

COURT OF MAGISTRATES (MALTA)

MAGISTRATE

DR. RACHEL MONTEBELLO B.A. LL.D.

Application Number: 238/2019 RM

**Saviour Grima (I.D. 360079M) and
Sempronia Grima (I.D. 397378M)**

-Vs-

**Sven Patrik Martin Larsson (I.D. 221218L) and
Gillian Elizabeth Mary Larsson (I.D. 29401L)**

Today, 1st November 2021

The Court,

Having seen the application filed by plaintiffs in the Registry of this Court on the 18th October 2019 where they requested the Court to condemn the defendants jointly and severally between them to pay unto plaintiffs the total sum of five thousand two hundred and seventy one Euros and sixty cents (€5,271.60), representing the balance of the price of gypsum and other ancilliary works, which were carried out by plaintiffs, upon the defendants' instructions and to their benefit, at the property namely 19, Triq 1-Isfragel, Attard, which sum the defendants have failed to pay onto plaintiffs without any valid reason at law, notwithstanding the fact that they were duly called upon (DOK: A), as will result during the course of these proceedings;

With costs, including those of the legal letter of the 1st October 2019, and those of the precautionary garnishee order which was filed concurrently with these proceedings, and with legal interest accruing from today until the date of effective payment, against defendants, jointly and severally between them, who are hereby being referred to their oath in terms of law.

Having seen the reply filed by Sven Patrick Martin Larsson and Gillian Elizabeth Mary Larsson on the 3rd December 2019, where the following pleas were raised¹:-

1. *That preliminarily, the identity card number of the defendant Larsson Sven Patrick Martin as indicated by the plaintiffs in the application is incorrect;*
2. *That without prejudice to the aforesaid, the allegations and pleas made by the plaintiffs are unfounded in fact and at law, and thus should be rejected with costs;*
1. *That in the same application requesting this Court to condemn the defendants to pay, the plaintiffs conveniently omitted to provide the background, as the sum claimed is substantially larger than the original price that the parties had agreed to;*
2. *That amongst the works commissioned, there were works which were never carried out, or if carried out were not executed in accordance to good and established practice, where the price for carrying out the works was agreed to be included in the price of those materials and products supplied by the plaintiffs, or alternatively the works were not authorised by the defendants, including:-*
 - a) *Closing of doors;*

¹ Translated from Maltese to English by the Court.

- b) The price of man holes, fan, light fittings and chandeliers;*
 - c) The installation of the hood*
 - d) The painting of feature walls;*
 - e) The provision and/or installation of extractor fans, box of stairs, corridor bulkhead, kitchen bulkhead, bathroom bulkhead and soffit repairs;*
- 3. That furthermore, the plaintiffs are responsible for various damages which were caused during the execution of the works, among them the most serious being that the soffits installed are of 18cm thickness whereas the defendants had cautioned the plaintiffs that the thickness of the soffits should not exceed 10cm, and that as a result of the relative works, the property is not in conformity with planning regulations.*
 - 4. That in addition to the above, other damages were caused as a result of the incorrect electrical wiring installation that now requires dismantling in order for the damage to be rectified; plaintiffs were also negligent to the extent that they soiled the internal yard of the said property with paint and notwithstanding extensive cleaning works being carried out, the damage remains.*
 - 5. That all these pleas that are being raised in this reply were already brought to the attention of the plaintiffs during a meeting held on the 5th of September 2019 and as a result, plaintiffs accepted payment of the sum of one thousand, seven hundred and fifty euro (EUR1750) in order to resolve the matter amicably, so long as the plaintiffs present an official receipt for all previous payments.*
 - 6. That the above is confirmed by the clandestine manoeuvres of the plaintiffs when the invoice of the 8th August, 2019 for the sum of five thousand, two hundred and seventy one euro and sixty cents (EUR 5,271.60) was only brought to the attention of the defendants by means of a legal letter sent by*

plaintiffs' legal counsel on the 1st October, 2019 – exhibited in these proceedings by plaintiffs themselves – while the amendments agreed to between the parties are reflected in the invoice dated 8th August, 2019. This is chronologically impossible, because the amendments were agreed to during the meeting of the 5th September, 2019;

- 7. That, furthermore, according to the same legal letter it is being alleged that the plaintiffs had been paid on the 26th of August, 2019 when the relative cheque was cashed on the 10th August, 2019.*
- 8. That the above facts will result during the hearing of the cause and the plaintiffs are themselves responsible for the damages suffered by the defendants;*

Therefore, the defendants reject all allegations made because, as already stated, there were works which were never carried out, or if carried out were not executed in accordance with good and established practice, or the price for carrying out the works was to be included in the price of those materials and products supplied by the plaintiffs, or alternatively the works were not authorised by the defendants and in any event, the parties had already reached a compromise, and thus the defendants request that all the plaintiffs' claims are rejected with costs.

