



COURT OF MAGISTRATES (MALTA)

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

Application Number : 80/2018 RM

Alessandro Salemme

-Vs-

Marcello Labor personally and on behalf of TRTO Agency Ltd (C-77031)

Today, 6th March 2023

The Court,

Having seen the application filed by plaintiff in the Registry of this Court on the 4th April 2018 where he requested this Court to condemn the defendants to pay that sum that is to be liquidated by the Court, which does not exceed the sum of ten thousand Euro (€10,000) representing works and services rendered by plaintiff unto defendants upon order of either or both defendants, after promises of works or other undertakings were not fulfilled.

With costs, including those relating to legal letter dated 18th May 2017 and with interests according to Law to run as from the date of the orders given, against defendants whose oath is being referred to.

Having seen the reply filed by Marcello Labor and TRTO Agency Limited (C 77031) on the 14th May 2018, where the following pleas were raised:-

1. *That preliminarily, the application filed is null and without legal effect due to the fact that plaintiff is neither resident and/or domiciled in Malta and has not appointed a mandatory present in Malta in order to represent him in the judicial proceedings instituted before this Court;*
2. *That without prejudice to the aforesaid, and also in a preliminary manner, Marcello Labor must be declared to be non-suited since he has no juridical relationship with the plaintiff;*
3. *That without prejudice to the foregoing, and also in a preliminary manner, the present action is premature since the plaintiff never called upon defendants in an official manner regarding the merits of this case. In fact, the only document that exists is a legal letter sent by plaintiff's legal counsel on the 18th May 2017 where reference was made to the payment of an amount of little more than € 4,000. Therefore independently of the result of these proceedings, defendants should not be made to bear the judicial costs.*
4. *That without prejudice to the foregoing, and also in a preliminary manner, the plaintiff must, in any event, prove his quantification in the sum of ten thousand Euro (€ 10,000). Defendant therefore reserves as of now his right to raise a further plea to the competence raionae valoris of thi Court;*
5. *That on the merits, defendant reject in the most absolute and categorical manner, the allegations made by plaintiff, as being unfounded in fact and at law, as would result furing the hearing of the cause, such that they must be rejected.*
6. *Saving further pleas.*

That consequently, defendant company is, in terms of Article 396 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), availing itself of plaintiff's claim and is hereby setting up a counter-claim due to the fact that, as

shall be explained, it was same defendant company which suffered damages as a result of plaintiff's actions.

Therefore, defendant company that is, TRTO Agency Limited, pleads:

- 1. That in February of the year 2017, the exponent company entered into an agreement with Alessandro Salemmme in order to commence some form of contractual relationship with the ultimate aim being that said plaintiff would be employed by the company;*
- 2. That until discussions were taking place between the parties in order to reach agreement on the conditions of employment of the said Alessandro Salemmme, he began to attend training courses in order to be trained for the employment that he was being offered, which sessions were being paid in full by the company;*
- 3. That since until that time, Salemmme was co-operating with the company, it decided, on the 2nd April 2017, to inform the competent authorities that it had nominated the said plaintiff as Ground Operations Manager;*
- 4. That the future of the company in fact depended exclusively on whether the company would manage to reach the necessary criteria in order to obtain the issue of a licence to offer air travel services with aeroplanes that it leased. In this regard, all the employees were being prepared for an important audit to be carried out by officials and representatives of Transport Malta, in order that it would be determined whether the company in question satisfied the criteria for the issue of the aforementioned licence;*
- 5. That in fact, a few days before the audit, the company transferred to Alessandro Salemmme a payment in the sum of one thousand seven hundred and sixty three Euri (€ 1763), naturally upon agreement between the parties that during the said audit, Salemmme would be on-site in order to assist the officials of Transport Malta in their audit, this being his responsibility;*

6. *That notwithstanding, a few hours only before the audit was due to be carried out, at around ten o'clock at night (22:00, Alessandro Salemmé called the Director of defendant company, that is, Marcello Labor, and warned him that unless he would increase his salary by thousand Euro (€2,000) every month, he would not attend at the offices of TRTO Agency Limited the next morning in order to receive the officials of Transport Malta;*
7. *That as Alessandro Salemmé knows full well, the licence that the defendant company required, could never be issued in its favour unless a Ground Operations Manager was present, and in fact, as would result during the hearing of the cause, the plaintiff, in the most abusive manner, used his position in order to manoeuvre a bullying tactic and/or arm twisting against the company;*
8. *That in fact, the company did not give in to this abusive pressure and Mr Labor requested Salemmé to meet up after the audit is carried out, to determine whether it would be possible to find an amicable solution in order to continue working together, as would result during the hearing of the cause;*
9. *That as a result of this, Salemmé did not turn up for the audit, such that the company lost the opportunity to obtain the issue of the licence and had to wait eleven days so that eventually, the company began to operate as a licensed air operations company, and this after having had to identify a Ground Operations Manager;*
10. *That also as a result of this, the company stopped the payment that it had effected the preceding day to plaintiff; this after he had chosen to breach the conditions of the agreement that he had with the company;*
11. *That the defendant company entered into substantial expenses in order that in the first place it would be prepared for the audit scheduled for the 6th April*

2017 and secondly, so that in case the licence is issued, it would commence operations immediately, as would result during the hearing of the cause;

12. That as a result of the abusive and entirely unacceptable actions of Alessandro Salemmé, the licence was not issued and therefore TRTO Agency Limited lost all that it had been working for and it suffered substantial damages as a result of the delay in the issue of the licence;

13. That the amount of the damages caused may be quantified in little over sixteen thousand Euro (€16,000) as may be proven and explained during the hearing of the cause, but notwithstanding, the amount is being limited to fifteen thousand Euro (€15,000) in order that this Court can take cognisance of this counter-claim;

Therefore for the above-premised reasons, the defendant company in reconvention humbly requests that this Court would:-

- 1. Declare that the allegations made in the application commencing proceedings are wholly unfounded without any basis in law and consequently no sum of money is due to plaintiff.*
- 2. Decide that plaintiff, that is, Alessandro Salemmé is a creditor of TRTO Agency, liquidate the amount together with expenses and other damages suffered by same defendant company as a result of the behaviour and actions taken by the plaintiff, in favour of the company.*
- 3. Condemn Alessandro Salemmé to pay, within the period stipulated by the Court, the sum so liquidated together with other damages that this Court deems fit, to the company that is, TRTO Agency Limited.*

With costs and legal interest to run as from the date when the amount aforementioned fell due, until the date of effective payment of the global sum in its entirety, against reconvened plaintiff, whose oath is hereby being made reference to.

Having seen plaintiff's reply to the counter-claim set up by defendant, filed on the 12th November 2018, whereby plaintiff raised the following pleas:-

1. That preliminarily, the claim in reconvention is not drawn up in an adequate manner, due to the fact that the reply to the plaintiff's claim serves, at the same time, also as the premises to the claim in reconvention without any distinction and without separate signatures. In fact, the first demand of the defendant is for the rejection of the plaintiff's demands. Thus, in so far as the claim in reconvention is defective in form, the procedure for reconvention is necessarily null.

