Court Of Appeal

Judges

THE HON. CHIEF JUSTICE MARK CHETCUTI
THE HON. MR. JUSTICE JOSEPH R MICALLEF
THE HON. MR JUSTICE TONIO MALLIA

Sitting of Wednesday, 17th March, 2021.

Number: 2

Application Number: 143/2012/1 SM

Philip Agius

v.

Arriva plc

The Court:

1. Having seen the sworn application brought forward by the plaintiff Philip Agius on the 9th February, 2012, whereby it was claimed:

> "1. Whereas applicant has since the year two thousand and eight (2008) communicated with defendant company informing said company about the fact that the public transport market in Malta was going to be liberalized and thus such a situation would offer an opportunity in favour of defendant company;
>
> "2. Whereas defendant company had confirmed that it was not represented in Malta and moreover suggested that applicant should communicate

with a particular segment within the same defendant company, namely the 'New Business Development Team', with regards to this opportunity;

"3. Whereas applicant communicated on a regular basis with defendant company both through telephonic conversations as well as by correspondence and emails whereby he used to render services to same and amongst which he used to forward useful information and this during the period 2008 till date of the adjudication of the relative tender in favour of a Maltese company namely Arriva Malta Limited (C48875) in which defendant company has an interest. This fact has also been acknowledged by defendant company as will be proved during the hearing of evidence and final submissions;

"4. Whereas consequent to the services rendered and information forwarded by the applicant, the defendant company interested itself and as a matter of fact representatives of defendant company travelled to Malta on more than one occasion and even used to meet up with applicant. On one occasion such a meeting was held in the presence of the legal counsel to applicant;

"5. Whereas applicant used to attend to meetings and conferences related thereto and used to inform defendant company of the outcome;

"6. Whereas defendant company from the outset had informed applicant that it was interested and moreover used to update and inform same applicant of what it was doing, even who were its prospective partners in Malta and moreover had promised applicant amongst other things that it would give the necessary aid in the setting up of a Transport Museum, an initiative which applicant has been working on for numerous years;

"7. Whereas on the fourteenth (14th) of August two thousand and nine (2009) the Malta Transport Authority issued a call for tender named '*Expressions of Interest for a Service Concession Contract for the Provision of Scheduled Bus Services in Malta (File reference 322/CSD/09)';*

"8. Whereas the maltese company Arriva Malta Limited in which defendant company has an interest, submitted its offer in relation to said tender. Subsequently said tender was awarded to said company and the value of same tender reached millions of euro;

"9. Whereas applicant is entitled to receive compensation and/or 'compensation for services rendered' for all the services rendered by him;

"10. Whereas notwithstanding that defendant company was duly called upon even by means of a judicial letter dated 13th May 2011 to appear for the liquidation and payment of the amounts due by way of compensation and/or 'compensation for services rendered', which services were

rendered by applicant in favour of said defendant company, the defendant company remained in default;

"11. Thus said proceedings had to be lodged;

"12. Whereas applicant is personally aware of these facts;

"In view of the above, defendant company should state why this Honourable Court should not, saving any other declaration necessary and permissible according to law:

"1. Declare, if necessary by the appointment of referees, that applicant rendered services to defendant company for which services he is entitled to compensation and/or rendered *servigi* in favour of defendant company for which services he is entitled to compensation;

"2. Liquidate, if necessary by the appointment of referees, the amount/compensation due to application from defendant company for services rendered by him and/or by way of *servigi;*

"3. Condemn and order the defendant company to pay to the applicant the amount/compensation so liquidated;

"With costs against defendant company which is being referred to the oath."

2. Having seen the sworn reply brought forward by the defendant company,

Arriva plc, on the 18th April, 2012, which states as follows:

"1. That David Andrew Kaye is authorized to represent the defendant company in these proceedings as per special power of attorney herewith attached (Document ARR 1),

"2. That the plaintiff's claim should be dismissed as being manifestly unfounded in fact and at law.

"3. That defendant company did not engage the plaintiff at any point in time to carry out any services on its behalf;

"4. That it is evident from the correspondence and documents exhibited by the plaintiff himself that the plaintiff forwarded useless and unsolicited information to the defendant company in the hope of being appointed representative of the defendant company in Malta;

"5. That consequently there is no compensation due to him under any form whatsoever.

> "The defendant company reserves the right to furnish evidence by reference to the oath of the plaintiff in terms of Art 697 of Chap 12 of the Laws of Malta. With costs against the plaintiff."

