



THE COURT OF MAGISTRATES (MALTA)

MAGISTRATE

DR. CAROLINE FARRUGIA FRENDO

B.A. (Legal and Humanistic Studies), LL.D.,

M.Juris (International Law), Dip. Trib. Eccl. Melit.

**Application Number:
250/2017 CFF**

Euro Tax Consulting Limited (C61249)

Vs

Sodecarp Limited (C75850)

Today the 22nd of February 2022

The Court,

After having seen the application filed by the plaintiff company whereby it requested this Court to condemn the defendant company to pay the plaintiff company the sum of six thousand and twenty-nine Euros and eighty cents (€6029.80) which represent corporate services and countability services given by the plaintiff company to the defendant company between January 2017 to July 2017, including both months according to the receipts sent of which a copy is being attached and marked as Dok A;

Having seen the reply of the defendant company wherein it pleaded:

1. That the applicant's claims are unfounded in fact and law as will be shown during this trial and the requests of the applicant company are to be rejected with costs against the same;
2. That whilst it is true that the defendant company did employ the services of the plaintiff company to give professional services related to corporate services and countability services, these same services were terminated by the defendant company in view of lack of professionalism and due diligence;

Having heard the evidence and having seen all the records of the proceedings and documents exhibited in these proceedings and after having heard the oral submissions made by the defence lawyers of both plaintiff and defendant company;

The Court made the following considerations:

Considers;

Michael Arena stated that she works as a junior accountant since November 2016. She confirmed that the documents exhibited at fol 2 till fol 8 represent the invoices issued to Sodecarp Ltd being claimed by the plaintiff. She exhibited the last statement issued to the defendant and marked as MA1. Under cross examination she stated that she knew a certain Christian Harneman and that she used to take care the book-keeping of the the defendant. There was also another person who used to work with her on the book-keeping of Sodecarp Ltd namely Ms Elvia Encoba. Gabriel Brincat was responsible for the incorporation of Sodecarp Ltd. Pierre Musu was also involved as he was the auditor of the company that she works with.

Alfons Schwarte stated that he is the managing director of Euro Tax Consulting Ltd. The company helps clients from Germany, Austria and Switzerland who would like to invest in Malta. In this case the company had assisted in the incorporation of Sodecarp Ltd through Gabriel Brincat as he is authorized to do so by law. The company then later offers office services to the newly incorporated company and even are assisted by Pierre Musu' and Gabriel Brincat. It was Christian Heneiman who had contacted him and wanted to incorporate the company in Malta. He was informed that they could not open companies in Malta but they can do so through another person. Initially he could not pay the agreed monthly fees and after six months of not paying he was called in and informed them that he needs more time to pay for the fees. During that period Christian Heneiman was running out of cash and he had tried to help him out even offering him a job within his company. Instead he started blaming him that things were being done wrongly and the service was not good. Initially he always signed the documents in relation to VAT. He exhibited a document showing that he had signed the document in relation to VAT (marked as dok AS1).

Emaliese Lofaro stated that she works with MFSA within the Authorization Unit as an analyst. According to the information so provided, the company Euro Tax Consulting Limited had no licence to operate as a corporate service provider. The functions of a company providing corporate service are mentioned in Article 3¹ of Act for Company

¹ 3. (1) Any person operating in or from Malta who acts, or holds himself out as acting as a company service provider by way of its business, shall apply for authorisation with the Authority in terms of this Act.

Service Providers. Without the said registration they cannot operate as service providers unless being considered as exempt persons as defined by law. The main function of corporate service providers are for the formation of companies, arranging for another person to act as director or secretary of a company in a partnership, provision of a registered address, business correspondence.

Paul Scicluna stated that he works as an inspector within the VAT department. He said that the company A2C Holdings Ltd was never registered for VAT purposes while Sodecarp Ltd with VAT number 23461602 has been registered effective from 1st May 2016 with the same department. There was a correction in the first return submitted whereby it was claimed input VAT on expenses made and, in the correction, it reduced the amount claimed. It was Sodecarp that was involved in this correction.