2. That the claim in reconvention exceeds the competence of this Court rationae valoris as there is no limit to the value of the claim.

3. That without prejudice to the preceding pleas, in any case it was the defendant Marcello Labor personally and or nominee who unilaterally breached and stalled the agreements that he had reached with the plaintiff, also because he did not pay him for his work and for the expenses that he incurred, and therefore the plaintiff was no longer bound to keep on working for defendant.

4. That without prejudice, the facts indicated by defendant do not reflect the true facts and these are being contested, and during the hearing of the cause it will be shown more clearly how defendant is not faithful to the truth.

5. That the plaintiff did not cause any damage to the defendants or either of them in violation of any law. Therefore, since plaintiff did not violate any law with regard to the defendants, he is not liable to pay any damages which, in any case, would need to be proven.

Having seen the order given during the hearing of the 24th October 2018 that the proceedings are to be conducted in the English language;

Having seen its judgement, delivered on the 26th March 2019, where it disposed of and dismissed the first plea raised by the defendant in his Reply and the first two pleas raised by the plaintiff in his reply to defendant's counter-claim;

Having heard the testimony of the parties and their respective witnesses;

Having seen all the evidence and documents produced by the parties;

Having seen all the acts of the proceedings;

Having seen that the First Hall of the Civil Court (Commercial Section) by means of a decree delivered on the 23rd May 2022 in the acts of Application Number 19/2019 in the names **TRTO Agency Limited v. X**, authorised the continuation of these proceedings against defendant company TRTO Agency Limited;

Having seen that plaintiff Alessandro Salemme failed to appear on the day appointed in order to reply to the questions that were approved to be put to him with reference to his oath;

Having seen that the questions were deemed to be admitted and accepted;

Having heard the final oral submissions of the lawyers for the defendants and the Official Receiver during the hearing of the 12th January 2023;

Having considered;

That having disposed of the defendants' first and second preliminary pleas, the Court must now proceed to examine plaintiff's demand and the pleas on the merits.

In his application, plaintiff, Alessandro Saleme, requested the Court to condemn defendants to pay a sum not in excess of €10,000 representing services rendered to defendants or either one of them and damages suffered by him as a result of defendants' failure to deliver on assurances of work and other undertakings.

Alessandro Saleme, the plaintiff, testified before the Court¹ and explained that he is qualified as a ground operation specialist in aviation business. He came to Malta from Italy in January 2017 after he was contacted by Maurizio Vincenti who offered him a job with Marcello Labor's company TRTO Agency as an Operation Control Centre (OCC) Manager of the company. At the time, he was employed in Rome with Air Consulta. Marcello Labor contacted him by phone to explain the specifications of the employment that was being offered to him and a few days later, he received an email with a draft employment contract. He replied by listing in an email to Marcello Labor all the terms of the draft contract that were not acceptable to him and which he requested are modified. He then received an email from Marcello Labor on the 1st February 2017, stating "*I do confirm. Thank you*" which he took to mean that he had confirmed all the proposed modifications to the contract. In fact, a new contract was sent to him, which contract was duly signed (Dok. AS2) and he came to Malta for work TRTO Agency Limited after Transport Malta certified that he could occupy the position of Operation Control Centre (OCC) manager. He was based in the Paola office where all operations of the airline are controlled.

In his testimony, Alessandro Saleme also explained that at the time, he had no fixed or specific duties since the company was only commencing its operations, but as part of his duties he had to attend operation meetings both in Malta and in Italy. In fact, his employment required him to work shifts of fifteen days duty and fifteen days off duty. Between March and April 2017 he was travelling from Malta to Rome and back and incurred expenses in the sum of 1,763 which were not covered by his monthly salary of €3,300 as OCC manager. Marcello Labor accepted in writing that he would refund these expenses to him (Doc. AS3).

¹ 14th May 2019.

Plaintiff also testified that on the 1st or 2nd April 2017, the position of Ground Operation Post Holder within defendant company became vacant after Margerita Acri, who previously occupied this position, resigned from her position and he was offered this new position by Marcello Labor. He accepted under the condition that his contract of employment with TRTO Agency Limited is modified to reflect the higher rank that he was to occupy within the company and the increased responsibilities and duty time that this position entailed. He also expected a higher salary than the monthly salary which he was entitled to as OCC manager and requested Marcello Labor to pay him €4,000 per month for this full-time employment.

On the 5th April 2017, plaintiff met Marcello Labor in Malta to discuss the conditions of this new contract however they did not reach an agreement on the plaintiff's new terms of employment as Ground Operation Post Holder and nor did he receive the payment of his salary as OCC manager in terms of the contract of employment. Although Marcello Labor transferred into his bank account the sum of €1,763 representing the expenses he had incurred, this transfer was blocked a mere two hours after the meeting held between himself and Marcello Labor. This he learnt only after a few days when he realised that the funds were not received into his account and upon requesting clarification, defendant, without providing a reason, informed him that he was not going to pay him.

Plaintiff explained that Marcello Labor did not accept to pay the salary that he requested for his new position in the company and neither did he pay the salary in terms of the employment contract for his position as OCC manager. That meeting closed off with plaintiff informing Marcello Labor that he does not accept the salary being offered and will not join the airline after all. He explained that at the time he was no longer occupying the position of OCC manager since Marcello Labor had placed him in this new position after the person who was scheduled to occupy this new post was not approved by Transport Malta. In fact, he testified that Marcello Labor had already presented him in the new role of Ground Operations Manager in a letter sent to Transport Malta on the 2nd April 2017 however, although Transport Malta did approve him in the positions of both OCC and Ground Control Manager

(Dok. AS7) they never reached an agreement on the conditions attached to this new role and he never signed anything. Luckily, his previous employer in Italy, Air Consulta, accepted to re-employ him after he had left the company for two months in order to work for TRTO.

Plaintiff explained in his testimony that he is claiming the payment of two invoices issued to TRTO for the two months that he worked for the company, although the company did in fact pay some of the expenses that he had incurred travelling from Rome to Malta and back.

Maurizio Vincenti testified that he was asked by Marcello Labor, the manager and owner of TRTO Agency Limited, to join the company as Deputy Flight Manager, at a point in time when the company was still being set up. He had chosen Alessandro Saleme to occupy the position of Manager of the Operation Control Centre (OCC) as he was the most qualified person for this post. Alessandro Saleme started working in this position at the beginning of 2017 and actually began to carry out work for the company TRTO in Malta. He also attended some courses in the meantime in order to upgrade his certification and worked in the position of OCC Manager until March or April 2017 when the company required the services of another Ground Operations manager since Margerita Acri who previously occupied this post, left the company.

He also explained that another employee, a certain Travos Ionese, replaced plaintiff in the position of OCC manager and plaintiff was informed by himself and Marcello Labor that he was chosen to take up the position of Ground Operations manager in the company. He also testified that while plaintiff was very willing to take on the new position, he however wanted to discuss issues and negotiate a new contract before taking up this post since the position of Ground Operations manager is more important than the position of OCC manager, carrying more responsibilities. The witness also confirmed that defendant Labor informed him that he had no difficulty to negotiate a new contract and a different salary for the plaintiff. However the day before the audit that was to be carried out by Transport Malta, Marcello Labor changed his mind and

decided to refuse the terms proposed by Alessandro Salemme for his new position as Ground Operations manager, amongst them a proposal to finance the purchase of a property in Malta and an increase in salary and instead, he wanted to pay the plaintiff part of his salary in cash and a lesser amount for financing a property. This was not acceptable to Alessandro Salemme.

