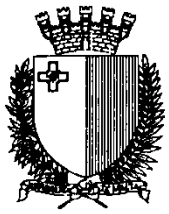

IN THE SMALL CLAIMS TRIBUNAL

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

Sitting of Monday, 25th November, 2019.

Claim Number: 18/2019PM1

Fahrenheit Freight Forwarders Co. Ltd. (C17421)

Vs

Kalataka Limited (C58107)

The Tribunal,

Having seen the notice of claim in the above-captioned names dated 4th February, 2019 whereby plaintiff company requested that defendant company be ordered to pay the sum of eight hundred and twenty-six euros (€826) allegedly due to them as payment effected by the same plaintiff company to Apple Invest Limited in connection with the storage of pallets belonging to defendant company in the stores of said company Apple Invest Limited and this on the basis of an agreement reached between the parties whereby plaintiff company was requested by defendant company to carry its goods, with all

expenses including those pertaining to the judicial letter bearing number 2408/2018 and legal interest from the date of the invoice attached to the notice of claim and marked Doc. 'A'.

Having seen the invoice marked Doc. 'A' attached to the notice of claim.

Having seen that, by reply to the above-mentioned claim, dated 1st March, 2019 defendant company objected to plaintiff's claim by denying categorically that the claimed sum was due by itself, that the claim constituted a *res judicata* as determined by the First Hall Civil Court in the case bearing names 'Kalataka Limited (C58107) v. Fahrenheit Freight Forwarders Limited (C17421) Rikors numru 1221/2015 on the 21st June, 2018, that the goods were stored by the plaintiff company for reasons exclusively pertaining to the same company, that there had never been a request for storage of the goods in the stores of Apple Invest Limited and that therefore the claim should be rejected.

Having seen the note filed by plaintiff company dated 18th March, 2019 and the invoices thereby attached.

Having seen also the note filed by plaintiff company dated 8th April, 2019 and the affidavit by Elaine Galea attached thereto.

Having heard the testimony of Antoinette Bartolo and Etienne Scicluna as well as the documents filed during the sitting of the 9th May, 2019.

Having seen the note by plaintiff company dated 17th June, 2019, the declaration made by both parties during the sitting held on the same day as well as having heard the testimony of Jan Pantzer also on the same date.

Having seen the note dated 18th September filed by defendant company as well as the documents attached thereto.

Having seen that on the 29th October, 2019 the parties declared that they do not have further evidence to produce.

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

Having heard and read 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 the case essentially concerns a claim for payment of the sum of eight hundred and twenty-six euros (€826) allegedly due by defendant company to plaintiff company for the storage of pallets at the stores belonging to Apple Invest Limited for which plaintiff company was held liable on behalf of the defendant company. Defendant company seeks to reject these claims by stating, first and foremost, that this matter constitutes a *res judicata* as already decided by the First Hall Civil Court in the judgment cited in its reply and that, in any case, there had been no request for the defendant's goods to be stored at Apple Invest Limited and that such goods had to be retained by the plaintiff company for reasons attributable to the latter.

The Tribunal will determine the pleas raised by defendant company, commencing with the preliminary plea of *res judicata*.

With regards to this plea, local Courts have regularly decided that for its success the defendant needs to prove three essential elements, that is same parties (*aedem personae*) the same object (*aedem res*) and the same cause (*aedem causa petendi*). Defendant company acknowledges this even in its note of submissions and to this effect refers to the judgment delivered in the names of **Vito Domenico Benvenga v. Direttur Generali**

Veterinary and Animal Welfare decided by the First Hall Civil Court on the 25th November, 2014. In this connection defendant company contends that these three elements are fulfilled when one compares the current suit to the one decided in the names of **Kalataka Limited v. Fahrinheit Freight Forwarders Co. Ltd.** (Rik. Mah. Nru. 1221/2015LM) on the 21st June, 2018 by the First Hall Civil Court, which latter judgment was not appealed. However, even from a perfunctory review of the latter judgment, it results clearly that the object ('res') of the latter lawsuit is precisely the liquidation of damages suffered by plaintiff company in those proceedings (defendant company in these proceedings) as a result of a breach of contract in the transport of goods. (To this effect the claim reads as follows: "*tiddikjara u tiddeciedi illi s-socjeta` intimata hi responsabbli ghad-danni sofferti mis-socjeta` rikorrenti; tillikwida d-danni hekk sofferti mis-socjeta` rikorrenti anke bl-opra ta' periti nominandi; konsegwentement tordna lis-socjeta` intimata thallas l-ammont hekk likwidat bhala dovut in linea ta' danni, bl-ispejjez u bl-imghaxijiet sad-data tal-pagament effettiv.*"