Christian Hiendermann² exhibited the affidavit and marked as doc CH1. In the affidavit he stated that together with Ludger Stilling are directors of the defendant company. He had engaged the plaintiff company to incorporate two companies with Euro Tax Consulting Ltd. He claims that the plaintiff company did not conduct diligently any corporate and accounting services. In so far it did not distinguish between the Trading company from the Holding Company as instead of issuing two separate invoices as A21C Holding Limited could not claim the VAT back as it is a Holding Company. As a result Sodecarp Ltd claimed higher VAT refund than it was eligible to resulting in VAT fraud committed by Euro Tax Consulting Ltd. In 2016 he confronted the Director of Euro Tax Consulting Limited about the above-mentioned issue and he will be correcting the issue. He had informed him that he will no longer be invoiced until the matter was sorted. This mistake was sorted out in August 2017 and he was invoiced for correcting their own mistakes. When he contacted the MFSA, he found out that the 1975 Euro were deposited by Mr Brincat from his private account and 25 Euro from the segregated Euro Tax Consulting Limited. The share capital of 10,000 Euro were deposited by Mr Brincat and not by the Holding Company. The issue is that A2IC Holding has no evidence that it had deposited such amount. He had to engage another accountancy services to rectify the problems they created.

In the second affidavit, he added that the Euro Tax Consulting Ltd was not in possession of a corporate service licence as required by law. As a result he had confront Alfons Schwarte as he had suffered due to such services offered as the companies were not registered were not set up correctly. Although he was informed that Euro Tax Consulting Ltd had applied for a licence it resulted that it had no licence being granted. After this issue he terminated all relationship with Euro Tax and claimed back the money paid in 2016 but refuses to pay for the invoices of 2017. He added that the company had made several mistakes to the detriment of his companies. As a result of having no licence the plaintiff now is requesting that the defendant pays 6,029.80 Euro for services rendered when it is not licenced to do so.

Nenkova Stoyanova Elvira Slaveykova stated that she was employed with Euro Tax Consulting Ltd and was employed as an accountant. She knew Christian Heindermann as

² Christian Heineremann had exhibited an affidavit and during the sitting of the 5th February 2020, another affidavit was exhibited.

he was a client to the plaintiff. She was involved in the accounting process of the company belonging to Christian Heindermann and used to file VAT returns and documents with MFSA. The plaintiff company used to provide corporate services and she knew that it had no licence to operate and used the licence of previous director who was involved in finance and accounting of the same company. It transpired that he used the licence of a certain Gabriele who used to work with the company. She had left the company as she was not happy working there. She knew the Alfons Schwarte used the licence of Gabriel Brincat. Pierre Musu' used to be the company's auditor and accountant. She knew that Gabriel Brincat used to work from home and his function was responsible for accounting and finance.

Facts of the case

The plaintiff company had issued a number of invoices (see doc A a fol 2 till fol 8) covering the period between December 2016 till July 2017. According to the plaintiff the invoices were issued to the defendant company for the services provided in Accounting and Corporate Services for the periods mentioned in the invoices. According to the Director of the plaintiff company, his company namely Euro Tax Consulting had incorporated Sodecarp through Gabriel Brincat and Pierre Musu' who had the respective licence to carry out such tasks. They provided accountancy services and corporate services through their employees in accordance to their agreement. On the other hand, the defendant company namely Sodecarp Ltd as stated by one of its director Christian Heindermann that the services provided were not professionally done and the company was not licenced to carry out such services by the Maltese authorities. In fact he added that such services had an effect on the company's reputation and had to seek professional services somewhere else as a consequence of the services that were made by the plaintiff.