Maurizio Vincenti also confirmed that plaintiff was never paid any wages and never received any money from the company although he was employed with the company until March or April 2017.

Defendants' version of events results from the sworn declarations of defendant Marcello Labor himself, Emanuele Ghirardo and Charlotte Grech.

Marcello Labor, the defendant, testified that TRTO Agency Limited was a start-up company that was set up to operate aircrafts commercially and service aircraft operators. The company rented offices and employed the necessary staff for operations to begin. Since the company had also applied for an Air operations certificate, he recruited a number of personnel to take up the posts required by Law, including Nominated Person Ground Operations. He confirmed that Alessandro Salemme was originally employed by the company in the position of Head of OCC and once his job was confirmed, he started working immediately. The job required him to travel between Malta and Italy, a job that plaintiff duly performed. When Margerita Acri resigned from the company, Alessandro Salemme was considered for the role of Ground Operations manager in her stead. This is a managerial role which was required in order that the company may be certified to operate in the aviation industry.

Marcello Labor declared that he had agreed with the plaintiff that the salary attached to the new position was to remain unchanged since the role of Ground Operations manager is considered within the industry to be on the same level as that of OCC, and does not involve many additional responsibilities which might otherwise warrant an increase in salary. He denied that the position of Ground Operations manager would

have required plaintiff to reside permanently in Malta since this role requires the employee to travel around Europe checking on the company's operations in various airports.

He also explained that at this time, the company was undergoing a final audit by the Civil Aviation authority prior to the issue of the final permits which would allow the company to commence operations. Alessandro Salemmé, the person designated as Ground Operations manager of the company, was required to be present in person for the final audit which was to be carried out at the company's premises. However on the eve of this audit, Alessandro Salemmé called him late at night and demanded a substantial increase in his salary in order to accept the role of Ground Operations manager and threatened not to turn up for the audit and resign from his post unless his demands were acceded to. Although he advised him that he was willing to discuss this issue following the audit, Alessandro Salemmé insisted that he wanted an immediate reply but he was not willing to give a final reply at that time. The call ended with plaintiff indicating that he had no intention of returning the next day but it was too late by then to cancel the audit. When the inspectors arrived the next day, he felt humiliated as the audit had to be rescheduled until another person was found to replace the plaintiff as Ground Operations manager. The company found a replacement fifteen days after the cancellation of the meeting and TRTO Agency Limited was granted the Air Operator Certificate MT 43 on the 28th April 2017.

Emanuele Ghiroldi, who was employed by TRTO Agency Ltd. as Safety and Compliance manager, testified that the company was not yet certified by Transport Malta but was in the process of complying with procedures, including the recruitment of key personnel, in anticipation of an audit which was to take place in April 2017. The person who had been nominated by the company in the role of Ground Operations Manager was not accepted by Transport Malta and the post was subsequently offered to Alessandro Salemmé who, to his knowledge, had accepted. He was with Marcello Labor having dinner one night when Alessandro Salemmé called Labor on the phone. Labor became visibly distressed and he heard him saying that he had to make some calculations before committing to anything and that his priority was the audit the

following day. Labor then told him that during that telephone call, Salemme had demanded a substantial increase in his salary due to the new position of Ground Operations manager and he refused to be present for the audit the next day. In view of the impasse, the audit that was scheduled for the next day had to be postponed until a few weeks later, a replacement was found and the audit was successfully carried out.

Charlotte Grech, the Human Resources manager of TRTO Agency Ltd. testified that Alessandro Salemme, who was employed by the company as Operations Control Centre manager, agreed to take the position of Ground Operations manager and he consequently sat for the Nominated person interview with Transport Malta and was accepted. She confirmed that he was suitable for this position as he had experience in flight dispatch and Operational Control. Charlotte Grech also testified that an audit was scheduled by Transport Malta after Alessandro Salemme agreed to take on the role of Ground Operation Manager.

Having considered;

The Court notes that the sworn declarations of Marcello Labor and Emanuele Ghirardo are not the original sworn declarations but merely certified true copies thereof. Although evidently, these copies do not constitute the best evidence that defendant company was required to bring, at no point did plaintiff object to the production of certified true copies and or insist on the production of the original affidavits and consequently, having been admitted in evidence, the Court affirms the probatory value of these copies and shall give them due weight.

The Court also took due note of the following questions that were presented by defendants for purposes of evidence in support of their counter-claim and put to plaintiff with reference to his oath:-

- 1. Do you agree that as a direct result of your unilateral decision not to turn up and be present for the audit scheduled for the 6th April 2017, result in the audit*

being cancelled and consequently, TRTO Agency was unable to obtain its Air Operations Certificate?

- 2. Do you agree that the consequence of your abusive actions, TRTO Agency Limited suffered damages which exceed the claim of around ten thousand Euros (€10,000) which you have made in this case before this court?*

Plaintiff failed to appear on the day appointed in order that he may reply to said questions, with the result that these questions are deemed to have been responded to in the affirmative in accordance with the provisions of Article 702(3) of Chapter 12.

Having considered;

That in their reply, defendants maintain that defendant Marcello Labor is to be declared non-suited since he has no contractual or other juridical relationship with plaintiff.

In the judgement delivered in the names **Pauline MacDonald vs Medistar Healthcare Services Limited et²** on the 28th September 2016, the Court maintained:-

“Il-kriterji li jirrendu parti f’kawza bhala legittimu kontradittur jirrizultaw ben cari mill-gurisprudenza:

Focal Maritime Services Company Limited vs Top Hat Company Limited *deciza fid-9 t’April 2008 mill-Qorti tal-Appell:*

“In linea ta’ prinċipju generali huwa, bla dubju, indiskuss illi d-deduzzjoni ta’ konvenut f’gudizzju trid, neċessarjament, titwield minn rapport guridiku, sija jekk dan jemani minn kuntratt, leżjoni ta’ dritt minn intervent delittwuz jew akwiljan, ope successionis jew minn sitwazzjonijiet strutturalment komuni (ad eżempju, f’kondominju jew il-krejjazzjoni ta’ ċerti servitujiet). Li jfisser, b’konsegwenza, illi kawza ma tkunx tista’ tikkonsegwi l-iskop tagħha jekk mhux fil-konfront ta’ dak li

² Rik Gur Nru 700/14

miegħu l-attur, għal xi waħda mill-konnessjonijiet aċċennati, għandu relazzjoni ġuridika.

