



IN THE SMALL CLAIMS TRIBUNAL

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

Sitting of Monday, 28th June, 2021

Talba Nru: 254/2019 PM1

Gabriel Monterrosa

Vs

Short Lets Malta Ltd.

The Tribunal,

Having seen the notice of claim filed on the 9th September, 2019 by which, for all the reasons indicated therein, the plaintiff asked defendant company for the payment of the sum of nine hundred and ninety euros (€990) as compensation for failing to return to him his personal belongings as described therein after the same defendant company had assumed responsibility to move such belongings from the apartment found in Triq Mathew Pulis, Sliema to another apartment at 17, St Helen, Penthouse, Triq il-Freres, Sliema but had failed to return a number of his belongings.

Having seen the reply filed the defendant company by which the same pleaded that:

1. The claim was unfounded in law and in fact and should be denied with expenses to be borne by plaintiff.
2. That, in any case, defendant company had not assumed any responsibility for the move of the plaintiff's personal belongings from one address to the other
3. That plaintiff is required to furnish the best possible evidence according to law in support of his claimed amount which amount is being contested.
4. Saving other pleas.

With expenses and with a reservation of any action competent to the same defendant company against the plaintiff.

Having seen that during the sitting of the 29th October, 2019 the Tribunal acceded to the request by plaintiff and ordered that proceedings be continued in the English language for the reasons adduced therein, saving for the testimony of such witnesses who prefer to testify in Maltese.

Having heard the testimony of plaintiff and of Ralph Vella during the sitting of the 25th November, 2019. Having seen also the documents filed by plaintiff during such sitting.

Having seen also the note dated 25th November, 2019 with Thomas vander Eecken's affidavit.

Having heard the testimony of WPC89 Maria Bezzina and of Simon Sultana during the sitting of the 27th January, 2020. Having also seen the documents filed during such sitting.

Having heard the testimony of plaintiff under cross-examination during the sitting of the 25th September, 2020.

Having heard the testimony of Ilhom Brida as well as that of Simon Sultana.
Having seen also the documents filed during such sitting.

Having heard the testimony of Gabor Beremyi and of Borislov Yordanoi
during the sitting of the 22nd February, 2021.

Having heard the oral submissions of the respective legal representatives
during the sitting of the 3rd June, 2021.

Having seen that the case stands ajourned for today for the delivery of the
judgment.

Having taken into due consideration all the circumstances of the case.

Having considered

That the current case concerns a claim by plaintiff for the compensation of the value of movables which he claims defendant company was supposed to transfer from one property previously occupied by himself to the second property which he was to occupy through the involvement of the same defendant company. From its end defendant company defends itself from such claims by stating that defendant company had not assumed any responsibility for the move of the plaintiff's personal belongings from one address to the other, that plaintiff is required to furnish the best possible evidence according to law in support of his claimed amount which amount was being contested.

That plaintiff has testified in these proceedings to the following effect:

I am being asked what was the relationship between myself and defendant company and I can confirm that my relationship started off in view of the fact that I was renting a property from the same company or at least through such agency. This property was found at the address 27, Muriel, Triq Matteo Pulis,

*Sliema. My intention was to move to the new apartment which was found at the address 17, St Helen Penthouse, Triq il-Freres, Sliema however I was not present in Malta at the time. **Short lets actually offered to transport my belongings from the first flat to the second one and I can say that I received an e-mail from them which e-mail is dated 26th April 2018 where they offered to carry out this piece of work. Via e-mail that is by reply to the e-mail dated 26th April 2018, I confirm that I was willing to engage the services of defendant company** and I also informed them through the same e-mail that my belongings were kept in two black garbage bags which I left outside the door of my previous property. **Actually, these bags were left inside the door and I made clear to them that they were not rubbish to be dumped. I made particular emphasis on these two bags in view of the fact that they contained my belongings in rubbish bags so I said that they would look suspicious.** (...) As soon as I arrived at my new property I realised immediately that these two bags were missing. (testimony given during the sitting of the of the 25th November, 2019 – emphasis added)*

In actual fact the plaintiff filed copies of the emails mentioned in his testimony (Dok. GM1 at fol. 20 et. seq. of the acts of these proceedings). In particular, the Tribunal refers to the email dated 26th April, 2019 by which Ralph Vella for defendant company offered to have plaintiff's belongings delivered to him to the studio penthouse booked for him and in which he was to check in on his arrival. To this, the plaintiff replied precisely by indicating the items he was leaving behind for collection with the added warning that his belongings included "**two garbage bags that are NOT garbage but additional clothes and other necessities**" (email dated 27th April, 2019). To this, said Ralph Vella replied to the effect that the contents of plaintiff's email were being noted with thanks and that he "will advise the housekeeping with the things and to have them moved for you then at the penthouse".