3. Having seen the judgement delivered by the First Hall Civil Court on the 29th October, 2015, by means of which decision the case was determined in the sense that it was satisfied that the plaintiff did not prove his case to the satisfaction of the Court and to the legal standard required. Therefore, on the basis of the considerations made therein, while accepting the replies submitted by the defendant company, it rejected the plaintiff's pleas and requests and also determined that the plaintiff was to bear the cost of all legal expenses related to the proceedings.

4. The First Hall Civil Court delivered its judgement after making a number of considerations which are being reproduced hereunder:

> "Considers:
>
> "10.0. That the case, as forwarded by the complainant, may be briefly drawn up as follows:
> "10.1. That he had heard that Malta was to re-organize its public transport, (see folio 242);
> "10.2. That he thus took the initiative to surf the internet to see which bus manufacturing companies there might be who may show any interest in this development, (see folio 242);
> "10.3. That this, he claims, took a lot of work and involved long hours contacting various companies, (see folio 242);
> "10.4. That he finally stumbled on the defendant company whom he contacted, (see folio 242);
> "10.5. That he soon realised that said company had no representative in Malta, (see folio 242);
> "10.6. Thus he claims to have unilaterally shown interest in the subject, attending various meetings, conferences and public consultation fora that were being held on transport reform, (see folio 242);

"10.7. That on contacting the defendant company he was informed by an email dated the 22nd May, 2008, that it did not have any operations in Malta, (see folio 242);

"10.8. That he kept the defendant company posted with local developments, even attending a stormy meeting organised for all concerned, and sending it the official brochure published on the local reform, (see folio 243);

"10.9. That complainant upholds that even the Group Business Development Director of the defendant company called him up on his mobile to discuss the issue, (see folio 243);

"10.10. That he took the liberty to draft a Memorandum and Articles of Association in case the defendant company would want to consider applying for the tender that was evidently soon to be issued, (see folio 243);

"10.11. That the defendant company soon grew interested in local developments and eventually two of its highest officers came to Malta where they even met the complainant (see folio 244, 68 and 288), who was also accompanied by his legal assistant, (see folio 244,);

"10.12. That when asked by Keith Bastow of Arriva p.l.c. what reward the complainant was seeking, the latter answered that he would rather think on that at a later stage and eventually sent an email dated the 28th March, 2009, on the subject, (see folio 244 and 29 *et sequitur*);

"10.13. That in effect the above paragraph refers to clause 10 in a letter sent by complainant to defendant company bearing the said date which criptically refers to "... compensation which is left at your study in your feasibility studies .... and there are many ways of compensation such as being one of the Directors, etc..." , (see folio 30);

"10.14. That complainant continued to correspond with the representatives of the defendant company throughout 2009 and 2010, (see folio 244 to 246);

"10.15. That complainant's interest was duly acknowledged by Bastow, (see folio 245);

"10.16. That actually the defendant company, through its locally registered company was eventually awarded the public transport contract which was officially signed at Fort St. Angelo, in Vittoriosa (see folio 246);

"10.17. That one final meeting was held between the contending parties with a view of reaching some form of amicable solution on the question of complainant's claim for compensation, but no such agreement was reached, (see folio 246);

"Considers:

"11.0. That the defendant company's position in the matter may be briefly summarized as follows:

"11.1. That complainant had contacted defendant company's head office in the U.K. showing it his interest in the possible reform of

public transport in Malta, and that the island would be of interest to said company (see folio 248 and 249);

"11.2. That notwithstanding such information, Bastow was already eyeing developments taking place in Malta since 2006, and was even invited by the Malta High Commissioner in London to discuss the issue, (see folio 249);

"11.3. That the original contact between the contending parties during the period 2008 and 2009 was a mere acknowledgement of complainant's contract, (see folio 249);

"11.4. That Bastow and a member of his business development team came to Malta in 2009 as things were appearing to move and as the defendant company did not have any representative there as it did not need one in any way, (see foll 248 and 249);

"11.5. That during this 2009 visit they met several stakeholders, including the complainant, (see folio 249, 68 and 288);

"11.6. That defendant company explained in clear terms that it would come to Malta "... to take an independent view of the situation", (see folio 249);

"11.7. That in a particular email Bastow also asked the complainant to "present" him "with a proposal and terms", (see folio 250);

"11.8. That the "proposal" received was no such thing at all but was only a list of "thirteen" (13) points and somewhat incoherent, (see folio 250 and 29);

"11.9. That given the early stage of the process it was not possible for the defendant company to conclude any commitments with anyone, (see folio 250);

"11.10. That for the defendant company the issue of compensation to the complainant was never considered as it had never asked the complainant to provide it with any service, (see folio 250);