In another judgement, in the names **Frankie Refalo et vs Jason Azzopardi et** decided by the Court of Appeal on the 5th October 2001 it was held :-

“Jekk dan in-ness jigi stabbilit, il-persuna citata setghet titqies li kienet persuna idoneja biex tirrispondi għat-talbiet attrici, inkwantu dawn ikunu jaddebitawlha obbligazzjoni li kienet mitluba tissodisfa dan inkwantu il-premessi għaliha, jekk provati, setghu iwasslu għall-kundanna mitluba f'kaz li jinstab li l-istess konvenut ma jkollux eccezzjonijiet validi fil-ligi x'jopponi għaliha. Dan, naturalment ma jfissirx li jekk il-Qorti tiddeciedi li l-konvenut kien gie sewwa citat inkwantu jkun stabbilit li l-interess ġuridiku tiegħu fil-mertu kif propost mill-attur illi hu kellu necessarjament ikun finalment tenut bhala l-persuna responsabbli biex tirrispondi għat-talbiet attrici kif proposti, kif lanqas ifisser li l-istess konvenut ma jkollux eccezzjonijiet validi fil-mertu, fosthom dik li t-talbiet attrici kellhom fil-fatt ikunu diretti lejn haddiehor ukoll inkwantu dan ikun involut fl-istess negozju u li allura seta' jigi wkoll citat bhala legittimu kontradittur fil-kawza.”

The Court agrees with defendants' position. There is no doubt whatsoever that plaintiff was employed with TRTO Agency Limited, a limited liability company: in fact, the contract of service dated 1st February 2017 refers to TRTO Agency Limited as the Employer while Marcello Labor appeared on the said contract “*for and on behalf of TRTO Agency Limited*” and in no other capacity. Consequently any action for payment of wages and other dues and for the enforcement of other rights arising from the contract of service, must be legitimately directed against the company. Plaintiff also failed to show that there exists a separate contractual or employment relationship with Marcello Labor personally, distinct from the contractual and employment relationship with Marcello Labor acting on behalf of TRTO Agency Limited or that Marcello Labor commissioned plaintiff to render services to him personally.

As for the payment of expenses that may have been disbursed by plaintiff, which defendant Marcello Labor allegedly agreed to reimburse, it is also evident that such expenses were made in anticipation or for the purposes of plaintiff's employment with the company. It is true that at some stage, Marcello Labor agreed to reimburse these expenses to plaintiff, however after having examined the evidence, the Court cannot fail to observe that Marcello Labor was corresponding with plaintiff from email address mlabor3@trtoagency.com in his capacity as "Accountable Manager" while his assurance of payment was made subject to commencement of flight operations. Operations that evidently were to be carried out by TRTO Agency Limited, defendant's company. Moreover, this payment appears to have been instructed to be made from a bank account in the name of TRTO Agency Limited³ and the Court found no evidence whatsoever that shows that defendant Marcello Labor himself refunded or paid any expenses claimed by plaintiff or commissioned plaintiff to incur the said expenses or render services to him personally. On the contrary, it is clear that the expenses incurred by plaintiff were intended for his employment as OCC manager and or in anticipation of his impending employment as Ground Operations manager and that Marcello Labor in his relations with plaintiff, always acted on behalf of TRTO Agency Limited and not in his personal capacity.

Indeed, there no evidence whatsoever that could lead the Court to conclude that Marcello Labor, except through or on behalf of his company, had any material or effective participation in the affairs and transactions that took place with plaintiff and which gave rise to plaintiff's claims in this lawsuit. In the Court's view, there is insufficient evidence of any form of juridical relationship on the basis of which defendant can be considered prima facie as having been legitimately sued with plaintiff's demands.

Therefore Court finds that defendants' second plea, raised in their reply, is well-founded and consequently, defendant Marcello Labor is to be declared non-suited with costs.

³ Page 94.

Having considered;

Plaintiff claims payment for works carried out and services rendered to defendant company TRTO Agency Limited after it failed to fulfil the commitments undertaken in his favour.

After having analysed the evidence, the Court must begin by observing that plaintiff was employed by defendant company in terms of a contract of service dated 1st February 2017. Consequently, his claim for payment and the works and services that he claims to have rendered to defendant company, must be examined in the context of this agreement and from an employment relationship perspective because it results that the services that he claims to have rendered to defendant company consisted in his employment with said company.

The fact that plaintiff was indeed employed by TRTO Agency Ltd as Operation Control Centre manager is hardly disputed and in any event, this is expressly affirmed by defendant Marcello Labor himself who testified that “*His job [as OCC] was confirmed and he started working immediately*” and also by Charlotte Grech, the former Human Resources manager of the company, who testified that plaintiff was initially employed in the aforesaid role and that “*he did work for the company in that capacity*” and “*also undertook a training course*”⁴.

As would result from the emails exchanged on the 1st February 2017, the parties had mutually agreed to amend the draft contract of employment that was initially sent to plaintiff for review on the 17th January 2017 so that the term of validity of the contract was increased from one to three years, while the gross annual salary was reduced from €36,000 to €30,000. The parties also agreed on a work schedule of fifteen consecutive days of duty and fifteen consecutive days off-duty and that the employee is entitled to a monthly allowance of €200 for accommodation expenses.

⁴ Maurizio Vincenti also confirmed that plaintiff was never paid any wages and never received any money from the company although he was employed with the company until March or April 2017.

Moreover, all travel arrangements for the employee between Malta and home-base (Country of Residence) is organised by the Company, including a minimum of two return trips per month paid by the company according to the company's exigencies. This agreement is essentially reflected in clause 2.2 of Appendix A (Conditions of Services and Benefits for OCC Manager (Operations Control Centre) attached to the Contract of Employment.

Although the the amended version of the contract of employment, exhibited by plaintiff and dated 1st February 2017, appears to be signed only by plaintiff himself, the defendants do not contest that this contract of employment was indeed also signed by the company, TRTO Agency Limited and that plaintiff was in effect employed by the company.

Plaintiff testified that although he worked for TRTO Agency Limited for two months, between the beginning of February and beginning of April 2017, he was not paid his monthly salary, a fact that was confirmed by Maurizio Vincenti and not disputed by defendant company. In fact, Maurizio Vincente testified unreservedly that plaintiff was never paid for his employment with TRTO Agency Limited. He also confirmed that the plaintiff "*worked in the position of OCC Manager until about March or April two thousand and seventeen ... [until] we encountered some difficulties with another post holder*".

From the evidence adduced by both sides, the Court understands that at the time of his resignation from employment on the 5th April 2017, plaintiff was still employed as OCC and was not effectively employed as Ground Operations manager. The Court found no evidence in support of plaintiff's assertion that he was no longer employed in the role of OCC with defendant company because he was chosen to be Ground Operations Manager. The Court is also of the view that notwithstanding the fact that defendant company declared that plaintiff was appointed as Nominated Person for Ground Operations with effect from the 2nd April 2017, his contract of employment was not amended to reflect this new appointment when, as already pointed out, his contract of employment expressly required a new contract of employment in order to

give effect to any alterations in the conditions of employment stated in the contract. In fact, clause 5.1 of the contract of service dated 1st February 2017, stipulates:-

“No alterations may be made to this Contract unless by written agreement between the parties. Such alterations will be valid only upon the filing of such new Contract between the employer and the employee.”