In view of the above it is amply clear that the first plea raised by defendant company to the effect that it is not to be held responsible for the transport of the plaintiff's belongings from one property to the other is contradicted by the above emails which

indicate clearly not only the willingness on the part of the defendant company (through its representative Ralph Vella) to move precisely such belongings but also an offer to carry out the same which was then duly accepted by the plaintiff.

The Tribunal is thus required to determine whether the losses incurred by plaintiff can in actual fact be imputed to the same defendant company and therefore whether plaintiff managed to prove, at least on the basis of a balance of probabilities, the losses alleged by himself.

In this regard the Tribunal notes immediately that, even in view of the above emails, the agreement reached by the parties makes express reference to the existence of two garbage bags with the added caution required by the plaintiff in this regard as expressed via his email of the 27th April, 2019. It is also the witnesses Simon Sultana (testimony given during the sitting of the 27th January, 2020) and Ilham Brida (testimony given during the sitting of the 4th December, 2020) who confirm the presence of the two ‘garbage’ bags upon collection of the plaintiff’s belongings for delivery to this second address. In addition, Ralph Vella stated that he had duly informed Simon Sultana with plaintiff’s communication via email including that he was to move plaintiff’s belongings which also included two garbage bags behind the door. However, the Tribunal cannot but note that at no point in time was any communication in writing between Vella and Sultana in confirmation of the above filed in the acts of proceedings. In addition, the same witness Simon Sultana who testified during the sitting of the 27th January, 2020 declared that his involvement in the incident which gave rise to these proceedings was limited to carrying out checks following the plaintiff’s complaint as to the loss of his belongings. At no point in time did Sultana confirm Vella’s version that he had been duly alerted as to the need to also move the garbage bags which, in actual fact, contained plaintiff’s belongings as plaintiff stressed in his original email to Vella. Sultana confirms that Vella did not indicate “*neither (...) the particular items which we were supposed to collect nor of the particular number of bags which we were supposed to find over there and which we were to move from one apartment to the other*” (testimony given during the sitting of the 27th January, 2020).

In addition to the above, the Tribunal cannot but note that, at no point in time, did the defendant company - through any of its representatives and/or employees - deny the existence of such garbage bags upon gaining access to the property where plaintiff left them. More than this, as stated above, the employees utilized to carry out the said transport of bags confirm the existence of such garbage bags amongst the bags left by plaintiff for collection.

In particular, the Tribunal cannot but notice that whilst Ilham Brida testified to the effect that he effectively took with him and delivered such 'garbage' bags ("*Nghid illi jiena f' dik l-okkazzjoni gbart zewg garbage bags u haversack, nghid illi l-basket l-iehor biz-zipp jiena ma gbartux peress illi kien tqil hafna ghalija naf pero` li kien hemm il-kollega tieghi li jismu Bobby illi gabru.* Nghid pero` illi jiena dakinhar rajt l-erba` oggetti li semmejt u cioe` z-zewg garbage bags, kif ukoll iz-zipper u kif ukoll il-haversack. Nghid illi meta jiena gejt biex nerfa iz-zipper sibt illi dan kien tqil hafna u allura fejn kont ser immur kien ser ikun problema ghalija biex jiena ngorru. Nghid illi jiena x`hin wasalt Saint Helen hemmhekk ukoll kien hemm problema ta' parking, niftakar li kellimt lil cleaner li kienet qeghda hemmhekk, ghaddejtilha l-affarijiet u tlabtha sabiex terfahhom fl-istudio jew fil-penthouse peress li nfurmajtha li l-persuna proprjetarja ta' dawn loggetti kienet ser tibda tirisjedi f'wiehed minnhom, ma niftakarx liema wiehed. *Nghid li waqt li jiena kont ghadni hemmhekk kont ghadni ma tlaqtx gie Bobby bil-basket it-tqil li semmejt u fil-fatt tellghu Bobby ukoll.*" (testimony given during the sitting of the 4th December, 2020 – emphasis added), in direct contradiction with the above, the same Borislav Yordanov (known as Bobby) testified that, in his case, when he acceded to the property he noticed that "*there were rubbish bags on the floor, they were normal black rubbish bags. (...) I actually left the black rubbish bags as well as the food untouched and I did not take them with me because those were the instructions that I received*" (testimony given during the sitting of the 22nd February, 2021 – emphasis added).

