IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Żammit

Sitting of Wednesday, 20th January 2021

Claim No: 76/19 CZ

Tennisline Malta Limited (C-76881)

vs.

Paolo Machado

The Tribunal,

Having taken cognisance of the claim filed by plaintiff company on the 10th April 2019 whereby they claimed:

1. That the defendant Paolo Machado was engaged by the applicant company Tennisline Malta Limited, to provide it tennis coaching services between the months of May and December of the year 2018;
2. That towards the end of his engagement, the defendant collected certain sums from the applicant company's clients for tennis lessons, which sums he never passed on to the applicant company, as he was required to do.
3. That the total sum collected in this regard amounts to one thousand four hundred seventeen Euro and fifty cents (€1,417.50).

4. That in this regard the defendant caused the applicant company considerable damages, arising from reputational damage suffered vis-à-vis its clients, as will be amply proven throughout the case.
5. That moreover, on the 14th July 2018, the applicant company granted a sum of eight hundred Euro (€800) to the defendant on loan, out of which four hundred forty-five Euro (€445) remain pending.
6. That therefore, in total the defendant owes the applicant company a sum one thousand eight hundred sixty-two Euro and fifty cents (€1,862.50), besides damages suffered by the same applicant company.

   That notwithstanding various attempts by the applicant company in order to recover this sum from the defendant, he remained in default, and this is why these proceedings had to be instituted.

Therefore the applicant company is humbly requesting this Tribunal, that besides any declaration that it deems fit and proper, it:

i. Declares that the defendant Paolo Machado must pay the applicant company Tennisline Malta Limited the sum of one thousand eight hundred sixty-two euro and fifty cents (€1,862.50) representing pendencies on the loan it granted to him, as well as sums collected from its clients for lessons, as explained in this application;
ii. Condemns the defendant Paolo Machado to pay the applicant company Tennisline Malta Limited the sum of one thousand eight hundred sixty-two euro and fifty cents (€1,862.50) representing pendencies on the loan it granted to him, as well as sums collected from its clients for lessons, as explained in this application;
iii. Declares that the defendant Paolo Machado is solely responsible for the damages suffered by the applicant company Tennisline Malta Limited arising from reputational damage caused by the defendant's actions;
iv. Liquidates the damages suffered by the applicant company Tennisline Malta Limited, due to the defendant Paolo Machado's actions, if needs be through the nomination of legal experts for this purpose, which damages

are being limited to the amount of three thousand one hundred thirty seven euro and fifty cents (€3,137.50) and this in order to fall within the competence of this Honourable Tribunal;

v. Condemns the defendant to pay the applicant company Tennisline Limited the amount of damages as liquidated by this Honourable Tribunal;

With expenses and legal interest against the defendant who is hereby being called upon to testify on oath, with reference to the oath of the adversary.

By means of a decree of 20th May 2019, the Tribunal ordered that the proceedings be held in English.

The Tribunal took cognisance of the reply filed by defendant on 20th May 2019 whereby he stated:

1. Firstly, the Small Claims Tribunal is not competent *ratione materiae* to hear and decide this case, particularly the third and fourth request put forward by the plaintiff company and this in line with that provided by article 3 of Chapter 380 of the Laws of Malta;
2. Secondly, and without prejudice to the above, both during the period that the defendant was working for the plaintiff company and also afterwards, the defendant always behaved professionally and showed respect to the plaintiff company. Moreover, he never acted in anyway or manner which caused damage and/or could have caused damage to the plaintiff company and/or its reputation.
3. Thirdly, also without prejudice to the above, any harm and/or damages allegedly suffered by the plaintiff company were caused solely because of the behaviour of the same plaintiff company and in no way is thus the defendant responsible.
4. Fourthly, the amounts being demanded by the plaintiff company, even in line with principles of equity and justice, are not due, this as shall be shown during the course of this case.

5. Fifthly, and always without prejudice to the above, in any case the plaintiff company has to provide evidence to sustain its requests.
6. Lastly, the plaintiff company's requests are unfounded both in fact and law.