Although defendant company might have appointed plaintiff in the role of Ground Operations Manager in order to satisfy the requirements of the Civil Aviation authority and for the purposes of the audit was required to be carried out in anticipation of the issue of the operating licence sought by the company, this does not mean that a new contract of service was entered into or the current one amended. In fact, plaintiff's contract of employment as OCC does not appear to have been rescinded or terminated or even altered in any way, despite the parties having expressly agreed in the said contract, as aforementioned, that no alterations may be made to the contract unless by written agreement between the parties and the drawing up of a new contract of employment.

The Court, after having reviewed the evidence, is satisfied that plaintiff had been rendering his services to the company as OCC and that he had not, at any point prior to the 5th April 2017 resigned from this role. Nor was this employment shown to have been terminated by the employer and defendant company brought no evidence to show that plaintiff was in breach of any of the provisions of the contract of employment or was given notice of termination of his employment.

Since it is an undisputed fact that the parties did not agree on the terms and conditions of a new contract of employment for plaintiff in the position of Ground Operations Manager and that plaintiff's contract of employment as OCC on the agreed terms and conditions, was not terminated or altered in any way, the Court cannot but conclude that plaintiff was still employed with defendant company as OCC as of the 5th April 2017 and, when parties failed to agree to the terms and conditions of a new contract of employment for the position of Ground Operations Manager, plaintiff informed

defendants that he will not be working with TRTO Agency any longer, thus effectively resigning from his employment with the company.

It must also be borne in mind that clause 2.5 of Appendix A of the contract of service stipulates that *“The first six months of this contract shall be on a probationary basis”*. Although it was also agreed in clause 5.8 of the main contract that *“The Contract is regulated by all other applicable conditions contained in the Employment and Industrial Relations Act (Cap. 452 of the Laws of Malta) and legal notices and regulations regulating the contract of employment under Maltese Law or such other regulations as are or may become applicable from time to time.”* – meaning that upon application of Article 36(1) and (1b) of the Employment and Industrial Relations Act, the probationary period of employment should have been that of twelve months⁵ - the parties evidently agreed to derogate from this rule when they expressly established a probationary period of six months.

This period had not yet elapsed when plaintiff decided to terminate his employment relationship with the company, and consequently, as provided in Article 36(2) of Chapter 452 of the Laws of Malta, he was entitled to terminate the employment at will without assigning any reason. However, since plaintiff had been in the employment of TRTO Agency continuously for more than one month, he was bound in the circumstances, again in terms of the aforementioned Article 36(2), to give one week’s notice to defendant company of the termination of his employment.

Although it results that plaintiff was employed for a period of nine (9) weeks with defendant company between 1st February 2017 and 5th April 2017 in the post of OCC manager, it is excluded from his own testimony and upon his own admission that he worked the one week’s notice as required by Article 36(2) of the Employment and Industrial Relations Act.

⁵ Since plaintiff held a managerial position within defendant company as OCC manager and his wage was evidently more than double the national minimum wage for the year 2017.

It is satisfactorily proven by plaintiff's own testimony and that of Maurizio Vincenti that plaintiff was not paid his monthly salary by his employer – a fact that is not contested by defendants. Indeed, none of the witnesses brought forward by defendants, nor defendant Marcello Labor himself, alleged that plaintiff was paid the monthly salary stipulated in the contract of employment. It therefore follows that plaintiff is owed eight weeks' salary⁶ in the total amount (gross) of four thousand six hundred and fifteen Euro and thirty eight cents (€4,615.38). After deducting the amount of €43.85 per week as employer's social security contributions as applicable in the year 2017⁷, **the total due to plaintiff by way of wages is four thousand two hundred and sixty four Euro and fifty eight cents (€4,264.58).**

The Court understands that in addition to the reimbursement of expenses in the sum of €1,763, plaintiff is also claiming payment of damages suffered as a result of defendants' failure to deliver on assurances of work and other undertakings. Although the nature of the damages is not expressly stated in the application commencing proceedings, plaintiff made it clear in his testimony and from the documents he submitted as part of his testimony, that these damages consist in the loss of remuneration from his previous employment with Air Consulta for the two months that he worked for TRTO Agency Limited.

Plaintiff declared that he left his employment with Air Consulta, his previous employer, since he was promised employment with defendant company. However, the Court is of the view that plaintiff did not adequately prove that he had to resign from his employment with Air Consulta prior to having agreed on the terms and conditions of his prospective employment with TRTO Agency Limited. In fact, his wife Valentina Scialanga testified that he never resigned from his previous employment in Italy, "*he just take some days off ... to move*". It is undisputed that plaintiff entered into a contract of service with defendant company at the beginning of February 2017 and that he effectively commenced his employment as OCC. The Court has already concluded that plaintiff is owed his salary for the period 1st

⁶ One week's notice deducted. See clause 2.5.1.2 of the contract of employment: "*Payment Procedure: Earnings will be paid four weekly by direct bank transfer.*"

⁷ €43.85 per week calculated on a weekly wage that exceeds €438.53 (for persons born from 1st January 1962 onwards) - cfr@gov.mt.

February 2017 until 5th April 2017: consequently he cannot be entitled to claim loss of earnings when in effect he was employed on a whole-time basis with defendant company during such period. In any event, he brought no evidence whatsoever to sustain the loss and damages he claims to have suffered. Consequently, this part of plaintiff's demand must be rejected.

Having considered;

Plaintiff also claims reimbursement of expenses that he incurred during the period that he worked for defendant company.

That the Court shall consider plaintiff's claim for reimbursement of expenses collectively with defendant company's counter-claim, where TRTO Agency Limited claims payment of damages suffered as a result of plaintiff's actions which delayed the issue of its Air Operations Certificate, setting back the company's operations by several weeks.

As already pointed out, plaintiff failed to appear before the Court on the day appointed for the reference to his oath in respect of the questions duly approved by the Court for this purpose, and no attempt was made by plaintiff to justify his absence on that day. However, the Court does not agree that the affirmative reply to these questions and the consequent admission to the interrogatories - prompted by plaintiff's own failure to appear on the day appointed for the reference to his oath – must necessarily also constitute a confession to defendant's counter-claim.

While it is true that the non-appearance without just cause of the party to whose oath reference is made on the day appointed for the reference to his oath, is tantamount to an admission of the statements and questions put in the interrogatories⁸, it has been consistently held that the reference to the oath of the opposing party is only one of various modes of bringing evidence in support of the other party's version and in itself is not always necessarily sufficient to successfully discharge the burden of proof

⁸ Ara **Leonard Incorvaja vs Manwel Camilleri et** – deciza mil-Qorti tal-Appell (Sede Inferjuri) fl-4 ta' Gunju 2018.

incumbent on the party referring⁹. Moreover, the Court is not always bound to rely exclusively on the presumed admission to the interrogatories that would ensue from the unjustified non-appearance of the party to whose oath reference is made, if this presumed confession contradicts other evidence resulting from the record.