The First Hall Civil Court consequently decided that defendant company in those proceedings (plaintiff company in the current case) was to be found liable for breach of its contractual obligations and hence liable to compensate plaintiff company in those proceedings for the consequent damages suffered by the latter as a result of such breach. ("*Is-socjeta` konvenuta, f'dan il-kaz, kellha l-obbligu li tipprova r-ragunijiet li minhabba fihom hi naqset milli twettaq l-obbligu taghha, f'dan il-kaz, li tassigura li t-temperatura prestabbilita bejn il-partijiet tinzamm fit-trakkijiet u t-trailers uzati fit-tragitt, tul il-waqtiet kollha tal-garr, anke jekk kien hemm cirkostanzi li fihom bieb ta' trailer kellu jinfetah ghal xi waqtiet. Kien dan in-nuqqas ta' adempiment mal-obbligi kuntrattwali prestabbiliti li wassal ghal sitwazzjoni fejn il-merkanzija ttrasportata ma baqghetx fl-istat ottimu li ppretendiet is-socjeta` attrici, tant li lanqas biss setghet tinbiegh.* (…) *In vista ta' dan, il-Qorti thoss li filwaqt li tiddikjara li s-socjeta` konvenuta ghandha tinzamm responsabbli ghad-danni sofferti mis-socjeta` attrici, ghandha tillikwida d-danni fil-prezz li thallas mis-socjeta` attrici ghax-xiri tal-merkanzija* (…) *is-somma ta' elf,*

mitejn u tlieta u għoxrin Euro u sitta u sittin ċenteżmu (€1,223.66) rappreżentanti spejjeż għall-ġarr ta' din il-merkanzija, u dan skont dak li jirriżulta minn diversi dokumenti li ġew esebiti fl-atti ta' din il-kawża. Il-Qorti tqis li s-soċjetà konvenuta għandha tagħmel tajjeb ukoll għall-ispejjeż inkorsi mis-soċjetà attriċi għall-ħażna tal-prodotti inkwistjoni fl-imħażen tal-Unistores Limited fiż-żmien li fih l-istess merkanzija ma setgħetx tinżamm fl-imħażen tal-Applecore (…).")

Having considered that the current case does not involve a claim for damages by the defendant company but a claim for recovery of payments effected by the plaintiff company in these proceedings on behalf of the defendant company, the Tribunal can only conclude that the elements of *res judicata* are not fulfilled with the object of the respective cases being different. Consequently, the matter which the Tribunal is being asked to decide upon had not been already decided via the judgment of the First Hall Civil Court dated 21st June, 2018.

In this regard and for the sake of completeness the Tribunal notes that the issue of goods stored at stores belonging to Apple Invest Limited was marginally touched upon by the said proceedings infront of the First Hall Civil Court with the latter Court noting, with reference to Jan Pantzar's testimony in those proceedings that "*f'April tas-sena 2015, Applecore kienu informawh li ma setghux ikomplu jahznu l-merkanzija ghandhom, u li hu kien ta struzzjonijiet sabiex il-pallets in kwistjoni jigu ttrasferiti fl-imhazen tal-Unistores. Jan Pantzar qal li sa fejn jaf hu hadd ma hallas lil Applecore ghall-ispejjez marbuta mal-magazzinagg tal-oggetti u li hu qatt ma kien informa lil Fahrenheit li l-oggetti kienu ser jigu mcaqalaqa mill-imhazen ta' Applecore*". However, in liquidating the damages suffered by plaintiff company in those proceedings, the First Hall Civil Court declared that defendant company in those proceedings (plaintiff company in these proceedings) was to be held liable for the payment of expenses incurred for the storage of goods at the stores belonging to Unistores Limited. It is therefore clear that, even in the context of the claim for damages, the First Hall Civil Court limited its decision to the liquidation of the same referring only to current plaintiff company's obligation to settle itself storage fees

of goods at premises belonging to Unistores Limited, after such goods were removed from Applecores's premises. At no point in time did the First Hall Civil Court pass judgment on the issue raised through these current proceedings pertaining to the storage fees allegedly suffered by current plaintiff company on behalf of defendant. Hence the plea of *res judicata* is hereby being rejected.

With regards to the plea that there had been no request for plaintiff to keep storing defendant's goods at stores belonging to Apple Invest Limited, the Tribunal deems fit to refer to the affidavit filed by Jan Pantzer himself in the acts of the aforementioned law suit decided by the First Hall Civil Court whereby he testified as follows:

> "*I can confirm that our professional relationship with Fahrenheit Freight Forwarders Co. Limited started around the beginning of the year 2014. We were sent an offer from Fahrenheit whereby they proposed to transport our cargo from Orly in France to the Applecore Foods warehouse in Malta.*"

It is therefore clear even from such a testimony that the contractual relationship between the parties, in actual fact, considered and involved the carriage of goods from Orly, France precisely to the Applecore Foods warehouse in Malta, this as confirmed by the very representative of defendant company. To this effect, it can be clearly concluded that plaintiff company was abiding with its contractual obligations with defendant when it delivered the goods to the Applecore Foods warehouse, precisely in line with what both parties had agreed.

