



**SMALL CLAIMS TRIBUNAL  
(EUROPEAN SMALL CLAIMS PROCEDURE)**

ADJUDICATOR  
**ADV. DR. KEVIN CAMILLERI XUEREB**

**Sitting of Wednesday, 30<sup>th</sup> of September, 2020**

Claim Number: **2/2020**

**NADINE PIERRE**

*VERSUS*

**JADE HANDFORD**

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimant on the 24<sup>th</sup> January, 2020 whereby the same, in line with Regulation (EC) no. 861/2007, requested the Tribunal to condemn defendant to pay her the sum of four hundred Euros (€400.00) for the reasons explained under Section 8 of the Claim Form, namely for the refund of a deposit in connection with a lease agreement (see *tergo* of *fol.* 3 and *fol.* 4). Claimant demanded the expenses of the procedures but not any legal interest on the amount claimed (*vide* Sections 7.3.1 and 7.4 respectively at *fol.* 3).

Took cognizance of all the acts and documents relating to the case;

The Tribunal considers:

The claimant (or plaintiff) provided a succinct description of the factual aspects at the basis of her claim (see *tergo* of *fol.* 3 and *fol.* 4) and also submitted a number of documents in support of her claim (see *fol.* 6–16).

However, claimant failed to follow the pertinent procedure and serve the defendant with the acts of these proceedings, notwithstanding the Tribunal's directives and orders in this respect.

The acts show that the claim was filed on the 24<sup>th</sup> of January, 2020 and that the very first attempt to notify the defendant with the relative acts of the proceedings was not successful

(see *tergo* of *fol.* 21). No second or further attempt was made to notify the defendant. This prompted the Tribunal to issue a decree dated 2<sup>nd</sup> June, 2020 (see *fol.* 22) which stated thus:

The Tribunal,

Having seen the acts of the present proceedings;

The Tribunal notices that the defendant has not yet been properly notified with the relative claim in terms of EC Regulation no. 861/2007 (see *tergo* of *fol.* 21);

Having seen Articles 12(2) and 14(1) of EC Regulation no. 861/2007, the Tribunal orders and directs the claimant to take all necessary steps so to duly notify the defendant, within a period of thirty (30) running days from service of this decree, with the relative acts of these proceedings in terms of the relevant provisions of EC Regulation no. 861/2007.

The Tribunal makes it clear that failure to abide by the directions contained in the present decree, after the lapse of the stated time-frame, shall result in the Tribunal proceeding for judgment, dismissing claimant's claim.

The Tribunal orders that a copy of this decree be immediately communicated to the claimant on the email address shown in her claim 'Form A'.

In spite of this decree – which was communicated to the claimant by email dated 2<sup>nd</sup> June, 2020 issued by the Tribunal's deputy registrar (see *fol.* 23 – the claimant appears to have remained passive and inert, taking no initiative to make another, proper, attempt at service, generally, in line with Regulation (EC) no. 861/2007 and, particularly, in the light of the cited Tribunal's decree, even though the same contained the intimation stating that upon "*failure to abide by the directions contained in the present decree, after the lapse of the stated time-frame, shall result in the Tribunal proceeding for judgment, dismissing claimant's claim.*" Instead of conforming to the decree's directive and follow the applicable procedural channels, claimant sent a number of emails to the Tribunal's Deputy Registrar inquiring on the import of the said decree and in one such email she simply indicated an alternative address for the defendant.<sup>1</sup>

The time-period mentioned in the Tribunal's decree has abundantly lapsed and in the interim period (*viz.* between service of the said decree and the lapse of the 30-day time-limit and even in the several successive months until this decision), the acts of the present proceedings manifest no activity whatsoever on the part of the claimant.

This inertia on the part of the claimant cannot but be interpreted as being tantamount to a lack of interest in pursuing these proceedings further, albeit being prompted by the Tribunal as above shown. Such lack of interest is equivalent to the claimant's abandonment of her claim against the defendant.

This Tribunal observes that it is a known tenet at Law that a party who initiates proceedings is duty bound to diligently follow the proceedings which it instigated and gave rise to. A party is not allowed to file judicial proceedings and expect Justice to take its course in the absence

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<sup>1</sup> See the email exchanges at *fol.* 24–26.

of any contribution on its part or without any impetus whatsoever from its side. When proceedings are initiated, the party instigating such judicial process (i.e., the plaintiff) triggers a number of procedural mechanisms by virtue of which it calls upon the Court's or Tribunal's jurisdictional authority to delve into a specific subject-matter and decide thereupon. However, in order to do so the Court or Tribunal (i.e., to consider and decide the issue at hand) must be 'aided' by the party calling upon its authority. Certain formal requirements, particular procedural norms and specific normative mechanisms must be addressed and adhered-to by the interested party in order for the Court or Tribunal to do so, failing which the deciding authority finds itself incapable and paralysed to consider or accord that which is desired or demanded. All this dilutes itself into the imperative requirement that when proceedings are set in motion, the party seeking a remedy ought to meet a certain level of diligence, care, zeal and vigour in following the process it voluntarily gave rise to.<sup>2</sup> In relation to these observations, reference is made to the judgment *in re Raymond Cauchi et v. Kontrollur tad-Dwana* (Court of Appeal, 15<sup>th</sup> December, 2015) wherein it was held that: "*huwa palezi li l-partijiet f'kawza ghandhom l-obbligu li jsegwu l-kawza b'mod diligenti u li jattendu ghall-udjenza fid-data u fil-hin indikat fl-udjenza precedenti sabiex jinformat ruhhom dwar dak li jkun qed isir fl-udjenza u dak li jkun qed jigri fil-kawza.*" Furthermore, in the case of *Mary Zammit v. Paul Camilleri Paul pro et noe* (First Hall, Civil Court, 16<sup>th</sup> March, 2012) it was *inter alia* pointed out that, "*parti ghandha l-oneru li kull tant zmien tivverifika mill-atti x'ordnijiet ikunu qeghdin jinghataw mill-qorti in camera b'riferenza ghall-kawza.*"<sup>3</sup>

**THEREFORE**, in the light of the above-mentioned reasons, this Tribunal decides the present case by cancelling plaintiff's case. All the expenses connected with these proceedings are to be borne by the plaintiff.

Finally, the Tribunal orders that a copy of this judgment is served upon the claimant in terms of Article 13 of Regulation (EC) no. 861/2007.

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

**Sgnd. ADRIAN PACE**  
*Deputy Registrar*

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<sup>2</sup> For additional remarks with respect to these requirement, reference is made to the *obiter* reasoning in the decision *in re Celine Imbert v. Jasmin Voss* (European Small Claims Procedure, 26<sup>th</sup> March, 2018).

<sup>3</sup> On the same lines, see also *in re Mauro Vella v. Orlando Periti* (Eraclesofa Italia S.R.L.) (European Small Claims Procedure, 11<sup>th</sup> June, 2020); *in re Celine Imbert v. Jasmin Voss* (already cited); *in re Christopher Warner v. Bilom Group* (European Small Claims Procedure, 12<sup>th</sup> March, 2018); *in re Dorianne Zammit Guglielmi v. Leon Yousefzadeh* (European Small Claims Procedure, 6<sup>th</sup> November, 2017); and *in re Antoinette Pullicino et v. Rynair Limited* (European Small Claims Procedure, 6<sup>th</sup> November, 2017).