The defendants also reserve the right to seek damages against the plaintiffs also by separate judicial remedies, including proceedings before the Consumer Claims Tribunal. With costs.

Having seen that during the hearing of the 4th December 2019 the proceedings were ordered to be conducted in the English language in terms of Article 3 of the Judicial Proceedings (Use of English Language) Act;

Having seen that by virtue of a decree given during the same hearing of the 4th December 2019, the Identity Card Number of defendant Sven Patrick Larsson as indicated in the Application, was substituted by the letters and numbers “ID 221218L”;

Having heard the testimony of the parties and having seen all documents exhibited;

Having seen all the acts and the record of the proceedings;

Having seen the note of submissions filed by the plaintiffs on the 21st June 2021;

Having seen the note of submissions filed by defendants on the 26th July 2021;

Having heard the oral submissions of both parties regarding the said preliminary pleas raised in these proceedings;

Having seen that the case was adjourned for today for delivery of judgement;

Having considered;

This case concerns gypsum installations and other works executed by plaintiffs under a contract of works or *locatio operis*. In March 2018 defendants contacted plaintiff Saviour Grima regarding installation of gypsum works that they required in their newly acquired maisonette in H’Attard which was at that time, under construction. From the exchange of correspondence which plaintiffs exhibited in the acts of the proceedings², it would result that the works that they were originally contracted to execute were limited to the installation, plastering and painting of flat gypsum ceilings with coving, together with lighting installations. The Court notes that defendants requested “*flat gypsum in all rooms with silver square lights*”, “*three hanging pendant lights*” in the kitchen and “*one light hanging over the dining table.*” They also

² Dok. 1 till Dok. 20.

indicated that their budget for the works including all light fittings was to be limited to €4,500³. On this basis, plaintiffs issued a handwritten quotation on the 2nd April 2018 in the total amount of €4,891.63. This quotation was based on the requested works and the plans submitted by defendants and was accepted by defendants despite being in excess of their budget⁴. Defendants paid a deposit in the sum of €200 prior to the commencement of the works.

Although it was originally intended that the works would commence around September or October of 2018, it is an undisputed fact that delays in the fixture of apertures and bathroom fittings and other works carried out by third party contractors in defendants' property, led to the contracted works having to commence in April 2019 as would result from correspondence exchanged between the parties⁵.

It also results that in the intervening period and also during the course of the execution of the works by plaintiffs, defendants requested and commissioned further works to be carried out in addition to the works indicated in the original quotation, including the adjustment of height of five doorways using gypsum, which upon defendant's request was carried out prior to all other commissioned gypsum installations. Defendants also decided against installing coving on the ceilings and opted instead for the installation of a bulkhead in the kitchen with spotlights instead of the hanging lights, and round led lights instead of square for the entire house. A request for a gypsum section to cover the steps to the front entrance to the property was also made by defendants in July 2019⁶, in addition to the works originally commissioned, as was a request to make a ten centimetre hole in the kitchen ceiling for the installation of an extractor fan (hood)⁷.

It would also result as an undisputed fact that although the original quotation for the ceiling works requested by defendants included gypsum soffits in the two bathrooms

³ Fol. 30, 31.

⁴ Fol. 38.

⁵ Fol. 36, 37.

⁶ Fol. 64.

⁷ Fol. 66.

in their property, these soffits were not, after all, installed by plaintiff but by other contractors prior to plaintiff having actually commenced the main gypsum works in the property. Subsequently, however, upon plaintiff's suggestion, defendants decided to have extractor fans installed within the gypsum ceiling of the two bathrooms notwithstanding that this involved the removal and subsequent repair of the already-existing gypsum ceilings and the creation of gypsum bulkheads and man-holes for easy repair access.