The defendant also filed a counter-claim, wherein he held:

This Tribunal is being requested to refuse all the requests put forward by the plaintiff company Tennisline Malta Limited, and this for the reasons outlined earlier, and instead condemn Tennisline Malta Limited to pay Paulo Machado the sum of two thousand and one hundred Euro (€2,100) which are due to him for the following reasons:

1. Between the months of May and December 2018 the applicant rendered tennis lesson services to a number of students registered with the school that Tennisline Malta Limited manages;
2. The contract of services between the parties was as follows:
    - The applicant was to carry out a number of lessons per week to students registered with the school that Tennisline Malta Limited managed, whereas Tennisline Malta Limited had to engage the applicant to render his services for a minimum of thirty-five (35) hours and a maximum of forty (40) hours per week.
    - The rate of payment was that of fifteen Euro (€15) per hour for one-to-one lessons and seventeen Euro (€17) per hour for group lessons.
3. During the period between October and December 2018 the company Tennisline Malta Limited failed to keep up to the contract of services agreed to between the parties and this when it started engaging the applicant for far less hours than that agreed.
4. As a result, the applicant suffered loss of earnings, which loss amounts to the sum of two thousand and one hundred Euro (€2,100).

5. Despite being requested to settle this amount, Tennisline Malta Limited failed to do so – hence this procedure had to be initiated.

With costs, expenses and interest on the amount due, against the company Tennisline Malta Limited which is being summoned in subpoena.

The Tribunal took cognisance of the reply to the counter-claim, filed by plaintiff company on 3rd June 2019, where it declared:

That, the counterclaim put forward by the plaintiff in reconvention should be refused against the same plaintiff in reconvention, with costs, as they are unfounded in fact and at law, for the following reasons:

i. That firstly, no binding agreement was ever finalised between the contending parties regarding a minimum amount of hours per week that the defendant company in reconvention was bound to engage the plaintiff in reconvention for;
ii. That secondly, and without prejudice to the above, the defendant company in reconvention has no pending debts towards the plaintiff in reconvention;
iii. That thirdly, and without prejudice to the above, the counter-claim put forward by the plaintiff in reconvention has no legal or factual basis whatsoever, and this as will be made amply clear during the proceedings of the case;
iv. That moreover, and without prejudice to the above, the counter-claim is frivolous and vexations, seeing as there was no contract of employment between the contending parties, and thus the counter-claim is intended merely for the plaintiff in reconvention to escape his debts with the defendant company in reconvention, Tennisline Malta Limited, and in order for him to evade the payment of damages that he caused to the same defendant company in reconvention, due to his wrongdoing;
v. Reserving the right to raise further exceptions permitted by law.

With costs and expenses against the plaintiff in reconvention.

The Tribunal:

Took cognisance of the acts;

Took cognisance of is decree of 7th November 2019 whereby it rejected defendant's request to file an additional defence plea.

Viewed the affidavit of Sava Jovic[1], heard Sava Jovic in cross-examination[2], viewed the affidavit of defendant[3], cross-examination of Dr. Philip Formosa, and cross-examination of defendant.

The Tribunal heard the final oral submissions of the parties;

Considered that the case has been adjourned for judgment for today.

Further considered:

[1] Fol. 36
[2] Fol. 147
[3] Fol. 163

That from the acts of the case, the following has resulted:

Plaintiff company engaged defendant to provide tennis coaching services. Defendant provided these services from May to December of 2018. There was no employment contract between the parties, but a memorandum of understanding was signed between the parties, and the conditions and benefits of work were e-mailed to defendant prior to commencing his duties.

Plaintiff company alleges that defendant used to organise training packages for students, which were not in line with the company's policy, in that rather than charging a lesson fee for each lesson, defendant would offer packages which would be discounted, without recording them in plaintiff company's books, and keep the money for himself. Plaintiff company in fact established through various workings that the sum of one thousand, eight hundred sixty-two Euro and fifty cents (€1,862.50) were due to it, by way of revenue from unrecorded tennis lessons carried out as above-mentioned.

