SMALL CLAIMS TRIBUNAL

ADJUDICATOR
ADV. DR. KEVIN CAMILLERI XUEREB

Sitting of Tuesday, 26th of November, 2019

Notice of Claim number: **191/2018**

THE MEDITERRANEAN WELLBEING COMPANY LIMITED
[COMPANY REG. NO. C-40909]

VERSUS

CONCORDE INTERNATIONAL FREIGHT FORWARDERS LIMITED
[COMPANY REG. NO. C-11393]

By means of Notice of Claim filed on the 2nd May, 2018 plaintiff company requested this Tribunal to condemn defendant company to pay the amount of three thousand, and ninety-three euro and fifty two cents (€3,093.52) representing amounts which were unduly paid (and paid in excess) by it to defendant company. In the said Notice of Claim, plaintiff company did not demand costs and any judicial interest.

By means of a Reply dated 13th June, 2018 defendant company raised the following pleas:

1. In the first place, plaintiff company's claim is legally invalid since there is a case in the inverse names, that is 'Concorde International Freight Forwarders Limited (C-11393) v. The Mediterranean Wellbeing Company Limited (C-40909)' [Notice of Claim number 98/2017] on identical merits;

2. That because the aforementioned case was filed on the 23rd February, 2017 the Tribunal as presided in the case number 98/2017 should hear this case;

3. Without prejudice, plaintiff company's requests are unfounded since no amount is due to plaintiff company who not only did not overpay but it made no payment at all. It falls on plaintiff company to prove the alleged overpayment.

4. Due to the frivolous nature of the case, defendant company requested that should the claim be denied, plaintiff company is to be condemned to pay double the judicial expenses.

In the sitting dated 2nd July, 2018 the Tribunal, presided by Dr. Philip Mario Magri, ordered that these proceedings be transferred to the Tribunal as currently presided to be heard together with the proceedings in the inverse names with the number 98/2017 (see *fol.* 11).

In the sitting dated 11th October, 2018 (*fol.* 65) the parties, through their respective legal counsel, agreed that the evidence submitted in the proceedings in the inverse names (Notice of Claim number 98/2017) shall also apply *mutatis mutandis* to the present proceedings.

In the sitting of 13th October, 2017 (*fol*. 17) the parties, through their respective legal counsel, agreed that the proceedings be held in the English language due to the fact that the representative of defendant company (Kenneth Donaldson) does not understand the Maltese language. Thus, as duly registered in the minutes of the said sitting, the Tribunal ordered that from that stage onwards, the proceedings be held in English. As a natural corollary, the present judgment is in the English language.

After the parties produced their evidence, it was agreed in the sitting dated 3rd July, 2019 (*fol*. 78) that the case be adjourned for judgement.

Having examined all the evidence so far produced, having examined all the relative acts of the proceedings (and those bearing number 98/2017) and also having weighed respective counsels' submissions (*foll.* 142–146), the Tribunal considers as follows.

First and foremost, the Tribunal deems imperative the following preliminary description and observation.

As a matter of fact, plaintiff company supplied general cargo services to defendant company, for the transportation of beds, mattresses and related goods by land and by sea from Italy to Malta. In 2016 a dispute arose between the parties regarding the amount due by defendant company. Plaintiff company maintains that defendant company has failed to pay the amounts due for cargo services rendered in February and March, 2016, with the total amount due totalling three thousand and ninety-three euro (€3,093.00c).[1] On its part, defendant company maintains that it was being overcharged by plaintiff company, and for that reason has made an overpayment in

[1] This is the subject matter of the case in the inverse names with the Notice of Claim number 98/2017.

the amount of three thousand and ninety-three euro and fifty-two cents (€3,093.52c). Defendant company also maintains that while the parties were in the process of negotiating the aforementioned dispute it had made a payment of two thousand and five hundred euro (€2,500.00c) after being asked to make an interim payment. In this regard, plaintiff company alleges that this payment was made on account of invoices which are not part of the merits of these proceedings and that therefore such payment is not relevant to this case.

Having established a brief depiction of the factual backdrop of the present case, the Tribunal now proceeds to delve into the merits thereof.

The Tribunal considers;

Defendant company pleaded preliminarily that this action is invalid because there is already a case in the inverse names bearing claim number 98/2017 on the same and identical merits.

The Tribunal observes that defendant company's claim that the merits of the present case and that of case number 98/2017 are identical is completely unfounded. This for the following reasons.