"11.11. That complainant persisted in sending information to the defendant company's head-office in the U.K., which information was in any case already in the public domain, (see folio 250);

"11.12. That the defendant company had decided to use the services of an industrial partner in its bid to enter the local public transport market, which implied that it "... would not pursue anything with applicant Agius", (see folio 250);

"11.13. That complainant merely submitted "useless and unsolicited information" to the defendant company, (see folio 252);

"11.14. That the information given was already in the public domain, (see folio 252);

"11.15. That complainant was thanked for his interventions merely out of courtesy, (see folio 252);

"11.16. That any reference to a transport museum was made at the parties' first meeting, (see folio 252);

"11.17. That this museum development was even submitted as an official proposal at the negotiating stages with government, (see folio 252);

"Considers:

"12.0. That the above positions may be synthesised in the following manner:

"12.1. That complainant is a keen motor vehicle enthusiast with a good eye for an opportunity;
"12.2. That he unilaterally conducted research when the opportunity of a newly developing market emerged;
"12.3. That he unilaterally contacted the defendant company feeding it with information which was already in the public domain;
"12.4. That the defendant company never sought the complainant's services and never instructed him to act on its behalf in this issue;
"12.5. That correspondence, which complainant claims to be of concern to his claim for services rendered, was deemed to be incoherent by the defendant company;

"Considers:
"13. That as held in the Court of Appeal's judgement dated the 1st December, 1958, in Gio Maria Zammit et vs. Avv. Dr. Joseph Vella noe, Volume XLII I 625:

"... fil-gurisprudenza aktar ricenti ... gie applikat il-principju li kwalunkwe servigi jigu ritenuti pprestati bi speranza ta' kumpens jekk ma jikkonkorrux cirkustanzi tali li jiggustifikaw konkludentement il-gratuwita ... Vol. XXIX – II – 851"

"... that in more recent case-law ... the principle that any services rendered are to be held as being given in the hope of compensation is being applied, unless there are circumstances that justify that they were given gratuitously", (court's translation);

"Considers:
"14. That on the basis of the above although in this particular regard there seems to be a presumption in favour of the granting of compensation for services rendered, however, one still has to examine the underlying circumstances of the case to determine if this may actually be so with impunity and fairness;
"15.0. That in this respect it has been established that:
"15.1. The complainant acted unilaterally;
"15.2. That complainant's information given to the defendant company gave no added value to the said company;
"15.3. That the information so given was already in the public domain;
"15.4. That the defendant company's representative proved to be too courteous not to immediately dismiss such approaches as inconsequential;
"15.5. That the defendant company did not expressly request the complainant to give it any such information;
"15.6. That the complainant was not involved in any discussions leading to the final award actually being granted to the defendant company;

"Considers:
"16.0. That on the basis of the above, the court is satisfied that the complainant did not prove his case to the satisfaction of the court and to the legal standard referred to above…"

5. Having seen the application of appeal filed by the plaintiff Philip Agius requesting that for the reasons contained and submissions made therein, this Court revokes, rescinds and annuls the judgement delivered by the First Hall Civil Court, on the 29th of October, 2015, in the names Philip Agius v. Arriva plc (Sworn Application Number 143/2012SM), and consequently to accept all of the applicant's claims, and rejecting all the replies of the appealed respondent company, with costs of both instances against the appealed respondent company.

6. Having seen the reply by the defendant company Arriva plc, by means of which and for the reasons contained therein, submitted that this appeal should be dismissed and the appealed judgement confirmed, this with the costs of both instances against the appellant.

7. Having heard the submission by the respective counsel during the sitting of the 19th of January, 2021, when the case was adjourned for the purpose of this Court to deliver its judgement.

8. Having seen all the acts of the case and the documents exhibited thereat;

Considers:

9. That in this case plaintiff is seeking (i) a declaration by the Court that applicant rendered services and/or *servigi* to the defendant company, for which services and/or *servigi* he is entitled to compensation; (ii) liquidate the amount or compensation due to him by the defendant company for services rendered by him and/or by way of *servigi*; and (iii) and condemn the defendant company to pay to the applicant the amount/compensation so liquidated. With costs against the defendant company.

10. On the other hand, the defendant company Arriva plc contends that the plaintiff's claims cannot be acceded to since the plaintiff's claims should be dismissed as manifestly unfounded both in fact and at law. That the defendant company did not engage the plaintiff at any point in time to carry out any services on its behalf. That it is evident from the correspondence and documents exhibited by the plaintiff himself that he forwarded useless and unsolicited information to the defendant company, in the hope of being appointed representative of the defendant company in Malta. Consequently, there is no compensation due to the plaintiff under any form whatsoever.