From an examination of the evidence, the Court understands that while defendants paid in full the price of the actual works executed by plaintiff on the basis of the original quotation after this was adjusted to take into account the change from coved ceilings to bulkheads and other variations, they are disputing payment of the price of most of the extra works that were carried out in addition to the original gypsum and lighting installations. Defendants dispute payment for reasons which while being indicated in their Reply to the Application, are further expounded in their respective Affidavits, as follows:-

- a. The charge for the cut-outs for lights was higher than quoted;*
- b. The closing parts of the doors seemed extremely high – especially since he never finished them, as stated on the invoice. When visiting (on September 5th, 2019), he said he has a flat fee of one hundred and thirty Euro (EUR 130,00) per door for such work, but that cost also included plastering and finishing, which he never carried out. This is shown in image marked Doc PL1.*
- c. Installation of lights and light fittings was agreed to be at no extra charge;*
- d. Bulkheads in bathrooms were charged extra, even though the charge for flat ceilings in the bathrooms remained, not to mention the fact that we didn't ask for the bulkheads in the first place;*
- e. The painting of the walls – apart from the three feature walls – we did not ask for painting and his refinishing was carried out to fix his own damage;*
- f. Cost of LED lights increased from the price we were given;*

- g. *The cost of the additional features we requested (closing of doors, box of stairs, extractor fans, and bulkheads) now totalled two thousand and ninetyfive (EUR 2,095.00) excluding VAT, rather than the amount quoted for coving, which was quoted at nine hundred Euro (EUR 900.00) excluding VAT.*
- h. *The original two hundred Euro (EUR 200.00) deposit was not deducted from the total.⁸*

Also:-

- a. *Walls were bumpy and uneven – damage done with their sanding machine. The wall in the open area was all wavy, from previously being completely smooth;*
- b. *Feature walls painted badly with splashes of colour on the white walls;*
- c. *Cigarette stains created by his workers in the yard;*
- d. *The gypsum ceiling height was incorrect in the open plan and bedrooms – the main bedroom comes down to around 18cm not the 10cm maximum – he claimed it was because of our Air Conditioning pipes, which wasn't true, and also explained to him that he should have told us before continuing with the work because of the floor to ceiling height illegality. We explained that if we wanted to sell our property we would have to remove all the gypsum ceilings. Saviour just got angrier by this;*
- e. *Our internal yard was covered in his paint – We witnessed his workers rolling the dirty paint rollers against all our outdoor walls splashing paint all over the floor, insect nets and pipes. We explained how they left everything a mess, didn't clean up anything and damaged our property. No other painters had been in the flat since the insect nets were installed; The light switches – how they were installed did not make any sense and were not what we requested.⁹*

⁸ Affidavit of Sven Patrik Larsson.

⁹ Affidavit of Gillian Elizabeth Mary Larsson.

Having considered;

By way of initial observations, the Court notes that plaintiffs, in support of their version, rely largely on various messages exchanged with defendants, duly exhibited together with plaintiff Saviour Grima's Affidavit¹⁰. From their part, defendants do not appear to dispute the authenticity of these messages and offered no evidence of further exchanges of correspondence by way of rebuttal or clarification of the contents of the messages exchanged between the parties.

It is also evident that the defendants' main point of contention is that the prices charged by plaintiffs are too costly and that despite their repeated requests for an approximate total value of the works being carried out, in view of the changes and additions to the works originally commissioned and in view of their budget, plaintiff failed to give them the required information.

However the Court observes that while plaintiff denied being asked to provide a quotation for the additional works, no satisfactory evidence was brought to show that defendants did indeed request a quotation for the extra works commissioned after the quotation sent in April 2018, notwithstanding the fact that it is evident that there were not only changes to the original works that they commissioned, but also many additional works. It does result that on the 29th July 2019, defendants sent a message requesting an approximate total cost for the works as they "*need to make a budget*". Incidentally, this is the date when according to plaintiff's testimony¹¹ - unchallenged in this regard - the works were completed save for installation of the cooker hood and chandeliers: no other evidence was brought to substantiate defendants' claims that they had, prior to the 29th July 2019, been persistently requesting from plaintiff an indication of the total costs of the works. As such, the Court considers that had defendants indeed been as insistent as they claim to have been in this matter, then such a request would have been found amongst the plentiful correspondence exchanged

¹⁰ Affidavit 29th January 2020, Dok. 1 till Dok. 20.

¹¹ Fol. 23, paragraph 13 of Saviour Grima's Affidavit.

between the parties wherefrom it would also result that defendants' almost every request for additional or modified works was made via text message.

- **Painting and Finishing Walls**

The Court observes that much of defendants' testimony in their respective Affidavits is dedicated to challenging the price charged for "*painting and finishing walls*"¹². Defendants claim that they did not commission plaintiffs to paint the gypsum walls since these had been freshly painted by other contractors and they were repainted by plaintiffs only in order to repair the damage that they caused themselves during the installation of the gypsum ceilings and also as a result of water damage to the walls which occurred through their own fault when they dislodged the air-conditioner drains during wall replastering works.