It is true that the factual context within which both cases are set is the same, but the merits of each case is different. In case number 98/2017 Concorde International Freight Forwarders Limited is requesting that The Mediterranean Wellbeing Company Limited be condemned to pay €3,093.00c for services rendered, whereas in the present proceedings The Mediterranean Wellbeing Company Limited is requesting that Concorde International Freight Forwarders Limited be condemned reimburse €3,093.52c representing a sum unduly paid because of overcharging on the part of Concorde International Freight Forwarders Limited. While it is also true that the issue of overcharging was brought up in case number 98/2017, out of the seventeen invoices on which the merits of the other case is based, only one (invoice number 022427) forms part of the merits of these proceedings.

Therefore, this plea is consequently being rejected.

The Tribunal considers further;

By means of the present action, plaintiff company is seeking reimbursement for sums paid to plaintiff company in excess of what should have been due to the latter. Plaintiff company alleges that defendant company overbilled on several occasions, causing plaintiff company to make several payments in excess of what should have been paid for the service actually provided, and it claims that it consequently has a right of restitution of these sums paid in excess. The Tribunal therefore considers

that the nature of this action is based on the juridical institute of *indebiti solutio* [*ex* Art. 1022 (1) of the Civil Code][2] and is to be examined from this perspective.

The quasi-contract of *indebiti solutio* has been described as coming into being "*when a person, through mistake, pays what is not due by him under any civil or natural obligation ("indebitum ex re"), either because there was never any obligation, or because it was already extinguished, or because something different from that which was due was given, or because he pays that which is due but not by him ("indebitum ex persona solventis"), or because he pays that which is due but not the person who receives it ("indebitum ex persona accipientis").*[3] The nature of the juridical relationship between the *solvens* and the *accipiens* has been held to be similar to that which exists between an owner and a possessor of a thing belonging to a third party owner, since the *accipiens* is in possession of that which he should not possess and the *solvens* has a right to recover that which he unduly paid.[4] Furthermore, despite the fact that unlike the *actio rei vendicatoria* the action for *indebiti solutio* is a personal action, the effects between the parties in the latter action are similar to those of *reivindicatio* and may consequently refer to (1) the restitution of that which was unduly paid; (2) indemnity for deteriorations; (3) restitution of fruits; and (4) reimbursement of expenses.[5]

According to settled jurisprudence, the action of *indebiti solutio* is available not only when the entire sum was paid unduly but also when the *solvens* paid in excess of that which was due and therefore seeks reimbursement only of that part of the payment made in excess.[6] This is because the action of *indebiti solutio* is based on the principle of equity which does not permit that one enriches oneself to the detriment of another.[7]

There are three elements which must be met and satisfied by a plaintiff in an action for *indebiti solutio*: (1) the **payment**, made by the *solvens* with the intention of extinguishing an obligation which he believes to exist; (2) the ***indebitum***, that is the absence of a cause, whether civil or natural, of payment; and (3) the **error** made by the *solvens* who paid under the mistaken belief that the payment was due by him.[8]

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[2] Art. 1022(1) of the Civil Code (Chapter 16 of the laws of Malta) provides that, "*Where any person pays a debt under a mistaken belief that such debt is due by him, he may recover from the creditor the debt so paid*."

[3] *vide* **VICTOR CARUANA GALIZA**, 'Notes on Civil Law' revised by J.M. Ganado (University of Malta, 1978) p. 304.

[4] *Ibid.*, p. 306.

[5] *Ibid.*, pp. 306- 308.

[6] *vide* case *in re* **Anton Azzopardi noe et v. Lawrence Ciantar et noe** (Superior Appeal, 5th October, 1998), **Camel Brand Company Limited v. Worldwide Import and Export Company Limited** (Court of Magistrates, 10th March, 2010); **Anna Maria Gauci noe v. Salvino Farrugia et** (Superior Appeal, 24th June, 2016).

[7] *vide* case *in re* **Joseph Rossi v. Victor Cilia** (First Hall of the Civil Court, 11th March, 1970).