The Court of Appeal, in its judgement in the case **James Trapani et v. Vincent Cilia**¹⁰, held that the non-appearance of the defendant to appear at the trial when reference to his oath is required, the interrogatories :-

“... .. jitqiesu konfessati pero` dan ma jfissirx li l-Qorti kienet obbligata toqghod fuq dik il-prezunta ammissjoni. Dik il-prova kellha tigi evalwata u meqjusa flimkien ma` kull prova ohra li sa dak l-istadju setghet kienet diga` prodotta quddiem il-Qorti.”

In the case at hand, the Court cannot but observe that while it is uncontested that plaintiff's failure to appear for the audit scheduled for the 6th April 2017, resulted in the cancellation of the audit that day, defendant Marcello Labor himself testified that the Air Operations Certificate was indeed obtained by TRTO Agency Limited on the 28th April 2017, a fact that was affirmed by Emanuele Ghiroldi who testified that the company obtained the necessary approval only a few weeks after the original audit was cancelled.

Plaintiff's presumed admission to the first statement put by defendants in the approved interrogatories¹¹ must therefore be evaluated in the light of the other evidence that shows that plaintiff's failure to attend the audit on the 6th April 2017, **merely delayed and did not definitively or permanently prevent the approval and issue of the required certificate**. After having considered all the evidence forming part of the

⁹ Ara in propositu **Tabib Dr Antonio Zammit et vs Francesco Pace et** – deciza mill-Prim'Awla tal-Qorti Civili fit-28 ta' Gunju 1952.

¹⁰ Cit. 2357/1996, deciza 28 ta' April 2000.

¹¹ *“Do you agree that as a direct result of your unilateral decision not to turn up and be present for the audit scheduled for the 6th April 2017, resulted in the audit being cancelled and consequently, TRTO Agency was unable to obtain its Air Operations Certificate?”*

record, the Court cannot therefore agree with defendants' submission that plaintiff's presumed confession to the interrogatories proves that TRTO Agency Limited "*was unable to obtain its Air Operator Certificate*" or is sufficient to prove his responsibility for the *quantum* of damages claimed by defendants in their counter-claim.

Moreover, the Court cannot fail to point out that other than plaintiff's presumed confession as a result of his non-appearance after the approval of the interrogatories, defendant company brought no evidence whatsoever in support of its demand for the liquidation of damages it alleged to have suffered as a result of plaintiff's actions. While it is true that plaintiff is presumed to have admitted that TRTO Agency Limited suffered "*damages which exceed [his] claim of around ten thousand Euro (€10,000)*", the Court is of the firm view that in order to successfully prove its demand for the liquidation of damages in the said amount, defendant company had to bring concrete evidence that it did in effect incur expenses or otherwise suffer a material loss of income or goodwill of a definite value, as a result of plaintiff's resignation. However, defendant company failed to bring any evidence of expenses incurred or other loss in monetary terms.

Moreover, although in their final submissions defendants' lawyer submitted that the company was compelled to cancel flights that were already booked in the intervening period between the cancelled audit and the eventual issue of the AOC, no evidence whatsoever was brought to support the claim that defendant company suffered material damages consisting in loss of income from cancelled flights or delayed operations, and the Court is of the firm view that plaintiff's presumed confession is insufficient in and of itself to make good for this abject lack of evidence of material loss.

It must also be pointed out that, as already observed earlier on, plaintiff was not yet, at the time of his resignation, formally employed in the role of Ground Operations manager, the parties having failed to reach an agreement on the terms and conditions to be attached to this new position. This means that he was not contractually bound to

provide his services to defendant company in that role. On the basis of the evidence adduced in the record, the Court understands that although plaintiff's contract of service expressly required that a new contract of service is entered into in the event of an alteration to his current employment as OCC, the parties were at that time still in the process of negotiating the terms and conditions of plaintiff's prospective employment as Ground Operations Manager and no final agreement had been reached. It is the Court's view that having not yet been employed as Ground Operations Manager at the time, plaintiff was under no contractual obligation to render services to the company in that role and above all, plaintiff was well within his rights at law while being in probationary employment with the company as OCC manager, to terminate his employment even without having to provide a valid reason therefor to his employer. After all, Article 1030 of the Civil Code provides:- *Any person who makes use, within the proper limits, of a right competent to him, shall not be liable for any damage which may result therefrom.*

However, the succeeding Article, 1031, then proceeds to establish the principle that ... *Every person, however, shall be liable for the damage which occurs through his fault,* from which flows the corollary that a person whose actions cause damage is bound to make good the negative consequences flowing from such actions.

Having said this, however, the Court considers that there is undisputed evidence that as early as 21st February 2017, plaintiff had expressly accepted to act as the Person Nominated Ground Operations for the company and had continued to manifest his willingness to occupy this role until the 5th April 2017¹² when he informed the defendant that he would not be present for the audit scheduled for the following day, even though he knew that his presence was crucial for the success of the audit. These considerations, in the Court's view, justify a deliberation of the application or otherwise of the notion of pre-contractual liability on the part of plaintiff for damages that might have been suffered by TRTO Agency Limited as a result of his failure to attend the audit and subsequently act as the company's nominated person for the post of Ground Operations manager.

¹² See also service order No. 2/2012 issued by TRTO Agency on 2nd April 2017 : *"This is to confirm the new appointment as Nominated Person for Ground Operations of our new AOC MT 43 of Mr. Alessandro Salemmé."*

Although defendants did not expressly make reference to this juridical notion, it is obvious from an examination of the testimony of witnesses brought by them and from the submissions made by their legal counsel, that their position in this regard falls squarely within the notion of pre-contractual liability, which comes into play when two parties enter into negotiations intended for the conclusion of a contract and one of the parties puts an end to these negotiations without just cause.

In its judgement in the case **S. Fiteni et v. Louis Mazzitelli et**¹³, the Court of Appeal (Inf.) held that while it is true that, unlike the position prevailing in foreign jurisdictions, the concept of pre-contractual liability is not expressly contemplated in the Maltese legal system, yet this juridical notion is not entirely alien to our Courts. It referred to the judgement **Pullen vs Matysik**¹⁴ where it was held:

“... the damages to which the plaintiffs are entitled are, however, to be restricted to the actual losses they incurred up to the time that the negotiations broke down whether they consist in actual expenses or depreciation of material or otherwise but are not to include any profits which they would have derived from the concession of the boutique as in that way they would be benefiting from an obligation which never came into existence”

The Court affirmed that in such circumstances, the aggrieved party may claim damages arising from pre-contractual liability if he proves that he incurred a loss as a result of an unjustified act on the part of the other contracting party "Illi f'kazijiet bhal dawn l-attur jista jirreklama danni minn responsabilita` pre-kontrattwali, jekk jippruva li huwa ma hax il-kuntratt minhabba agir mhux gustifikat tal-konvenuti li kwazi jekwivali ghal dolus (ara wkoll sentenza Attard vs Xuereb PA 13/10/03).

¹³ Decided on the 2nd June 2003.

¹⁴ Decided by the Court of Appeal on the 26th November 1971.