The Court must observe at the outset that it is evident that defendants failed to substantiate both their claim that the walls were damaged during the installation of the gypsum soffits and their assertion that air-conditioning drains were dislodged due to plaintiff's fault when the wall was being replastered. The Court expects that following defendants' express indication in their message to plaintiff dated 8th August 2019, that they would charge the price of the replastering and repair of the gypsum walls to the air-conditioning contractors given the latter's negligence in the installation of the drain-pipes behind the walls, they would have produced the relative evidence such as the testimony of the air-conditioning contractor himself or other technical evidence, in order to give credence to their claim or at the very least, shown that they had confronted plaintiff in a timely manner with their allegations. However, no such evidence appears to have been brought forward.

The defendants also allege that the walls, apertures and floor of the internal yard were covered in paint as a result of negligence on the part of plaintiff's workers, internal walls were bumpy, uneven and damaged with a sanding machine, while feature walls

¹² €1,981.25 pre-VAT.

were painted badly. However, no expert technical evidence was brought forward to support the assertion that such works were not carried out in accordance with the standards of good workmanship: defendants supplied only a set of photos¹³ which, in themselves and since they are unclear, cannot constitute conclusive proof that in effect, the walls and apertures were effectively damaged or that the paint work was defective. Moreover, defendants failed to show that they incurred or will need to incur expenses in order to remedy any works that they claim not to have been carried out in accordance with the requirements of good workmanship.

As matters stand, the Court is faced with the undisputed fact that plaintiff was asked to replaster the wall following the installation of air-conditioning drain-pipes and again asked to re-plaster and repaint the walls in two rooms after water damage caused when the same air-conditioning drains leaked¹⁴. On the other hand, no evidence whatsoever was brought in support of the allegation that the walls were damaged by plaintiffs or that the replastering and repainting of these walls was required as a result of plaintiffs' fault. An allegation that was incumbent on defendants to prove in the circumstances. Nor was it shown to the satisfaction of the Court that the parties had agreed on the rates to be charged for the painting and finishing works on the walls or that the rates claimed by plaintiffs¹⁵ are in excess of fair market rates.

Moreover, the Court cannot but point out that from the exchange of messages exhibited in the acts of the proceedings, it emerges that defendant Patrik Larsson by means of a message sent on 8th August 2019, confirmed that they received the "*new invoice and quote*" and indicated that they were satisfied with it save for the description of "*painted gypsum work*" which he requested is changed to read "*plaster repair and repainting of broken walls x 2*"¹⁶. This message, in particular defendant's

¹³ Dok. GL1, GL2 and GL3

¹⁴ See in particular, Dok. 10 and Dok. 11, fol, 58 and 59 respectively.

¹⁵ €1,981.25 exclusive of VAT.

¹⁶ Moreover, it must be pointed out that the item described as "painted gypsum work" appears in the invoice dated 6th August 2019 but does not reappear in the invoice issued subsequently, dated 8th August 2019, so it is the Court's view that in effect, plaintiff's version that he initially sent one invoice listing all chargeable items and subsequently split the invoice into two upon defendants' request, is convincing.

comment “*I think it’s good*”, also convinces the Court that in point of fact, defendants’ contentions in respect of the poor quality of the works carried out by plaintiffs and their allegations regarding negligence in the execution of some of the works and other works not having been commissioned or completed, lack credibility.

It is the Court’s view that it would be reasonable to expect that had the defendants had any reservations about the nature and or quality of the work carried out by plaintiffs or the prices and rates effectively charged for the works carried out, they would have expressed such reservations upon receiving the invoice rather than pointing out one item which they intended to obtain redress for from third party contractors.

- **5 Closing parts of doors**
- **Box of stairs**
- **Bulkhead in corridor**
- **Bulkhead in kitchen**

It is uncontested that defendants requested plaintiffs to carry out additional gypsum works in the form of five sections intended to lower the height of the doorways. However, they claim that while plaintiffs did install the gypsum, they failed to carry out the required plaster and paint works on these sections which in turn, had to be carried out by third party contractors. They maintain that plaintiffs proceeded to charge them without having completed the works.