[8] *vide* **VICTOR CARUANA GALIZA**, 'Notes on Civil Law' revised by J.M. Ganado (University of Malta, 1978) p. 305. See also, *inter alia* the case *in re* **Maria Grech v Filippo Abela** (Commercial Court, 11th April, 1961). In the case of **Korporazzjoni Enemalta v. Renato Sacco et** (Inferior Appeal, 16th December, 2002) it was held thus: "*L-estremi mehtiega mil-ligi u mid-duttrina ghall-azzjoni ta` indebiti solutio huma tlieta u cjoe:- (a) il-*

The element of error on the part of the *solvens* is pivotal in an action for *indebiti solutio* as was held by the Court of Appeal *in re* **Alfred Tonna et v. Carmela Bugeja et** of the 8th of February, 1957 (Vol. XLI, p.76) wherein it was stated thus: «*Hu evidenti li l-fondament tal-azzjoni huwa l-izball f'min ikun hallas; liema zball ma ghandux japprofitta minnu min ikun ircieva l-hlas skond il-massima ta' gustizzja naturali "jure naturae aequum est neminem cum alterius detrimento fieri locupletiorem" (De Regulis Juris, L. 206)… jekk ma ssirx il-prova ta' dak l-izball fis-solvens, u b'mod specjali jekk issir il-prova li dak is-solvens kien jaf bic-cirkostanzi li minhabba fihom hu ma kienx tenut ghal hlas, allura ma ghandux id-dritt ghar-ripetizzjoni ta' dak li hallas, ghaliex "indebitum solutum sciens non recte repetit". F'dan il-kaz min ikun hallas ma jkollux ragun jilmenta, u "imputet sibi" jekk kellu xi dannu*.»

It has been held that in an action for *indebiti solutio* the burden of proof rests on the plaintiff to prove the said three fundamental elements in such a manner so as to induce in the person deciding the case that moral certainty that plaintiff has erroneously made a payment without cause to defendant.[9] In particular, the element of error, on the part of the *solvens* must be conclusively proven by him in order for the action to be successful.[10] This is based not only on the principle that *actori*

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pagament; (b) id-difett ta' kawza, ezempju mankanza jew inezistenza tad-debitu ("indebitus ex re") jew mankanza talkwalita' ta' kreditur fl-"accipiens" jew ta' dik tad-debitur fis-solvens ("indebitus ex personis") u (c) l-errur fl-accipiens jew fis-solvens." See also *in re* **Paul Camilleri v. Silvio Mifsud et** (Superior Appeal, 8th May, 2001) and *in re* **GasanMamo Insurance Limited v. Untours Insurance Agents Limited noe** (Superior Appeal, 21st June, 2006).

[9] *vide* **F. TALASSANO**, 'Condictio Indebiti*'*, Foro Padano (n. I, 1947) p. 397: "*L'attore in ripetizione d'indebito ha l'onere di provare il "non debito"...perché di non dovere è affermazione la pretesa di ripetere*." See also **U. BRECCIA**, 'La Ripetizione dell'Indebito', (Milano, 1974) p. 400; **A. TORRENTE** and **P. SCHLESINGER**, 'Manuale del diritto privato', (Giuffre Editore, 1994) p. 623; **G. TRABUCCHI**, 'Istituzioni di Diritto Civile', (34th ed., Padova, 1998) p. 697; Case no. 27026, Corte di Cassazione (8th July, 1997); Case no. 1962, Corte di Cassazione (17th July, 2008); Case no. 1734, Corte di Cassazione (25th January, 2011); Case no. 775, Tribunale di Pesaro (8th October, 2015).