11. The First Court upheld the defendant's pleas, in that it was held that the plaintiff did not prove his case according to law and therefore rejected the plaintiff's claims, with the costs of the proceedings to be borne by the said plaintiff.

12. The plaintiff felt aggrieved by the decision of the First Court and filed the appeal under examination, having put forward as his main grievances:

(I) the incorrect appreciation of evidence by the First Court;

(II) the incorrect considerations made by the said Court namely with respect to:

(a) Discussions leading to the granting of the final award to the appealed respondent company;

(b) Added value to the appealed respondent company;

(c) Information was not part of the public domain;

(III) Remunerative nature of the services/*servigi* rendered by the appellant; and

(IV) Inadequate motivation.

13. It should be stated right from the outset that, in so far as the main grievance of the appellant is based on the alleged incorrect appreciation of the evidence by the First Court, this Court, being one of review, does not disturb the assessment carried out by the First Court lightly, especially if it is deemed that the First Court could legally and reasonably come to the conclusion it reached. It has constantly been reiterated by this Court that it will only intervene, if it is convinced that the assessment carried out by the First Court is manifestly wrong and if there exist reasons which are serious enough that the conclusion reached constitutes an injustice with respect to one of the parties. (Vide for example judgement of this Court of the 28th April, 2017, in the names

Terres Co. Limited v. L-Ghajn Construction Company Limited.) However, this Court is still duty bound to go through the evidence to see whether a proper evaluation has been carried out and whether the conclusion reached is in accordance with the law, especially in the light of the complaint by the appellant that the incorrect appreciation is so grave, that an injustice has been created.

14. The appellant contends that some of the reasons on which the First Court based its decision are not factually correct and are based on the mere allegations brought forward by the defendant company namely (i) that the applicant acted unilaterally; (ii) that the representative of the respondent company did not immediately terminate communications with the applicant as an act of courtesy; and (iii) that the defendant company did not expressly request the applicant to give it such information. Appellant insists that these three motivations are untrue and not corroborated by any evidence.

15. After perusing the evidence presented in the acts of the case, it is felt necessary to list in a chronological manner the exchange of correspondence deemed relevant to the case under review. It is evident to the Court that the appellant did originally act unilaterally, in that he was the one to approach defendant company in May 2008 and expressed the desire to act as representative of the said company in Malta. Although the defendant company did indicate that there was nothing for the appellant to represent, given it had no operation in Malta (vide fol. 17), it cannot be stated that the defendant

company turned down appellant's request in an outright manner, as suggested by the defendant company in its reply. In fact, the same trail of emails of the 22nd May, 2008, invited appellant to forward his proposal for defendant company to enter Malta to the New Business Development team. In the meantime, out of his own initiative, the appellant attended a number of meetings held locally by the transport regulator and sent defendant company brochures regarding the transport reform in Malta. The appellant persisted in sending emails for nearly a whole year to defendant company.

16. It was only in March 2009, that the defendant company, through its Director, Keith Bastow, agreed to set up a meeting with the appellant for the purposes of discussing appellant's proposal. In his email (vide fol. 25), Bastow made it very clear that the purpose of the visit was to take an independent view of the situation, so that an assessment would be made of the opportunities which would flow from the Maltese Government's proposal, before making any commitments**.** Actually, representatives of the defendant company held a number of meetings with a number of stakeholders, including the appellant, who was invited to send his terms of proposal. The appellant sent the defendant company a list of points, rather than a business proposal. There was also mentioned the issue of the appellant's compensation, which was actually left in the hands of the defendant company, albeit mention was made of the possibility of compensation by way of directorship. This correspondence was acknowledged by the defendant company, which while thanking the appellant

for his assistance during the representative's visit to Malta, it also stated that appellant's proposal would be discussed at the Executive, before any commitments could be made and that they would not be in a position to decide before they actually see the tender documents.

17. It is also relevant to note that when appellant forwarded the link to the tender documents to the defendant company, John Rimmington on behalf of the defendant company, informed the appellant that he was registered to receive the tender updates and would be monitoring it accordingly, thus there was no need for appellant to send it to him (vide fol. 33). Then again, the defendant company's correspondence of the 1st July, 2010, (vide fol. 35) could only be described as noncommittal, despite including an invitation to meet up and discuss matters. A further exchange of correspondence ensued in July 2009, (fol. 37) whereby whereas appellant relayed information published on the local transport authority website, he also suggested the names of a couple of Maltese commercial stakeholders as possible partners, but yet again, the defendant company informed appellant that they had picked up the announcement and were in the process of analysing it.