At the outset it must be pointed out that from the evidence brought forward, it does not result that the price invoiced for the relative item¹⁷, that is the gypsum sections for the five doorways, was inclusive of plastering and painting and the Court finds plaintiff’s version that plastering and painting works on these sections of the doorways would be carried out at a later stage together with the plastering and painting of the gypsum ceilings, to be perfectly plausible. After all, the gypsum installations on the doorways were carried out upon defendants’ request in April 2019 prior to all other

¹⁷ €650 pre-VAT.

works and even before the tiles and bathrooms were installed in the premises. The Court would point out at this juncture that defendant Gillian Larsson herself explained, in her Affidavit, how plaintiff had informed her that he would be in a position to visit the premises in connection with the required works, once the tiles and air-conditioners were installed: it is therefore evident that the gypsum sections on the doorways were installed even prior to the plastering and painting of the internal walls. Consequently, defendant Patrik Larsson's allegation that plaintiff "*never finished*" the gypsum sections in the doorways is inaccurate, given that plaintiff commenced the main works two months later in July 2019 when these sections had already been plastered and painted by third party contractors.

As for the box of stairs there is no doubt that these works were installed upon defendants' specific request and no complaints were raised by defendants in connection with the work effectively carried out.

The same applies to the bulkheads in the kitchen and corridor and the installation of the kitchen hood: plaintiff testified that since the hood was 38 centimetres in height, part of the kitchen soffit had to be lowered in excess of the minimum depth of 10cm. This meant that in turn, two bulkheads had to be installed in the kitchen and in the corridor so that the rest of the ceiling would be of the minimum acceptable height. It also results in an undisputed manner that plaintiff was additionally contracted to install the hood¹⁸.

It is also abundantly clear that when commissioning the extra works consisting of gypsum sections for the stairs and doorways and bulkheads instead of coving, defendants did not request an approximate price. This could only mean that defendants failed to safeguard their interest. Moreover, they brought no evidence to show that the price charged by plaintiffs for these particular items is excessive or otherwise not in accordance with market rates and in the absence of an agreement

¹⁸ See Dok. 7, fol. 40 till 45.

between the parties regarding the chargeable rate for this particular item of work, the Court will not vary the price requested by plaintiff.

As this same Court had occasion to point out:-

“Il-Qorti rat l-atti u tqis illi ma jirrizultax mill-provi illi l-partijiet kienu ftiehm u dwar ir-rati u prezzijiet li kellhom jigu applikati ghax-xogholijiet tal-appalt. Ghalkemm huwa indiskuss illi skont il-principji bazilari tal-ligi kontrattwali, il-hlas ghax-xoghol li jiffirma l-oggett tal-appalt ghandu jkun kif kien miftiehem bejn il-partijiet fl-appalt innifsu, f’dan il-kaz la gie ppruvat li ntabet jew inghatat stima preventiva tax-xogholijiet mitluba u eventwalment ezegwiti, u lanqas intwera li gew maqbula rati specifici li kellhom jigu applikati ghal dan l-appalt. Jigi osservat ulterjorment illi ghalkemm jirrizulta illi kien hemm kont ta’ xi xoghol imwettaq mill-atturi precedentement fuq inkarigu tal-konvenuti, liema kont jidher li kien gie debitament imhallas, ma giex ippruvat sodisfacjentement x’kienu r-rati u l-prezzijiet individwali li gew applikati f’dak l-appalt. Dan qed jinghad ghaliex il-Qorti tqis li din il-prova hija essenzjali sabiex tista’ ssib riskontru l-presunzjoni illi l-kundizzjonijiet u rati ta’ hlas ghal xoghol zejjed li jkun sar sussegwentement, ghandhom ikunu l-istess bhal dawk li gew miftiehm qabel ghall-appalt originali.”¹⁹

The Court does not find sufficient evidence to sustain the defendants’ claim that the parties had agreed or plaintiff had accepted, that the cost of additional works that were commissioned was to be equivalent to the cost of the coving at €900. Less so when it is evident that extra works were requested periodically and that some works were unforeseen and became necessary following works carried out by third party contractors. Plaintiff’s reply “*don’t worry speak later*” to defendant’s request to have a bulkhead in the kitchen instead of coving on the ceilings, cannot by any stretch of imagination be taken to mean that the price of the bulkheads was to be equivalent to the price of the coving. The Court therefore finds defendants’ version in this regard, unrealistic.

¹⁹ **Robert Ellul Kenely et v. Josie Farrugia et.** Decided 19th February 2020.