[10] *vide* case *in re* **Frank Schembri v. George Scicluna** (Superior Appeal, 24th October, 1975): "*jekk ma ssirx il-prova ta' dak l-izball fis-solvens u b'mod specjali jekk issir il-prova li dak is-solvens kien jaf bic-cirkostanzi li minhabba fihom hu ma kienx tenut ghall-hlas, allura ma ghandux id-dritt ghar-ripetizzjoni ta' dak li hallas, ghaliex indebitum solutum sciens non recte repetit, u allura f' kaz bhal dan, min ikun hallas ma jkollux ragun jilmenta, u imputet sibi jekk kellu xi dannu*." See also *in re* **Anton Azzopardi noe et v. Lawrence Ciantar et noe** (Superior Appeal, 5th October, 1998) wherein it was held thus: "*Dan l-element tal-iżball hu essenzjali biex l-azzjoni tiġi tentata b'suċċess. "Per farsi luogo alla ripetizione dell'indebito è indispensabile l'errore di chi pagò" (Vol. IX paġna 415). "L'azione dell'indebito non è ammissibile quando il pagante nell'atto di pagamento sapeva che l'ammontare pagato non era affatto dovuto" (Vol. XVIII, pt. III, p.146). L-element tal-iżball f'azzjoni ta' indebitu jeħtieġ li jiġi kompletament u rigorożament ippruvat. Altrimenti l-azzjoni tfalli. Dan iwassal għall-konklużjoni illi "una volta l-attur dak il-mument stess tan-negozju kien konsapevoli mill-fatt li ssomma mitluba kienet eseġerata ... u intant, malgrado din il-konsapevolezza ried jagħti, u fil-fatt ta, lill-konvenut issomma (mitluba), allura ma jistax raġonevolment jintqal li hu ħallas bi żball; anzi kien jaf li ma jmissux ħallas daqshekk u intant ried iħallas hekk. Ċirkostanza li tipprekludi l-eżerċizzju tal-azzjoni tar-ripetizzjoni tal-indebitu (Vol. XXIX, pt. II, p. 453)…Dan l-istat ta' fatt li jrid jirrizulta ppruvat kellu jkun ukoll invinċibbli fis-sens li min jallega l-ħlas tal-indebitu ma setax bi ftit diliġenza jinduna bih u jovvja għalih. Għaliex altrimenti ma jkunx faċli għalih li jipprova konvinċiment li hu ma kienx jaf li seta' ma jħallasx dak li fil-fatt ħallas.*" On the same lines are **Rosemarie Brincat et v. J&K Contractors Limited et** (Inferior Appeal, 6th March, 2012); **Sicons Opto Products Limited v. Jesmond Farrugia noe et** (Superior Appeal, 29th April, 2016); and **Banif Bank Malta plc v. Socjeta Filarmonika Lourdes A.D. 1977** (First Hall of the Civil Court, 31st October, 2019). The Tribunal observes that this is based on the teachings of Italian jurists, namely **V. DE**

incumbit onus probatio, but also on the presumption that every payment implies a debt.[11] In this regard, the Tribunal considers it useful to make reference to the teachings of **FRANCESCO RICCI** ('Delle Prove', UTET, 1891, pp. 52–53, §34) where he states as follows: "*L'attore che ha a favore della sua domanda una presunzione è dispensato dall'onere della prova* […] *Effetto della presunzione é, come si esprime la Cassazione di Torino (decis. 16 febbraio 1855, vii, 1, 176), di far considerare la cosa presunta come provata sinchè non si dimostri il contrario. La parte, quindi, cui una presunzione è opposta, non può limitarsi ad asserire il contrario, ma deve distruggere la presunzione stessa con una chiara e indubitata prova della fatta impugnativa."* In other words, since the existence of the debt is presumed, it is plaintiff company that is burdened with proving that the payments made by it were not due to defendant company by means of clear, convincing and unequivocal evidence.

Having considered the juridical fundamentals of this action, the Tribunal now turns its attention to the evidence submitted by the parties to substantiate their respective stance.

Plaintiff company filed a table indicating the cubic meters billed, and that actually delivered as well as an indication of the items delivered.[12] On the same document plaintiff company gave any indication of the box sizes for mattress (of various sizes), pillows (including leg pillows), blankets and airflow.[13] Plaintiff company also exhibited copies of the invoices that it is contesting, as well as the relative notice of arrival and itemized invoice issued by the supplier.

The Tribunal starts by noting that according to the terms and conditions of carriage, which are included with the quotations, "*Ex-works costs are charged by our agents based on cargo details as supplied by shippers and are not discounted in case shipment results to be smaller."*[14] From this it follows that the number of boxes, or cubic meters, actually shipped is not alone sufficient for the purposes of establishing whether plaintiff company was overcharged. This is due to the fact that by application of this contractual term, if the total cubic meter shipped was lower than the amount that had been disclosed to defendant company when booking the service, defendant company is empowered to charge based on the amount booked, and not on the amount that was actually shipped. Therefore in such cases, in order

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PIRRO, 'Teoria della Ripetizione d'Indebito Secondo il Diritto Civile', (Città di Castello 1892) p. 112; **V. CAMPOGRANDE**, 'Condictio Indebiti', Dig. It.,VIII, n.1, (Milano-Roma-Napoli 1896) p. 634; **G. GIORGI**, 'Teoria delle obbligazioni nel Diritto Moderno Italiano' (Firenze 1909) 109; **E. PACIFICI MAZZONI**, 'Istituzioni di diritto Civile' (Firenze 1920) p. 210.

[11] Art. 1147(1) of the Civil Code.

[12] 'DoC: KD.1', *fol.* 18 and 'Doc: KD-1A', *foll.* 19-20.

[13] The Tribunal notes that plaintiff company failed to submit information regarding the box sizes of goods ordered from "Ergogreen", and consequently the Tribunal can only make a general comparison using the weight indicated in the order forms issued by the supplier and the invoices issued by defendant company in order to make a determination about the claim of overcharging.