In its judgement in the case **Philip Seguna et v. Kunsill Lokali Zebbug**, the Court of Appeal referred to Fabio Fortinguerra's "*La Responsabilita` Precontrattuale*"¹⁵ where he expounded the following principles:-

"Occorre precisare che se da un lato e` vero che ogni trattativa genera la aspettativa, o meglio la speranza di un futuro contratto, dall'altro, e` pur anche vero che, in tale ipotesi non e` ancora corretto parlare di affidamento vero e proprio, atteso che, laddove cosi` non fosse, sarebbe necessario sostenere l'improbabile esistenza di un dovere di non recedere mai senza giusta causa, ogni qual volta si dia inizio alle trattative.

Pertanto, allorquando si richiede l'esistenza di un affidamento meritevole di tutela, ci si riferisce non tanto alla vaga speranza che si pervenga alla conclusione di un affare ovvero alla certezza di raggiungere un determinato risultato, atteso che nelle trattative e` inevitabile che sussista la prima cosi` come non sussista la seconda, quanto piu` propriamente ad uno stadio delle trattative tale per cui appare praticamente raggiunto l'accordo, salva la manifestazione formale del consenso e sempre che non sopravvengano elementi nuovi precedentemente non valutati che richiedono giustificato il recesso.

... ..

*Le trattative hanno raggiunto una ulteriore fase, talmente vicina alla conclusione dell'accordo da ritenere conforme a buona fede far ricadere sul soggetto recedente le spese sostenute ed il danno subito dell'altra."*¹⁶

In the judgement in the names **Alfred Attard et v. Paolo Xuereb et nomine**, the Court held that:

"... fil-fehma tal-Qorti sabiex wiehed jista' jirreklama danni rizultanti minn responsabilita' pre-kontrattwali huwa jrid jipprova li t-terminazzjoni jew it-twaqqif tan-negozjati ma kienx gustifikat u li l-agir ta' min waqqaf in-negozjati irid ikun ekwivalenti ghal dolus. F'dawk ic-cirkostanzi d-danni li ghandhom jigi likwidati

¹⁵ CEDAM 2002 Ed. Page 116.

¹⁶ *Ibid.* Page 117.

ghandhom ikunu limitati biss ghal spejjes realment inkorsi fil-kors tan-negozjati u konnessi ma' l-istess negozjati u mhux ghal eventwali telf ta' qliegh".¹⁷

While it is true that in the case **Grixti v. Grech**, decided on the 3rd April 1998, the First Hall of the Civil Court did not accede to plaintiff's demand for payment of damages arising from pre-contractual liability, it acknowledged that such an action could be successfully brought where: "*il-parti l-wahda li tkun inkorriet in buona fede certu spejjes, bl-aspettativa ta' ftehim vinkolanti bejnha u bejn parti ohra, u dik il-parti l-ohra li tkun b'kapricc u kwazi malafede jekk mhux necessarjament b'ingann jew b'qerq, itterminat in-negozjati fi stadju fejn il-kunsens reciproku tal-partijiet kien identiku dwar il-kundizzjonijiet essenzjali tal-ftehim, izda ma sehxx b'konsegwenza ta' dan il-kapricc*"¹⁸.

As already pointed out and as would result also from defendant's testimony and the testimony of both Charlotte Grech¹⁹ and Maurizio Vincenti, the Court is satisfied that plaintiff had not only indicated his willingness but had also accepted to undertake the position of Ground Operations manager of the company, having enrolled for the required EASA training course, having also sat for the interview with Transport Malta on behalf of TRTO Agency Limited and having been duly approved for the position of Ground Operations manager. Consequently, in view of this state of affairs, defendant company was legitimately entitled to expect that plaintiff would attend for the audit on the 6th April 2017. Moreover, from an examination of the evidence, the Court is not convinced that during the phonecall that Emanuele Ghirardo mentioned in his

¹⁷ Decided by the First Hall, Civil Court, 13th October 2003.

¹⁸ In fact, in a more recent case, **Frank Portelli nomine vs Onor. Michael Falzon et**, decided on the 18th May 2001, the same Court held:- "*Min jidhol f'negozjati ma haddiehor bi hsieb li jikkonkludi kuntratt jista' jallega li kien 'unfairly treated' u, kwindi, jitlob danni taht id-dottrina ta' 'pre-contractual liability'. ... Biex wiehed jista' jirreklama danni f'dawn ic-cirkostanzi jrid jipprova terminazzjoni ingustifikat tan-negozjati b'agir li kwazi jekwivali ghal dolus; f'dan il-kaz dan ma jirrizultax.*"

¹⁹ Charlotte Grech also testified that an audit was scheduled by Transport Malta after Alessandro Salemme agreed to take on the role of Ground Operation Manager.

testimony, Marcello Labor had closed the door entirely on negotiations regarding the financial aspect of plaintiff's eventual employment as Ground Operations manager. The Court also observes that at no point did plaintiff declare that Marcello Labor had definitively and unreservedly refused to accept his proposals during their meeting on the eve of the audit: he merely stated that they did not reach an agreement on the terms of his new employment. Nor did plaintiff's own witness, Maurizio Vincenti, testify that Marcello Labor offered a take-it-or-leave-it financial package and had closed the door on further negotiations on the eve of the audit scheduled for the 6th April 2017. In fact, he testified that *"at the last minute ... he changed his mind and instead wanted to offer Mr Salemme the payment of his salary partly in cash and was not amenable any longer to agreeing to the proposals that had been made by Salemme."*

The Court also understands that the telephone conversation between the parties on the 5th April 2017 did not take place in the presence of Maurizio Vincenti but in the presence of Emanuele Ghiroldi who testified and corroborated Marcello Labor that contrary to plaintiff's assertions, it was plaintiff himself who insisted that a final decision is taken regarding his financial package then and there before the audit the following day, and who refused to attend the said audit unless his proposals were accepted. In fact, while Maurizio Vincenti testified that he was present for a meeting that was held between plaintiff and defendant Marcello Labor on the 5th April 2017, at no point did he testify that during this meeting plaintiff had informed defendant of his intention not to attend the audit the following day: the Court is convinced that this decision was conveyed by plaintiff later on during the day over the phonecall regarding which both defendant and Emanuele Ghirardo testified.

The Court is of the view that defendants' version of events, which was not seriously contested, is more credible even because it is corroborated by Emanuele Ghirardo who overheard defendant's side of the conversation and confirmed that he had asked for more time to make some calculations and could not give a definitive reply then and there.

The Court after having seen that Marcello Labor had instructed his employee (Janet) to refund unto plaintiff the expenses he claimed in an email sent to defendant on the 5th April 2017 at 17:03h, firmly believes that at this time, plaintiff had not yet informed Marcello Labor of his intention not to attend the audit and to resign his employment. **In fact, it is evident that a supervening event must have taken place between Marcello Labor's instructions for payment and the eventual reversal of these instructions.** In the Court's view it is equally evident that this event consists in none other than plaintiff's abrupt resignation from his employment and his failure to attend for the audit as the Person Nominated Ground Operations.