18. On the 12th August, 2009, whereas the appellant reminded the defendant company of the deadline set for queries and clarifications, he requested information as to whether defendant company had committed itself to someone else in writing apart from himself. The defendant company's reply was to the

effect that it had chosen its partners and while indicating the names of said partners, it also stated that it was close to setting up a consortium having a blend of pan-European public transport experience, together with a well-connected Maltese partner. While recognising the appellant's keen interest in the project and his helpfulness with the information flow, Bastow ensured appellant that his interest will be discussed with the other partners in their consideration of what resources and other local advisors would be needed and that he would revert back on the matter.

19. From the correspondence which ensued between September 2009 and November 2009, it is evident that defendant company was forging ahead with its plans to participate in the bidding process without the appellant's assistance, as the emails sent by the appellant are persistently requesting information, indicating the appellant's wish to be involved in meetings with the consortium, requesting that his idea to bring "Arriva" to Malta be divulged to the partners, requesting his inclusion on discussions with Maltese partners and requesting consideration that defendant company acts as the main sponsor to set up the Malta Transport Museum should it win the tender (vide fol. 42, 44, 46, 48 and 51). The only exception was the correspondence issued by the defendant company, namely by India Chaplin requesting appellant to forward the ITT, should he be "*able to get hold of the published ITT*" (vide fol. 49).

20. From the above listed sequence of events, it could be stated that the exchange of correspondence was unilateral towards the beginning, it then ensued to a bilateral exchange of correspondence between the parties, only to revert to back to unilateral correspondence from the appellant's end. This Court can also agree that the exchange of correspondence was mostly courteous but it disagrees that the defendant company simply did not terminate communications with appellant out of courtesy. It is the opinion of this Court that the defendant company was considering all avenues and keeping its options with the different possible stakeholders it considered as valid open, ahead of the business venture it was on the verge of embarking upon. Finally, although most of the information supplied by the appellant was unsolicited, there were a couple of occasions where the defendant company did request information from the appellant. However, it will now be essential to assess if these considerations resulting from the evidence in the acts, should have had a bearing on the outcome of the case as filed by the appellant, plaintiff in these proceedings, leading to conclusions which differ from those reached by the First Court.

21. This leads to the appraisal of the second grievance of the appellant, that the First Court rejected the appellant's claims on the basis of incorrect considerations namely: (a) that the plaintiff was not involved in the discussions leading to the granting of the final award to the appealed respondent company;

(b) that the information provided by the plaintiff to the defendant company did not give any added value to the defendant company; and (c) that the information so given was already in the public domain.

22. The appellant makes reference to case-law to the effect that the First Hall Civil Court, in its judgement of the 28th January, 2004, in the names **Anthony Camilleri v. Nicholas Martin Jensen Testaferrata *proprio et nomine,*** reference was made to jurisprudence, wherein it was held that, a broker would be entitled to full brokerage fees if he has a determining role in bringing parties together on the substantive and incidental issues of the transaction leading to an effective agreement to finalise negotiations, whereas he would be entitled to compensation in the case where although he was party to the negotiations, these do not lead to desired fruition, through no fault of the broker. Thus, appellant argues that once defendant company involved him by informing him of its prospective partners and kept him in the loop right up to the moment before the submission of the expression of interest, he is entitled to compensation, even though he was not a party to the final discussions. Appellant also suggests that he was excluded by the defendant company, at a particular point in time, purposely so that he would not be duly compensated.

23. This Court does not agree with the appellant's argument, in that his role certainly cannot be deemed determining, for the purposes of the award of the tender in favour of the defendant company. Suffice it to point out that the

appellant had no role whatsoever in the set-up of the consortium which was awarded the tender. If anything, the appellant had suggested other possible partners to join the consortium, which the defendant company discarded in an outright manner. Moreover, in the same judgement quoted by appellant, reference is also made to another judgement whereby it was stated that, the fact that a person merely provides information, without further applying himself to attain the consent of the parties, does not give rise to the right for brokerage fees, nor compensation. (Vide **Pace v. Tabone Vol. 36 pt.2 p.394; Bonavia v. Grech 21.2.1947; Vol XXXIII pt II p. 23; Vol XLIX pt II p. 993).** It is held that, the appellant, more often than not, provided unsolicited information to the defendant company in the hope of attaining the particular role of local representative, a role discarded by the defendant company, which was more inclined towards having a strategic local partner.