[14] See for example Quotation number 011142 issued on 18th February, 2016 (*fol.* 37).

to be successful in this action plaintiff company would need to prove not only that the total cubic meters delivered was less than the amount for which it was charged, but also that the quotation given by defendant company erroneously ascribed more cubic meters than what was being ordered by plaintiff company. In this regard the Tribunal notes that plaintiff company failed to produce any evidence regarding the bookings it made relative to the invoices it is impugning, and the Tribunal will consequently be precluded from examining whether any irregularity occurred when defendant company processed the bookings made by plaintiff company.

The Tribunal must also point out that plaintiff company also failed to explain how many items fit in one box. This information was crucial to enable the Tribunal to make its own calculations of the cubic meters involved in each order,[15] and without it the Tribunal must necessarily make its determination based on a more generic comparison of the amount of boxes and weight stated in the supplier's invoice and the relative invoice issued by defendant company.

Regarding invoice number **022427** (*fol.* 29), the Tribunal recalls and confirms its findings in the case in the inverse names (Notice of Claim number 98/2017) wherein it was decided that: "*plaintiff company produced a document that had been delivered with the cargo by the supplier which states that three (3) cubic metre of cargo were delivered to plaintiff company by the supplier to be shipped to defendant company*[16]*, which confirms the amount billed by plaintiff company. The authenticity of this document was in no way contested by defendant company. Furthermore, the Tribunal notes that the supplier's invoice relative to this shipment*[17] *contains more items than what is indicated in Doc: KD1 (fol. 18), drawn up by defendant company, which necessarily weakens its argument that it was overcharged in this invoice since its calculations appear to have been based on the wrong quantities*."

The Tribunal notes that in invoice number **021262** (*fol.* 59) plaintiff company was billed for 2.1 cubic meters, whereas in 'Doc: KD 1' it claims that 2.2 cubic meters were actually shipped. There is therefore clearly no overcharging in this invoice.

With regards to invoice number **022008** (*fol.* 42) the Tribunal notes that no measurements of the boxes for items ordered from Ergogreen S.r.l. were submitted by plaintiff company in order to allow this Tribunal to make its own calculations. Therefore, the Tribunal can do no more than compare the weight indicated in the supplier's invoice and in defendant company's invoice, which appear identical.

[15] For instance, in invoice number 021245 11 "airflow", a blanket, 70 low boots and 30 slippers were ordered, for a total of 112 items, which were shipped in 7 boxes. Without guidance from plaintiff company, it is impossible for this Tribunal to deduce how many boxes of a particular size were utilised in order to be able to calculate the cubic meters booked for shipping.
[16] 'Doc: AA.2' (*fol.* 130).
[17] Invoice issued by Home Relax srl on 19th February, 2016, (*foll.* 31–34).

Consequently, the Tribunal is of the opinion that plaintiff company failed to provide sufficient evidence that it was overcharged on this invoice.

With respect to invoice number **021856** (*fol.* 47) 'Doc: KD 1' indicates that 14 double mattresses and 4 single mattresses were ordered from the supplier when from the supplier's invoice it appears that plaintiff company had ordered twenty double mattresses (also indicated in a handwritten note on the notice of arrival) and 5 single mattresses, apart from other accessories such as blankets and back warmers. It is consequently evident that plaintiff company has failed to prove that it was overcharged on this invoice.

With regards to invoices number **022287** (*fol.* 35), **020859** (*fol.* 51), **021332** (*fol.* 69), **020576** (*fol.* 75), **020572** (*fol.* 79), **019494** (*fol.* 85) the Tribunal notes that on each invoice (or its relative notice of arrival) there is a handwritten remark to the effect that a number of items were undelivered. However, a comparison between the weight of the cargo as stated by the supplier and the weight stated on the invoice shows no discrepancy to the detriment of plaintiff company, as there is never an occasion where the weight on the invoice is higher than the weight stated by the supplier. Furthermore, a comparison between the number of items listed in 'Doc: KD 1' and the number of items listed in the relative order form shows that there are less items listed in 'Doc: KD 1' than what was actually ordered, potentially on account of the fact that, at least according to plaintiff company, some items were not sent. In this case, due to the contractual clause abovementioned plaintiff company does not have a right to be reimbursed for any amount paid by it relative to the undelivered items since, when it engaged the services of defendant company it agreed that there would be no discount should the shipment result to be smaller than expected.