- **Installation of light fittings and chandeliers**

As for the three chandeliers, upon examining the two invoices dated 6th August 2019 which was paid by defendants and 8th August 2019 which is the subject of this lawsuit, the Court notes that while the former invoice charged the actual price of the chandeliers and bulbs which were purchased by plaintiffs, the outstanding invoice charges the price of the installation of the said light fittings. The Court also notes that the defendants did not indicate that the payment made on the 8th August 2019 in the sum of €6,010.56 for the invoice dated 6th August 2019 was made in full and final settlement of all amounts claimed by contractor, and further understands that defendants were fully aware that there were other items for which plaintiffs were claiming payment, which were not included in the 6th August 2019 invoice, the plaintiffs having previously issued on the same date, a full invoice containing all the twenty two items due to be charged.

The Court finds no logic in the fact that the price of the light fittings and the price for the installation of the same light fittings are not indicated in the same invoice and as already established, it results to have been upon defendants' request that the prices for these items were separated into two different invoices. To be sure, it is observed that in the original quotation issued by plaintiff²⁰, the price and the installation of the light fittings are entered as two separate items. Moreover, at no point did defendants point out that they expect free installation: indeed, to the message containing the original quotation, they replied : *“Hey, took a look at the quote and we are happy to go ahead and book”*²¹.

The defendants did not bring forward any evidence to sustain their allegation that the price of the light fittings should be inclusive also of the price of installation. This is evidence which the Court deems essential in order to counter the fact that from the

²⁰ 2nd April 2018, fol. 38.

²¹ Fol. 38.

exchange of messages exhibited by plaintiffs, no mention of this request appears to have been made notwithstanding the fact that it appears to the Court that most of defendants' requests concerning changes to the works and particularly, the choice of light fittings, were made by means of the exchange of text messages. The Court expects that had the defendants indeed requested an all-inclusive price for the installation and purchase of light fittings, they would have also pointed this out at latest upon receipt of the invoice. However, upon receipt of the invoice, the evidence shows that defendants only pointed out one particular item that was not to their satisfaction²².

Finally, the fact that plaintiffs might have offered free installation of light fittings to other clients does not bind them to make the same offer in all cases or to all their other clients.

The defendants also contest plaintiff's decision to increase the price of the wiring cable for lighting installations, from €4.50²³ to €5.25²⁴. Plaintiff contends that this increase is due to the fact that more than a year had elapsed from the issue of the original quotation until the works were in a position to be effectively carried out and that in any event, the quotation was only valid for a period of three months.

It is the Court's view that plaintiffs should have notified defendants of the increase in price of the material since it is clear that in respect of the other works subject of the original quotation, they relied on the same prices originally quoted²⁵. When a quotation was indeed supplied to defendants upon their request, any changes in those prices, particularly in the event of an increase in the price, should have been signalled by plaintiffs. After all, the acceptance by defendants of the original quotation provided by plaintiffs, constitutes an agreement which any variances thereto should have been bilaterally agreed to.

²² Dok. 11 fol. 59.

²³ See Dok. 3, fol. 32: "50 cut outs, wiring installation, wiring material @€4.50".

²⁴ As results from invoice dated 6th August 2019 – Dok. 18.

²⁵ See "painted gypsum work" and "flat ceilings".

However, the Court cannot point out that the controversy regarding the price of the wiring cable, does not pertain to the matter in dispute in these proceedings since this item was charged in the invoice dated 6th August 2019 which the defendants paid in full.

As for defendants' complaint regarding the light switches, the Court is not satisfied that defendants produced sufficient evidence, technical or otherwise, to adequately demonstrate that the works executed by plaintiff on the wiring of the light installations, were faulty and they also failed to show that they incurred or need to incur expenses in order to rectify or remedy any substandard or defective works.

- **2 Bulkheads in bathroom and repairs soffits**
- **2 Installation man holes and fan**
- **4 Cut outs in walls for pipes for fan**

Defendants contest the fact that plaintiff charged them for two bulkheads in the bathroom ceilings and repairs to the soffits in the sum of €468.00²⁶, when they had already paid him the sum of €2,312.00 for the ceiling works. Their argument is that the latter price is the same price that plaintiff had originally quoted for installation of gypsum ceilings in all the rooms in their property and they paid this price notwithstanding that after all, gypsum soffits in the two bathrooms were not installed by plaintiff but by a third-party contractor.