24. As held by this Court in its judgment of the 25th May, 2007, in the names **Legend Real Estate Limited v. Paul Pisani,** once the appellant did not have a leading role in bringing the parties to agree on the substantive and incidental elements of the transaction involved, his role certainly cannot be associated with that of a broker and his claim for compensation certainly cannot be assimilated with brokerage fees, nor can it be in this sense entertained. The intervention of the appellant in this case, certainly did not bring about “a meeting of the minds”, leading to the publication of the contract, he did not even introduce the parties to each other, since the ultimate transaction was the result

of a competitive call for tenders and not through a meeting brokered by the appellant. Furthermore, as rightly pointed out by the defendant company in its reply, the appellant had no role in the formulation of the bid it presented, nor did he contribute in the subsequent process leading to the concession agreement for the operation of the public transport in Malta.

25. Another consideration made by the First Court which is heavily criticised by the appellant is that the information provided by him to the defendant company did not give any added value to the defendant company. Appellant refers to the extensive evidence produced by him to substantiate his allegation regarding providing information to the defendant company, whereas the latter did not produce any evidence to substantiate its claims to the effect that it was already aware of the proposed reform in the transport sector and it failed to indicate who was the individual, who passed onto it such information. Thus, the appellant argues that, the fact in itself that he informed the defendant company of the proposed reform, was in itself an added value, together with the information provided by him as evidenced through the emails exhibited in the acts of the case, led the defendant company to fix meetings with him, which does not corroborate the defendant company's claim, that his contribution was of no value.

26. Albeit the fact that the defendant company did not substantiate its claims that it had the proposed reform on its radar way before being informed by the

appellant about it, it should be reiterated that the simple fact that the appellant informed the defendant company about the proposed reform, by sending brochures, links to the transport regulator's website or informing it about the subject matter of public discussions held for stakeholders, in itself does not suffice to entitle him to compensation. It is deemed that the appellant's strategy was to provide the information, so as to entice the defendant company to appoint him as its local representative. Although it is true that the defendant company did not exclude such a possibility in an outright manner, it cannot be blamed for organising meetings with various stakeholders, including the appellant, in its quest for finding the right local strategic partner. It is held that the appellant made a choice and played his card by approaching the defendant company and offered information in the hope of being involved in its venture, to eventually either attain a directorship in the local company to be set up, or to receive some other form of compensation. The fact that the appellant did not succeed in the strategy he adopted, does not necessarily mean that he is entitled to compensation.

27. This Court is not convinced either that the fact that the appellant was eventually side lined and left out from negotiations and discussions, was purposely done with a view to deprive him from any right of compensation. It is felt that the defendant company simply did not accept the appellant's proposals as befitting its criteria of a strategic local partner. In fact, the defendant company carried out a background check of the organisation the appellant

claimed to represent, which was not held as one of substance, in that it was found to have no expertise or connection with the public transport market (vide Doc. JR 1 at fol. 297). Whereas the proposal made by the appellant was described as a mere incoherent list of points, which fell short of a business proposal worth consideration (vide evidence given by Keith Bastow at fol. 250). Without entering the merit of such an evaluation, this in itself was a cogent reason why the appellant's proposal was discarded.

28. The third point raised under this grievance is that the information that appellant provided was not in the public domain. Although the appellant contests the statement to the effect that information forwarded by him was already in the public domain, he contends that in any case the Court's conclusion ought to have been in the sense that he rendered services to the defendant company, as it was thanks to him that said company became aware of the reform in the transport sector in Malta. Albeit the fact that defendant company representatives contradicted this matter by stating that a meeting had been held with the Maltese High Commissioner in London and were supposed to submit relative details, no such proof was submitted in the acts of the proceedings. Therefore, it is the appellant's view that the information's availability or otherwise in the public domain, is not a factor which should have been taken into consideration in determining the appellant's claim.

29. As stated before, the information supplied by the appellant was mostly coverage by local newspapers, brochures distributed in public meetings organised by the transport authority, links to websites relative to the expression of interest and reminders as to deadlines regarding queries, which can hardly be described as instrumental in leading to the award of the tender. The defendant company had its own resources employed to follow up on local updates and subscribed to the notification of public tenders. In fact, this is evidenced by the email sent by John Rimmington to the plaintiff in the 15th June, 2009 (vide fol. 33). Notwithstanding the fact that, the defendant company did not bring forward evidence to sustain its knowledge of the reform in the transport sector beforehand, it is felt that the crux of the matter lies in the fact that it was primarily the duty of the appellant, as the plaintiff, to prove that the information he forwarded was of such a nature as to benefit the defendant company, leading to the effective negotiations and conclusion of the agreement. This principle is also embodied in the legal maxim *actore non probante reus absolvitur,* meaning, that when the plaintiff does not prove his case, the defendant is absolved.