Regarding this particular item, plaintiff company produced the time-sheets showing dwindling revenue and recorded lesson hours from defendant's side. Defendant however rejected this argument by stating that he did nothing irregular and that he had informed the director of plaintiff company about the packages. Regarding this particular item, the Tribunal finds plaintiff company's version more credible. The account given by Sava Jovic, corroborated by witness such as Samuel Formosa, and the screenshots of defendant's communication with various clients, clearly shows that defendant was not at all transparent in charging clients, and used to shift and arrange different packages, varying in the number of lessons and payment, according to his exigencies. Defendant also claims that clients were leaving plaintiff company because of the poor condition of the pitch, and even filed extracts from a court case about the matter, and a photo (taken from the exterior) of a part of the pitch. It does not result from the acts that any client complained about the condition of the pitch; rather it results that when the Pembroke pitch could not be

used, there were alternative pitches. After viewing all documents and evidence, the Tribunal finds that this particular claim regarding unrecorded lessons and lost revenue from plaintiff company is to be upheld.

Plaintiff company also claimed that it had lent the sum of eight hundred Euro (€800) to defendant. Defendant rejects this claim; the Tribunal must state that plaintiff company did not bring forward any proof that in fact there was such loan, and this claim is being rejected.

Plaintiff company also claimed that it suffered damages as a result of defendant's actions. In the initial claim it stated that such damages amount to three thousand, one hundred and thirty-seven Euro and fifty cents (€3,137.50). At a subsequent stage in the proceedings, however, it filed a break-down of its claims and in Doc. K at page 125 of the acts, it claimed that the 'minimum estimated loss of revenue' was two thousand nine hundred and sixty-eight Euro (€2,968). Defendant stated that the Tribunal is not competent *ratione materiae* to decide upon this claim. The Tribunal however is rejecting this particular plea since the claim is a money claim in terms of Section 3 of Chapter 380 of the Laws of Malta. The Tribunal understood that plaintiff company is claiming this amount of damages due to the fact that it claims that certain clients no longer bought its coaching services, but went to train elsewhere. The Tribunal notes however that the proper reason for the departure of these clients was not proven. Except for Philip Formosa, who states that he still trains with plaintiff company up till today, plaintiff company brought forth no other witness to prove this claim. Furthermore, plaintiff company's workings in Doc. J at page 124 of the acts are rather sketchy and barely corroborated and explained. The Tribunal therefore will reject this claim from plaintiff company.

The counter-claim

Defendant filed a counter-claim to claim that since he had to be given a thirty-day notice before termination of his services, and due to the fact that his services were terminated with immediate effect on 1st January 2019, plaintiff company owed him payment for a 35-hour week at the rate of fifteen Euro (€15) per hour. Plaintiff cites a memorandum of understanding as the basis of his claim. The Tribunal notes however that this memorandum of understanding does not constitute a proper employment contract and defendant is still to be considered as a freelance service provider, despite that memorandum. The minimum of thirty-five (35) hours per week is not even mentioned in that memorandum, and the mention of 35-45 hours per week is only mentioned in an e-mail sent by the director of plaintiff company to defendant. The Tribunal deems that defendant is therefore not entitled to the pay of thirty days as claimed by him, particularly because the rules applicable to termination in Chapter 452 of the Laws of Malta do not apply in this particular case, for the reasons given above, and also because it was through defendant's own acts that the request for his services was stopped.

The Tribunal therefore decides in the following manner:

As regards the original claim, the Tribunal is partially upholding the fifth defence plea, and while rejecting all other defence pleas, orders defendant to pay to plaintiff company the sum of one thousand, eight hundred sixty-two Euro and fifty cents (€1,862.50), together with interest as from the date of the filing of the claim till payment is effected.

As regards the counter claim, the Tribunal upholds reconvened plaintiff company's defence pleas, and rejects reconvenant defendant's claim.

The costs of the original claim shall be borne as to three-fifths (3/5) by defendant and two-fifths (2/5) by plaintiff company, whereas the costs of the counter-claim shall be borne by reconvenant defendant.

Dr. Claudio Żammit

Adjudicator

Mary Josette Musu'

Deputy Registrar