Upon an examination of the evidence, it results to the Court that plaintiff mounted two gypsum bulkheads in the ceiling of the two bathrooms in order to enable the installation of the extractor fans that defendants had agreed to install. It also results that these extractor fans and bulkheads were installed and connected after the gypsum soffits had been already constructed by third party contractors, necessitating the dismantling of the gypsum boards and subsequently, the necessary repairs. It also

²⁶ Pre-VAT.

results that plaintiffs charged for these items separately over and above the price of €2,312.00 which, according to the invoice dated 6th August 2019, includes “*Flat ceilings in ... Bathroom, Ensuite...*”

This leads to Court to conclude that the price claimed for the two bulkheads and repairs cannot be charged in full in addition to the price of €2,312 which includes two gypsum soffits which were not effectively installed. However, this having been stated, the Court notes that as would result from the actual invoice dated 8th August 2019, the sum of €312.20²⁷ representing the charge for the two gypsum soffits that were substituted with bulkheads and repairs, was indeed deducted from the total amount claimed for the extra works²⁸. This deduction was furthermore affirmed by plaintiff Saviour Grima’s testimony in cross-examination²⁹.

As for the installation of two man-holes and extractor fans in the bathroom, defendant Patrik Larsson in his Affidavit³⁰ confirms “*We later opted to add a few features: (a) To install extractor fans in the two bathrooms – on advice from Saviour Grima. This had been discussed earlier on and we thought it was a good idea.*” It is evident that these works were effectively carried out as can be seen from photos exhibited by plaintiff³¹.

Finally, as for the four cut-outs in the walls for fans, it is abundantly proven that defendants specifically requested this work to be carried out³². Plaintiff testified that two of these holes were to cut out in order to pass the pipes of the extractor fans in the two bathrooms into the shaft, while two others were required in the kitchen and in the bathroom in order to enable the installation of the kitchen extractor fan (hood). None

²⁷ Pre-VAT.

²⁸ See invoice dated 8th August 2019: “*Less amount €312.30 (2 Soffits in bathrooms)*”.

²⁹ See fol. 133.

³⁰ Fol. 78, point 4.

³¹ Fol. 46. Also vide exchange of text messages at fol. 66.

³² See message at Dok. 14, fol. 66.

of this was contested by defendants and nor was any evidence brought forward to successfully challenge the price charged for the said items³³.

Having considered;

That the defendants testified at length about the dispute that arose in connection with fact that according to them, the minimum floor-to-ceiling height required by law was not respected as a result of the installation of the gypsum ceilings in their property and that therefore, the works were not carried out according to Law and caused them damages. Plaintiffs counter by asserting that if indeed this is the case, any lack of conformity with statutory regulations in the minimum floor-to-ceiling height as a result of the installation of the flat gypsum ceilings in the premises is due to the fact that defendants themselves insisted on the installation regardless of any non-conformity and they followed defendants' instructions.

In this regard, it is a well-established principle, reiterated in relevant case-law on the matter, that an artificer who accepts to execute a contract of works is responsible for all damages resulting from his fault and he cannot, in order to escape responsibility for defects resulting from such works, rely on faults in the pre-existing structure or works of third parties on which his works were based, or the fact that it was the employer who insisted on the works being carried out in that manner, if such mode of execution was contrary to good practice. In any such case where the artificer cannot guarantee the integrity of the works commissioned, it has been held:-

“Min iwettaq bicca xoghol li ghaliha jkun gie inkarigat ghandu obbligu jaghti rizultat tajjeb u ta' vantagg ghall-klijent, u jekk jonqos li jaghti dan ir-rizultat, huwa jkun responsabbli ghad-danni, u la jista' jawhal fl-ghodda, la fil-materjal li juza', la fl-intromessjoni tal-klijent u lanqas fl-istat jew il-kundizzjoni tax-xoghol preparatorju li fuqu jkun irid iwettaq ix-xoghol tieghu. L-appaltatur ghandu obbligu li jwettaq xoghol

³³ €60 pre-VAT.

li jaghti rizultat konformi mal-htigijiet tal-klijent, u ghandu jirrifjuta jwettaq xoghol li jaf jew li messu kien jaf, mhux se jaghti rizultat utili.

...

*... b'referenza ghall-gurisprudenza anterjuri, l-istess Prim' Awla tal-Qorti Civili, fil-kawza **Francis Busuttil & Sons Ltd v. Apap et**, deciza fl-4 ta' Novembru 2010, ghamlet din l-osservazzjoni dwar il-htiega li appaltatur jirregola x-xoghol tieghu skont dak li jsib. Il-Qorti osservat illi anke jekk isib xoghol hazin irid jew jirrifjuta li jaghmel ix-xoghol li hu gie inkarigat li jaghmel, jew jirranga hu s-sitwazzjoni biex jaghti rizultat utili ghal kommittent.*"³⁴

While this may be true, however, the Court cannot endorse the defendants' argument that the gypsum ceilings were installed in violation of statutory sanitary requirements: it is evident from the wording of the relevant provision of law that the statutory regulation of the internal floor-to-ceiling height of the rooms in any premises used for habitation is concerned solely with the permanent structure and not with superimposed design installations or other works and installations that are not part of the masonry and which are of their nature detachable.