Regarding invoice number **021081** (*fol.* 55) the Tribunal notes that the number of items listed in 'Doc: KD 1' does not match with the list of items handwritten on the invoice, or in the supplier's invoice. The said document indicates that 5 single mattresses were ordered, when from the supplier's invoice it appears that plaintiff company in fact ordered 10 single mattresses, and it also omits a number of under blankets which are listed in the order form. The Tribunal further notes that the number of boxes and weight indicated in the supplier's invoice and in defendant company's invoice tally, and therefore it is not convinced that plaintiff company was overcharged with respect to this invoice.

With regards to invoice number **019734** (*fol.* 85) it appears that in 'Doc: KD 1' plaintiff company failed to indicate that a single mattress was also part of this order. Furthermore more, the number of boxes and weight on the on the supplier's invoice and on plaintiff company's invoice match. Similarly, regarding invoice number **019371** (*fol.* 91), the discrepancy indicated in 'Doc: KD 1' is in the amount of 0.1 cubic meter. No discrepancies appear from the number of boxes and weight indicated in the supplier's invoice and the invoice issued by defendant company. The

Tribunal considers therefore that plaintiff company has failed to sufficiently prove that it was overcharged on this invoice.

Regarding invoice number **021061** (*fol.* 95) the invoice issued by supplier appears to contain a greater number of items than indicated in the handwritten note on the same document. In fact, the number of boxes indicated in this note (which plaintiff company used to reach to its calculation of 4.9 cubic meters of shipped goods) is far lower than the number of boxes indicated to have been shipped on the supplier's invoice. Considering the lack of discrepancy between the number of boxes and weight in supplier's invoice and the invoice issued by defendant company, the Tribunal considers that plaintiff company, again, failed to prove that it was overcharged upon this invoice.

With regards to invoice number **021245** (*fol.* 65) the Tribunal notes that while the number of boxes indicated in the supplier's invoice and defendant company's invoice is the same, there is a weight discrepancy of 20kg. In view of this it cannot be excluded that plaintiff company was overcharged in this invoice. Furthermore, with regards to invoice number **022482** (*fol.* 24) there was an admission on the part of defendant company in an email sent to plaintiff company on 9th January, 2017 (*fol.* 22) that plaintiff company was charged for 3.65 cubic meters whereas the supplier's measurement stated read 2.95 cubic meters.

However, the Tribunal considers that plaintiff company is nonetheless ineligible for any reimbursement. As has already been explained above, according to Maltese jurisprudence in order for the plaintiff to succeed in an action for *indebiti solutio,* he must prove that the undue payment was made due to an excusable and invincible error that could not have been avoided even if plaintiff exercised due diligence. In the present case any error that might have given rise to undue payment on these invoices could have been avoided by plaintiff company taking the necessary measurements when the shipment arrived, which according to the testimony heard by this Tribunal was a possibility afforded to plaintiff company, or within the 30 day credit time-window granted by defendant company. Plaintiff company failed to do this and consequently the Tribunal is not morally convinced that there is any reimbursement due on these invoices since the error does not appear to be excusable or invincible. This is especially in light of the credit notes which were produced as evidence that defendant company had on past occasions admitted to overcharging, which should have served to further motivate plaintiff company to act diligently and confirm measurements in due time.

The Tribunal considers further;

By means of its fourth plea, defendant company requested that in the eventuality that plaintiff's claim is rejected it should be condemned to pay double expenses due to the frivolous nature of this case.

This demand appears unfounded. The fact alone that plaintiff company's demands were rejected does not automatically lead to the conclusion that its action was frivolous or vexatious. The alleged frivolity must have been proven by defendant company,[18] and no such evidence was produced. Therefore, this pleas/request is being rejected.

THEREFORE, in the light of the above considerations and in line with the same, this Tribunal decides the present case as follows:

I. in the first place, the Tribunal abstains from taking further cognisance of defendant's company second plea since this was decided by means of a decree dated 2nd July, 2018;

II. secondly, by rejecting defendant's company first plea and its fourth plea;

III. thirdly, by accepting defendant's company third plea and consequently rejecting plaintiff company's claim in its entirety.

The judicial costs connected with these proceedings are to borne thus: 80% are to be borne by plaintiff company and 20% are to be borne by defendant company.

***sgnd*. ADV. DR. KEVIN CAMILLERI XUEREB**
Adjudicator

***sgnd*. ADRIAN PACE**
Deputy Registrar

[18] See case *in re* **Dolores sive Doreen Vella v. Peter Paul Vella noe et** (First Hall of the Civil Court, 25th June, 2014).