jew inezattezzi fil-provi ghandhom ihallu lill-Qorti f'dak l-istat ta' perplessita' li minhabba fihom ma tkunx tista' tiddeciedi b'kuxjenza kwieta jew jkollha b'konsegwenza taqa' fuq ir-regola ta' in dubio pro reo;

Fil-kamp civili ghal dak li hu apprezzament tal-provi, ilkriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-isjegazzjonijiet forniti lilu imma jekk dawn listess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati talhajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall-konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet.

Dan ghad-differenza ta' dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli. (Vol. XXXVI P I p 319)"

The same was stated by the Court of Appeal in its judgement given on the 17th March 2003 in the names of Enrico Camilleri vs Martin Borg:

"Dan ghaliex, kif pacifikament akkolt fil-gurisprudenza taghna "l-gudikant, fil-kamp civili, ghandu jiddeciedi fuq il-provi li jkollu quddiemu, meta dawn jinducu fih dik iccertezza morali li kull tribunal ghandu jfittex, u mhux fuq semplici possibilitajiet; imma dik ic-certezza morali hija bizzejjed, bhala li hija bazata fuq il-preponderanza tal-probabilitajiet". ("Eucaristico Zammit -vs-

Eustrachio Petrococchino”, Appell Kummerc, 25 ta’ Frar 1952; “Paul Vassallo –vs- Carmelo Pace”, Appell Civili, 5 ta’ Marzu 1986).

Il-Qorti allura jehtiegilha tara jekk il-versjoni l-wahda ghandiex teskludi lill-ohra fuq il-bilanc tal-probabilitajiet. B’hekk ukoll jigi evitat ir-riskju li l-Qorti taqa’ fuq l-iskappatoja tad-dubju u ssib rifugju mir-regola ta’ “in dubio pro reo”.....Kif rilevat f’sentenza antecedenti fil-kawza fl-ismijiet “Dottor Herbert Lenicker –vs- Joseph Camilleri”, Prim’Awla, Qorti Civili, 31 ta’ Mejju 1972, “f’kawza civili lattur li jallega li gratlu hsara b’tort tal-konvenut, irid jipprova huwa a sodisfazzjon tal-Qorti li l-konvenut kellu tort. Jekk l-attur ma jgibx din il-prova l-azzjoni tieghu ma jistax ikollha ezitu favorevoli (anke jekk il-konvenut ma jipprovax – ghaliex legalment ma hux obligat li jipprova – li l-incident ikun gara b’tort tal-attur); dan mhux ghaliex ittort ghall-incident jkun tal-attur, imma sempliciment ma jkunx irnexxielu jipprova dak li allega bhala bazi tal-azzjoni tieghu”.

Considers:

Bearing this caselaw in mind, the Court shall now pass on to examine the plaintiff’s claim in the light of the defendants’ objections.

Hourly rate - From the facts that result, the plaintiff is claiming that the hourly rate agreed upon was that of EUR 20 an hour. On the other hand, the defendants insist that they had originally insisted on being given a quote but plaintiff had informed them that he did not issue such quotes and that he would charge them at a reduced rate of EUR 15 an hour.

The Court is convinced that due to the fact that defendant and plaintiff were friends through the work they carried out, a discounted rate was offered. The normal rate with which plaintiff is paid for his services was that of EUR 20 an hour and the Court is of the opinion that plaintiff did indeed offer that his rates would be discounted to EUR 15 an hour. Therefore, the Court shall be considering the rate of EUR 15 an hour as the rate with which the parties agreed that the works would be charged.

Hours worked- The second issue under examination is the amount of hours which were actually done by plaintiff. Plaintiff states that he worked 318 hours. The defendants claim that the hours amounted to 192 hours. To prove this, the defendants presented the notes which they kept of the hours allegedly worked by plaintiff. However, the court is not convinced that these notes were indeed

reflective of the hours worked by plaintiff. The Court finds it strange to believe that defendants would keep only the hours without listing the particular day when the plaintiff was working.