However, the issue to be determined by the Tribunal goes beyond a mere analysis as to whether or not plaintiff company was justified in delivering the goods to the Applecore Foods warehouse. What needs to be determined is who is to be deemed responsible for the retained storage of these goods at such warehouse given that it is with regards to such storage fees that plaintiff company is currently seeking compensation from defendant. In this regard plaintiff company representative Elaine Galea testified via affidavit that it was in agreement with defendant company that the goods were kept stores at Apple Invest

Limited. ("*Kien bi ftehim mal-istess Kalataka Ltd u bi piena konoxxena taghhom li dawn il-pallets gew mahzuna ghand Apple Invest Limited.*" fol. 20 of these acts). On the other hand Jan Pantzer, whilst conceding that in line with the agreement concluded between the parties the goods were to be received at Apple Invest Limited, the retained storage of these goods was only a direct result of the fact that the goods were found to have been delivered, in breach of the contractual obligations incurred by plaintiff company, in what is described as a "*deteriorated condition*":

> "*I took pictures of the readings of the temperatures. The temperature of the products was found to be much higher than the required and agreed upon level.* (…) *It was at that moment that I informed the Fahrenheit representative that the goods will not be accepted by us. He obviously tried to argue and insisted that I should take it, because he claimed that there was nothing wrong with the goods, which was a blatant lie* (…) *Fahrenheit asked Applecore employees to store the goods we had not accepted in their cold rooms until Kalataka was inclined to take the goods. Kalataka was obviously not going to accept the goods in their deteriorated condition, thus the goods remained at Applecore for storage.*" (fol. 72 of the acts of these proceedings).

Similarly in the current proceedings, the same witness testified that "*with regards to these particular goods the temperature that was calculated was substantially higher than that of -15. I can recall that the temperature was close to about -7. Applecore actually confirmed this and we also confirmed this problem with these particular goods with this particular shipment. In view of this we actually rejected shipment.* (…) *Questioned by the Tribunal Fahrenheit actually asked for these pallets to be stored at Applecore.*" (testimony given by Jan Pantzer during the sitting of the 17th June, 2019).

In this regard the First Hall Civil Court whilst, as stated above, not deciding the particular issue being raised in the current proceedings for decision by the Tribunal, did determine

that the current plaintiff company was in breach of its contractual obligations by not maintaining the agreed temperature during all stages of the carriage of goods. It was precisely on this basis that the First Hall Civil Court deemed the current plaintiff company liable for the damages suffered by the current defendant company in connection with the carriage of its goods. To the Tribunal this also necessarily means that the current defendant company was justified in terms of law to refuse the delivery of the goods in the condition in which they were found to be at the Apple Invest Limited stores and hence to refuse delivery of the same. Consequently to this decision to refuse delivery of the goods, as transpires clearly from the preliminary report issued by Bernard Farrugia for Resolve Consulting Limited, "(r)*epresentatives from both Kalataka and FFF attended at Applecore and it was agreed that the cargo would be placed in cold storage at FFF's expense until a decision was taken about whether the cargo was in good order or not*". (fol. 78 of these acts). Whilst the Tribunal understands that this joint decision may also refer to the storage of the goods at Unistores Limited after they were eventually moved from the Applecore storage facilities, this agreement is indicative of the fact that the parties were aware that the retained storage fees consequent to Kalataka's refusal to accept delivery of the goods were necessarily dependant on whether Kalataka was justified in refusing delivery. The Tribunal finds that, also in line with the decision delivered by the First Hall Civil Court whereby current plaintiff company was found liable for damages in view of its breach of contract and which damages included also the price of the goods, freight and storage of the same goods at Unistores, defendant company was justified in refusing to accept delivery of the goods. Consequent to this, it cannot be held liable to compensate current plaintiff the sums incurred by the latter for the continued storage of goods given that such continued storage was also a direct result of Fahrenheit's breach of contract. Therefore it is plaintiff company which should also suffer this expense without any right of recovery from defendant.

In view of the above the Tribunal hereby decides this case by rejecting the preliminary plea of *res judicata*, upholding the first, third and fourth pleas raised by defendant

company finds that defendant company cannot be held liable for the retained storage of its goods in the stores of Apple Invest Limited, thus rejects plaintiffs claim with expenses being apportioned as to one fourth (1/4) for defendant company and the remaining three-fourth (3/4) for plaintiff company.

Av. Dr. Philip M. Magri