30. As stated by this Court in its judgement of the 23rd November, 2020, in the names **Emil Otto Bachet v. Bank of Valletta plc:**

> *"The traditional principles in civil law relative to the onus probandi, burden the plaintiff with the primary responsibility to prove that which is being alleged by him. The defendant has no obligation to provide proof to deny that being stated by the plaintiff, before the same plaintiff satisfies his duty to prove that being alleged by him. Such proof brought forward by the plaintiff must be adequate so as to sustain with certainty the existence of the fact being alleged. Unless plaintiff discharges his*

> *obligation to prove adequately his claims, he cannot then accuse defendant of failing to prove the plaintiff's case as being unfounded. Furthermore, in the case of conflicting or contradictory evidence, brought forward by the parties, in such a situation, it is the defendant's position which is favoured, as it rests with the plaintiff to prove his claims according to law."*

While the Court endorses the principles mentioned above, in applying them to the situation at hand, it finds that the appellant's case cannot succeed, in that as stated before, once he failed to prove that the information relayed by him was of such of an essential nature and that he played a pivotal role as to lead to the actual award of the public tender in the defendant company's favour, this Court agrees with the overall assessment made by the First Court.

31. With respect to the appellant's third grievance regarding the remunerative nature of the services rendered by the appellant, he sustains that it was made clear from the start that he wanted a representative role in Malta and to be defendant company's sole correspondent, which clearly demonstrate that he was not offering his services gratuitously, since he was requesting payment in the form of a job. The appellant questions the reason why the defendant company continued to correspond with him, fixed meetings with him and never excluded the possibility of compensating him. In one particular meeting of the 27th March, 2009, Keith Bastow actually asked the appellant what kind of compensation he would be seeking in the event that the defendant company won the tender in question. The appellant replied by way of an email of the 28th March, 2009, wherein his proposals also included a clause relating to compensation. The representatives of the defendant company acknowledged

receipt of such email and did not dismiss the compensation proposal but he was told that it would be discussed with the Executive.

32. The appellant also makes reference to subsequent emails whereby he was chasing defendant company for an update, reminding them of his initiatives, which were not rejected. On the contrary, Bastow applauded him for his contribution and that he would be discussing the appellant's interest with the other partners. Appellant refers to his latest emails to defendant company after it submitted its expression of interest, requesting compensation, leaving no room for doubt that his services were gratuitous. The appellant also contends that his right to compensation was also recognised during a meeting held in September, 2010, at the offices of Tumas Group Company Limited. Appellant complains that although Bastow kept promising him that he would discuss matter of compensation with the Executive of the defendant company or with the other partners, once the defendant company attained its aim of being awarded the tender, it abandoned him and distanced itself from him.

33. It is to be noted that this third grievance is mostly a reiteration of the appellant's arguments before the First Court, more than a specific grievance with respect to the judgement under review *per se*. Through this grievance the appellant concentrates on his right to compensation. In any case, it has to be restated that for the appellant to be entitled to expect compensation for the services that he allegedly carried out, there has to be proof of an essential

element, that is a certain amount of work or a certain task was carried out at the defendant company's specific or implied request.

34. Although the appellant was not a party to the negotiations between the defendant company and the transport regulator nor did he have a role in relation to the final agreement, it remains to be determined whether he has any right to compensation for any work he might have carried out. In the judgement of this Court in its inferior jurisdiction of the 11th April, 1959, in the names **Gladys Hockey et v. Michael Marshall,** (Kollez. Vol. XLIII.I.570), wherein it was stated**:**

> *"Huwa veru li skont il-gurisprudenza, fil-kazijiet kongruwi, lill-medjatur, ghalkemm ma jkunx dovut dritt ta' medjazzjoni, jista' jkun pero' dovut kumpens bhala medjatur retribwibbli, ossia lokatur d'opera, ghas-servigi rezi imma dan ma jigrix f'kull kaz ta' konkluzjoni fallita imma biss meta l-ghoti ta' dan il-kumpens ikun gustifikat mic-cirkostanzi; per ezempju, meta l-partijiet ikunu bla htija tas-sensal irrecedew il-ftehim."*

Although there have been instances where the Courts accepted claims for compensation where it was duly proved that such claims for compensation were justified owing to the fact that a certain amount of work would have been carried out, it is to reiterated that the appellant in this case only relayed information he was gathering regarding the public transport reform with a view to secure a role within the defendant company. Although the defendant company did engage in correspondence with the appellant and also held meetings with him, as explained before, such exchanges were of an exploratory nature for it to be determined whether appellant could serve as a strategic partner in their bid to attain the transport concession.