On the other hand, plaintiff presented Doc A at fol 27 which clearly outlines the dates and hours which were worked by him. The Court in this respect is of the opinion that it is the hours claimed by plaintiff which are indeed the hours with which the works are to be calculated.

The Court took note of the findings reached by Engineer Martin Pizzuto which stated that an installation for a two bedroomed flat with washroom requires around 160 man hours to complete but certain tasks require a minimum of two persons working simultaneously.

It is true that defendant stated that he used to help plaintiff continuously but the Court is convinced that plaintiff did indeed have to work more hours than those calculated by Engineer Pizzuto, taking into consideration that he was working without any other workers except the help given by defendant.

Moreover, the Court noted that this cost assessment was done with regards to electrical and plumbing installations and did not cater for those works relating to tile cutting, tile laying and the grouting.

On another note, the calculations made by Engineer Pizzuto do not even coincide with the amount which defendants are claiming that they are willing to pay plaintiff.

Hence the Court cannot be convinced that the findings reached by Engineer Pizzuto covered all the works and indeed all the hours which were done by plaintiff. The Court deems that the hours and days listed by plaintiff in Doc A at fol 27 are sufficient proof . The defendants although taking note of this document did not in any way explain to the court which days were they objecting to and the reasons behind their opposing claims.

Materials used - Defendants are also contesting the amounts due for material used. The plaintiff presented Doc B and Doc B1 till Doc B12 . Doc B includes the total of all the amounts which are reflected in the separate invoices marked Doc B1 till Doc B12. These amount to EUR 3558.88 inclusive of VAT. Then on Doc D, the amounts of material used is laid down as EUR 3,016 (i.e. the amount exclusive

of 18% VAT). Hence, this amount on Doc D is sufficiently proven through Doc B1 till Doc B12.

On Doc B there is also added another amount of EUR 129.88c . However no matching invoice was presented and the Court shall discard the said amount.

On Doc D, there is also an amount of EUR 172.50c which represented other materials bought from the ironmonger next to the house but no invoices or receipts were presented and thus the Court shall also discard such amount.

On Doc D, there is indicated also the amount of EUR 101,69 exclusive of VAT for tile clips which amount coincides with Doc C exhibited at fol 41.

Tools expenses - The Court was not convinced as to how this amount listed in Doc D as amounting to EUR 380 was reached and what it actually represents. The Court shall thus not consider this amount.

Balances paid by defendants – On Doc D, the plaintiff indicates that defendants paid a deposit of EUR 4,000 and that EUR1,000 were to be set off. All this is reflected in Doc D at fol 42.

Amount due by defendants – The Court thus concludes that the amounts due to plaintiff were as follows:

Material used for electric and plumbing – EUR 3016

Tile Clips -EUR 101.69

318 hours @ EUR 15 per hour – EUR 4770

Total – EUR 7,887.69

From this amount, there is to be deducted the amounts indicated in Doc D at fol 42, which are EUR 530 discount; EUR 1,000 painting stairs; EUR 110.06 returns. If these amounts are deducted the total amount excluding VAT amounts to EUR 6,247.63. The amount inclusive of VAT comes up to EUR 7,372.20. From this amount, the deposit of EUR 4000 has to be deducted. Consequently the amount due by defendants to plaintiff is that of EUR 3,372.20c.

On a final note, the Court outlines that it shall not be considering the arguments brought forth with regards to the allegedly bad work as no counter claim was

insisted and also no mention of this allegedly bad work was raised in the reply presented by defendants at fol 12 and 13.

Decide

In the light of all the above it clearly results that the main claim being put forth by the Plaintiff is justified only to the extent of the amount of EUR3,372.20c. For these reasons the Court;

1. Upholds in part the plaintiff's claim in that it condemns the defendants to pay the plaintiff the sum of EUR 3372.20c with legal interest due from the date of this judgement till date of actual payment;
2. Rejects the second and fifth paragraph of Defendants' pleas to the Plaintiff's claim; and
3. Orders that Costs are to be borne half by the defendants and half by plaintiff.

MAGISTRATE SIMONE GRECH