Having Considered

The Court notes that this kind of contractual obligation for services rendered falls under article 1623 of Chapter 16. This is what is legally known as *locatio operis*. Reference is made to the case in the names of *Francis Buttigieg vs Phone Direct Ltd* decided by the Court of Appeal on the 18th October 2006 whereby it stated that:

"Huwa fatt inkontrastat illi l-attur gie imqabbad mis-socjeta` konvenuta jaghmel xoghol ta' accountant. Tali ftehim certament jikkonfigura bhala wiehed ta' "locatio operis" definit fl-Artikolu 1623 tal-Kodici Civili. Essenzjalment dan igib li min jippresta s-servizzi tieghu proprji, taht kwalsiasi forma u ghall-vantagg ta' haddiehor li jkun hekk inkarigah, jisthoqqqu li jigi retribwit. Dan fuq l-istregwa tal-massima tradizzjonali maghrufa "omnia labor optat premium".

Thus, it emanates from this judgement that in such case the services rendered by an accountant as in this case is entitled to be paid unless it is done gratuitously. It is seen from the evidence that in this case the services rendered was made under an agreed payment each month as shown in the invoices exhibited in these proceedings. On the other hand, the defendant company is contesting such invoices on the basis that the services offered by the plaintiff were not licences and not professionally done. Thus as a result the defendant company has incurred damages both to its reputation and had to

seek alternative professional services. On this regard the notion of the plaintiff company not having a licence to operate is a civil matter. In this case the Court notes that it was up to the defendant company to bring forward such evidence that it shows that the plaintiff company had not acted professionally and diligently.

As stated the Court must decide on the matters of the case on the evidence brought by both parties. In this particular case, the Court will not delve into the issue whether the plaintiff company had acted without a licence or not as this issue was raised during the testimony of one of the Directors and not in his reply. It has been stated by various judgements on such matters as said in the case of *Mercieca vs Laferla* decided by the Court of Appeal on the 21st January 1994 and even in the case of *George Sladden vs Albert Mais et* decided by the First Hall on the 27th January 2005, whereby it was declared that:

“xoghol li jsir bla licenza ghandu l-aspetti tieghu civili li jaghtu lok ghad-danni, izda ma jikkancellawx id-dritt ghall-hlas ghaliex ‘omnia labor optat premium’. Dan ifisser li r-rikorrenti xorta huma intitolati ghall-kumpens tax-xoghol li wetqu li qed jigi utilizzat mill-intimata bhala sid tal-imsemmi fond.”

In this case the plaintiff company produced conclusive evidence to sustain its claim that such amount was due. In fact, the defendant company has stated in its reply that it was true that the plaintiff company had provided such services but such amount was not due as a consequence of lack of diligence from its side. To this effect no such tangible evidence was brought forward by the defendant company to claim such non-diligence by the plaintiff company. It results that from the examination of the invoices issued by the plaintiff company, the amount that was issued per month to the defendant company was for 730 Euro and 18% VAT which amounted to 861.40 Euro. In this regard no agreement was exhibited claiming that such payments are to be made each month for the services rendered. No court appointed experts were nominated to establish the fees due if it is the case for the services to be rendered. In this particular case the defendant company did not state that the such amount per month for the professional service was not agreed upon or that it was excessive. It limited itself that the plaintiff company had not acted professionally in its service.

Thus, in accordance to article 1624 of Chapter 16, the Court sees that amount being requested to be paid to the plaintiff company is within limits to be paid for professional services. It is to be noted that the amount shown in the invoices far exceeds that of the amount being claimed by the plaintiff company. In this case the Court will only consider what is being claimed and not the amount as exhibited in the invoices.

The Court also notes that no amount was exhibited to the Court as to the costs of the legal letter dated 22nd August 2017. Thus, in so far as the costs of such a letter, the Court will not decide on such a matter.

Decide

For these reasons, the Court decides that while it rejects the pleas of the defendant company, it upholds the claim of the plaintiff company and orders the defendant company Sodecarp Limited to pay the sum of six thousand and twenty-one Euro and eighty cents (6029.80 Euro) to the plaintiff company Euro Tax Consulting Limited with legal interest from the 1st January 2017 until the date of full payment.

The expenses of these proceedings but not that of the legal letter dated 22nd August 2017, shall be borne entirely by the defendant company.

Dr. Caroline Farrugia Frendo
Magistrate

Dr. Federico Barbaro-Sant
Deputy Registrar