It is therefore clear to the Tribunal that the versions given by the said witnesses are mutually exclusive. In simple words, it cannot be true that, as testified by Ilham Brida, he took with him the garbage bags but left only a heavy haversack for collection by

Yordanov if it is true that, as testified by the latter, he noticed the garbage bags in the apartment when he acceded to it and left the garbage bags there in the absence of instructions to pick the same up.

To the Tribunal the above evident conflict of evidence is clear proof of the fact that defendant company did not manage to carry out satisfactorily its agreement to move plaintiff's belongings safely from one property to the other. As stated above, through the evidence produced, it transpired that Ralph Vella delegated the transfer of plaintiff's belongings from one property to the other to Sultana who in turn delegated the same to Ilham Brida who, in turn, sought to delegate part of the transport to Borislav Yordanov upon finding that one of the bags was too heavy for him to collect. Also, through the evidence produced it does not result that the plaintiff's clear words of caution with regards to his belongings found in the garbage bags were made known to each delegated party.

In any case, it is amply evident to the Tribunal that the very fact that defendant company bound itself to transport all the stated plaintiff's bags from one property to the other (including therefore the two 'garbage' bags) but that, in the end, plaintiff did not receive such two bags and the personal belongings contained in them, is indicative that such garbage bags and their contents went missing precisely during such days when only the defendant company could/should have had access to and was therefore responsible for the safe-keeping and transport of such belongings.

As to the *quantum* claimed, the defendant company contests same through its third plea. Through its submissions it clarifies that the plaintiff cannot reasonably claim the full replacement value for new items when all his personal belongings were necessarily used. As confirmed by plaintiff himself, the amount claimed declaredly refers to the replacement value of his belongings as new when the belongings which he lost were evidently used.

To this effect, the Tribunal makes also reference, amongst others, to the case decided on the 17th June, 200 by the First Hall Civil Court in the names of **Linda Conroy v. Tubeline Limited** whereby the said Court decided, rightly in the opinion of the Tribunal, that losses suffered to used, personal objects cannot be compensated through

the payment of a value which is commensurate to new goods. In evident line with the principle of *restitutio in integrum* the said Court proceeded to liquidate the amount due as compensation in the value of 50% of those of the new goods:

“L-attrici stess, pero’, tghid li dawn il-valuri jirreferu ghall-oggetti in kwestjoni meta dawn kienu ghadhom godda, mentri in effett meta ngarrbu l-hsarat dawn l-istess oggetti kienu oggetti usati. In vista ta’ dan il-fatt u in vista tac-cirkostanzi partikolari tal-kaz ghalhekk id-danni sofferti mill-attrici ser jigu likwidati “arbitrio boni viri”. F’dan ir-rigward, ghal finijiet tal-likwidazzjoni, hu rajonevoli u opportun, li titnaqqas hamsin fil-mija (50%) mis-somma indikata ta’ Lm3430. Ghalhekk id-danni sofferti mill-attrici qed jigu likwidati “arbitrio boni viri” fis-somma ta’ elf seba mija u hmistax il-liri maltin (Lm1715)”

The Tribunal deems that it is just and equitable in this case as well to adopt the same line of measurement and is thus liquidating the amount of compensation due to the plaintiff in the sum of five hundred and eighteen euros and three cents (€518.03) - equivalent to 50% of the total value of his perished goods.

In view of the above, the Tribunal decides this case by rejecting all the pleas raised by the defendant company saving for the third plea, accepts the third plea limitedly and *in parte* and in line with the above proceeds to uphold the plaintiff’s claim limitedly to the sum of five hundred and eighteen euros and three cents (€518.03). Interest on the same shall run from the date of this judgment whilst expenses in connection with these proceedings shall be suffered as to one-half by the plaintiff and as to the remaining one-half by the defendant company.

Avukat Dr. Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Gudikatur