Article 97(1) of the Code of Police Laws stipulates that:

In the construction of any house or part of a house, the owner as well as the mason and the architect employed thereon, shall, unless otherwise provided by any regulations made under article 102, observe the rules contained in the following paragraphs:

...

(d) every room shall, from the floor to the beams supporting the roof, or, if the roof be supported by arches, to half the height of each arch, be at least two point seven five metres high, in every part of it;

³⁴ **Coleiro Yacht Finishes Limited vs Easysell Kia (Malta) Limited**, decided by the Court of Appeal on 9th November 2012.

Indeed, the evidence in this case shows that defendant's decision to install gypsum ceilings was based on design considerations and at no point does it result that the gypsum ceilings were installed for any other purpose than as an aesthetic feature or that the installation was permanent or an integral part of the structural construction of the building.

It is true that the Development Planning (Health and Sanitary) Regulations, 2016³⁵ stipulate that the clear height of a habitable space, measured from the finished floor level up to the underside of the ceiling level shall not be less than two metres and sixty centimetres, excluding any beams, arches and/or drop ceilings, provided that these do not take up more than 30% of the ceiling area of the room and the clear height of this 30% area is not less than 2.0 metres. However, **defendants failed to provide objective or technical evidence in support of their claim that the area of the rooms in their property where the clear height was not respected, exceeded thirty percent of the ceiling area of each room and that the clear height of this 30% area is less than 2.0 metres** : evidence which in the Court's view was not impossible or even difficult to produce in any event, apart from the fact that it results from the evidence that the defendants had already obtained clearance from the competent authority certifying that the building was constructed in accordance to law and approved permits³⁶. Consequently, the Court does not share the defendants' view that the works carried out by plaintiffs were in violation of statutory building requirements or contrary to good workmanship and practice.

In any event, it is established from the evidence that plaintiffs already paid the invoice for the installation of the gypsum ceilings in full³⁷, notwithstanding their complaints about the floor-to-ceiling height and they moreover did not proceed to file a counter-claim in these proceedings for damages they claim to have

³⁵ S.L. 552.22

³⁶ Testimony of Sven Patrik Larsson, 28th April 2021.

³⁷ See testimony of Saviour Grima, fol. 129. The price for "*flat ceilings in kitchen, living, dining, corridor, bathroom, en suite, 3 bedrooms*" (€2,312 excl. VAT) was already invoiced in the invoice dated 6th August 2019 which was paid by defendants in full.

suffered as a result of the alleged lack of conformity of their property to statutory regulations.

Having considered;

In conclusion, as for defendants' allegation that a verbal agreement had been reached with plaintiff that he would accept payment in the sum of one thousand seven hundred and fifty Euro (€1,750) in full and final settlement of the invoice dated 8th August 2019³⁸, the Court is not satisfied that in effect, any such agreement had been struck. Plaintiff Saviour Grima, even under cross-examination, vehemently denied acceptance of the afore-mentioned sum by way of compromise and insisted that the said offer was unacceptable. Moreover, this assertion contradicts the statement made by both defendants in their respective Affidavits that they accepted to pay the sum of €2,500 for the works charged in the invoice dated 8th August 2019. In this regard, the Court cannot but observe that Patrik Larsson himself had sent a message to plaintiff on the 8th August 2019 stating "*Got the new invoice and quote and I think it's good*": a message that appears to have been confirmed by a declaration made in his Affidavit where that he "*accepted the second invoice as well as the quote for the repair work of the A/C drains*". In view of all this, the Court is not convinced that defendants had made an offer to plaintiffs which had been duly accepted.

For all the above reasons, while rejecting all of defendants' pleas in so far as they are incompatible with the above-mentioned conclusions, the Court accedes to plaintiffs' demands and condemns SVEN PATRIK MARTIN LARSSON AND GILLIAN ELIZABETH MARY LARSSON to pay unto plaintiffs the sum of five thousand two hundred and seventy one Euro and sixty cents (€5,271.60) for the reasons set out in the Application and with interest to be calculated from the 8th August 2019.

³⁸ See cross-examination of Sven Patrik Larsson, 28th April 2021, fol. .

The costs as requested in the Application are to be borne by defendants.

DR. RACHEL MONTEBELLO

MAGISTRATE.