Bearing all this in mind, the Court cannot agree that plaintiff acted reasonably when he terminated negotiations for his new position as Ground Operations manager within the company – a position that he had long accepted to assume and had even attended training courses with a view to being duly certified for the position – over a phonecall on the eve of an audit that was evidently crucial for the issue of the company's operating licence. *Multo magis* at a point when he knew that his presence as Person Nominated Ground Operations was fundamental for the issue of that licence, without having given an opportunity for negotiations to continue after the completion of the audit, when it does not result that negotiations were completely closed, that there was no further scope for discussion and possibly, agreement, or that there were impelling reasons for plaintiff to withdraw at that very moment. Indeed, the Court is convinced that plaintiff could not have acted in absolute good faith when he knew, or should have known, that his actions, in the circumstances, would inevitably disrupt the process for the issue of the company's AOC, without which flight operations could not commence.

Moreover, as already pointed out, plaintiff failed to give one week's notice to his employer as required by Article 36(2) of Chapter 452 of the Laws of Malta, applicable to the parties' employment relationship, even though he was on probationary employment, a failure which also meant that he did not turn up for the scheduled audit the next day in his role as Person Nominated Ground Operations and which resulted in a delay of over three weeks for the issue of the AOC in favour of the company.

Indeed, the Court is convinced that plaintiff used the impending audit as a tool to compel defendant to yield to his proposed financial package for the position of Ground Operations manager.

Upon application of the above-cited legal principles to the facts of the case at hand, the Court is of the opinion that defendant company is entitled to claim in damages the reimbursement of the expenses made in connection with or in anticipation of plaintiff's prospective role in the company as Ground Operations manager, such as purchase of devices and for training workshops that plaintiff had either attended or was scheduled to attend, amongst other expenses.

It would also result that on the 5th April 2017, Marcello Labor expressly approved the payment of the sum of €1,763 claimed by plaintiff in expenses incurred as from the 20th February 2017. Although, it is observed, the contract of service does not expressly impose on the employer the obligation to refund unto the employee expenses that are not specifically mentioned in clause 2.2 of Appendix A of the contract, such as meals and work-related equipment, defendant Labor appears to have expressly approved payment of the total amount claimed by plaintiff in his expense list, comprising payments for working days, meals and the purchase of a laptop. In fact, in an email sent by Marcello Labor to plaintiff on the 1st March 2017, he had already agreed to reimburse all expenses (*"ti rimborsero tutto abbi pazienza che iniziamo a volare e quindi ad incassare"*)²⁰.

In the Court's view, this means that Marcello Labor had accepted to reimburse plaintiff for expenses incurred as soon as the company commences operations and begins to generate an income²¹ and, as already pointed out, he had instructed payment to be made at a point when negotiations with plaintiff regarding his new position within the company, were still ongoing on the eve of the audit which would finally allow the company to commence operations. However, as already pointed out,

²⁰ A document exhibited by plaintiff (found at page 94 of the record) shows that on an unspecified date TRTO Agency Ltd instructed Bank of Valletta p.l.c. to pay the sum of €1,763 into plaintiff's bank account. This document was printed on the 6th April 2017 at 16:07h.

²¹ See email sent by Marcello Labor on 1st March 2017, page 100 of the record.

plaintiff's sudden decision to back out of negotiations and not attend the next day's audit naturally meant that the company did not obtain its AOC as scheduled and therefore, company's operations were delayed.

From the documents exhibited by plaintiff himself, it would result that defendant company had paid invoice number 17800639 to JAA TO for his enrolment in the EASA workshop in the Netherlands between the 10 and 12th April 2017²². Whether plaintiff attended this course or otherwise remains unclear, however in any case his participation was of no value to the company, having resigned from his employment and the Court is of the view that defendant company is entitled to reimbursement of this sum by way of damages arising from plaintiff's pre-contractual liability. **However defendants failed to bring proof of the amount actually disbursed for payment of this invoice so the Court is not able quantify the damages to which they are entitled in this regard.**

In his email, copied to defendant on the 5th April 2017, where he requested payment of the said expenses, plaintiff indicated that he had purchased a laptop device (Acer) which was required in connection with the JAA Amsterdam training, for the total sum of €658²³. He also appears to have paid the sum of €85 in order to attend the Civil Aviation Directorate interview on the 20th February 2017, an interview which the Court understands that plaintiff sat for in connection with his appointment with defendant company as Nominated Person Ground Operations²⁴. Plaintiff testified that he did not receive payment of the expenses listed in said email despite Marcello Labor having given instructions for the payment of the total sum claimed of €1,763. However the Court is of the view that had defendant company actually refunded these expenses to plaintiff, it would have been entitled to reimbursement by way of damages arising from pre-contractual liability incurred by plaintiff. Consequently, plaintiff is not entitled to claim payment of these expenses from defendant company and nor is he entitled to claim any other expenses that may have been incurred by him in connection with his approval by Transport Malta Civil Aviation Directorate as Ground operations

²² Email dated 1st March 2017, pagna 100 *tergo* tal-atti tal-kawża.

²³ Dok. AS3, page 92 of the record.

²⁴ See Dok. AS7, page 11 of the record.

manager for defendant company, which expenses would have otherwise been incurred by defendant company.

As already pointed out, defendant company's initial acceptance to pay said expenses, was superseded by plaintiff's withdrawal from his own acceptance to act as TRTO Agency's Person Nominated Ground Operations for the purpose of the audit scheduled for 6th April 2017 with the result that any expenses incurred by the company with regard to and in anticipation of plaintiff's participation in the audit, are refundable by way of damages arising from pre-contractual liability incurred by plaintiff.

As for the laptop, since it does not result from the evidence that plaintiff returned the laptop to defendants or either one of them or even despoited this device under the authority of the Court, it is legitimate to conclude that the laptop remained in plaintiff's possession and consequently, he cannot in any event, legitimately expect to be reimbursed for the price of this device.

Having finally considered;

That although defendants pleaded, in the third paragraph of their Reply, that the action was brought prematurely and consequently they should not bear the costs of the lawsuit, the Court cannot identify any basis that might justify this plea. Indeed, no evidence was brought to substantiate the plea and having established that plaintiff resigned from his employment with the company, there was no obstacle to his bringing an action for payment of unpaid services or wages.

For all these reasons, the Court decides as follows:

As for the principal claim, while abstaining from taking further cognisance of the first plea, accedes to the second plea and declares defendant Marcello Labor non-suited with costs against plaintiff, and while dismissing the rest of defendant company's pleas, accedes only in part to plaintiff's claim, liquidates the amount

due to him by way of unpaid wages in the sum in the sum of four thousand two hundred and sixty four Euro and fifty eight cents (€4,264.58) and condemns TRTO AGENCY LIMITED to pay unto ALESSANDRO SALEMME the said sum of four thousand two hundred and sixty four Euro and fifty eight cents (€4,264.58) with interest as from today.

As for defendant company's counter-claim, while abstaining from taking further cognisance of plaintiff's first two pleas and upholding the remaining pleas only in so far as these are sustained by the considerations made and conclusions already reached, accedes partly to the first demand and rejects the rest of the demands.

The costs connected with the principal claim are to be borne as to one third (1/3) by plaintiff and as to the remaining two thirds (2/3) by defendant company TRTO Agency Limited, while the costs of the counter-claim are to be borne wholly by defendant company TRTO Agency Limited.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**