35. Most of the information supplied by the appellant was offered willingly, at no request and the fact that meetings were held to discuss the possibility of future cooperation between the parties, cannot be deemed as a binding commitment, nor assimilated with work or services rendered by the appellant in favour of the defendant company. Although the appellant was strategic in his attempt to secure a job with the defendant company by persistently sending information and was duly praised for his endeavours, his actual proposals fell short of what the defendant company required out of its local strategic partner. Furthermore, the appellant had absolutely no role in any discussions with stakeholders, in the setting up of the consortium, in the formulation of the bid or in the negotiation of the actual concession. It is held that the issue of remuneration was discussed during the parties' meeting of March 2009 within the context of a business proposal. So much so that the appellant's subsequent request for compensation was made together with the list of proposals.

36. Moreover, although the Court went through clause number 10 of appellant's list of proposals, the indicated clause is truly garbled. The appellant describes himself as the pioneer for Arriva to come to Malta, leaving it to their "*intellect to come across with ideas and suggestions as your company might have settled in other countries, what compensation which is left at your study in your feasibility studies. A representative correspondent with some form of compensation is or rather can be discussed especially if you settle a company*

in Malta and there are many ways of compensation such as being one of the Directors etc. It is not my position at this stage to air my views about any salary because my first and foremost was to see Arriva here. I am an ethical and prudent person, a qualified and leave to your management to decide about my work involved." (Vide fol. 30). Although the gist of the clause does indicate the appellant's views that he would be ready to consider different options as a form of compensation for his work within the consortium, the Court deems that it can hardly be described as a solid business proposal. The fact that Bastow answered appellant that he would be consulting the Executive about his proposals, cannot be taken as a tacit acceptance of the appellant's proposal for services. Nor can a tentative meeting held at the local partner's offices be taken as the acceptance of an obligation to compensate the appellant. Thus, the third grievance is also being rejected as unfounded.

37. Finally the last grievance of the appellant addresses the issue of inadequate motivation, in that he refers to jurisprudence to the effect that a court's decision should not only be motivated but such motivation should be adequate. Now the appellant states that, whereas the First Court referred to a decision bearing the names **Gio Maria Zammit et v. Dr. Joseph Vella noe** and stated that on the basis of the said decision the presumption is in favour of granting compensation, nevertheless the First Court subsequently stated that the circumstances of the case need to be examined in order to establish whether the granting of compensation can be made with fairness and impunity.

Whereas the First Court recognised the existence of services rendered in citing a case relative to the institute of *servigi,* nevertheless the First Court held that the appellant "*did not prove his case to the satisfaction of the court and to the legal standard referred to above."* Thus, the appellant contends that the motivation provided by the First Court is not an adequate one and cites jurisprudence to the effect that compensation may be due for services rendered, even though there may be no agreement regarding same, in that he brought proof to sustain that payment is due to him.

38. Although it is true that the case cited by the First Court, does make reference to the presumption that services are not normally rendered on a gratuitous basis, even when there does not result an express agreement, in that particular case there was a whole list of services rendered and expenses borne by the plaintiff who was asked to buy land, engage the services of an architect as well as the services of masons to build the property, to buy material and coordinate the works, as well as execute ancillary works, which certainly cannot be compared to the case currently under review, whereby the appellant supplied the information, which was mostly available in the public domain. Thus, the First Court while stating the presumption, rightly added on that the circumstances of each particular case merited examination in order to reach a conclusion whether any compensation is due. The First Court essentially concluded that after examining the circumstances of this particular case, it was not satisfied that the appellant merited the compensation requested by him, in

that it was held that he did not manage to prove that such a claim was justified. In all fairness, on the basis of the previous considerations made, this Court agrees with the First Court's assessment and conclusions, thus it does not deem that the appellant managed to prove his claims in terms of the law, as explained above and his appeal cannot be considered as justified.

Decide

Therefore, for the reasons explained above, the Court disposes of the appeal filed by the plaintiff, in that it rejects the appellant's requests and confirms the appealed judgement of the First Hall Civil Court of the 29th October, 2015, in the abovementioned names, in its entirety.

All costs for the proceedings, in both instances, are to be borne by the plaintiff,

Mark Chetcuti Chief Justice	Joseph R Micallef Judge	Tonio Mallia Judge

Deputy Registrar
gr