



**COURT OF MAGISTRATES (GOZO)  
INFERIOR JURISDICTION**

**MAGISTRATE DR BRIGITTE SULTANA  
LL.D., LL.M. (CARDIFF), ADV. TRIB. ECCL.  
MELIT.**

Today, Thursday, 27th of April 2023

**Application number: 4/2018 BS**

**Jean-Christophe Bennavil**

**-vs-**

**Terence Zammit sive Terence William Zammit  
sive Terence Zammit McKeon**

**The Court;**

**Having seen the application** filed by the plaintiff who requested the defendant to state why in accordance to the law as well as the agreement reached with the defendant regarding works at the applicant's property at 'The Old Stone House', Liberat Grech Street, Xagħra, Gozo the defendant should not [1] furnish the applicant: **(a)** with the railings ordered by the applicant from the defendant for which the defendant were paid in advance and which were not installed in his property, as well as; **(b)** the keys and all

documentation, including certificates of guarantee, pertaining to a set of UPVC apertures installed by the defendant, although not up to the required standard, in the applicant's property which keys and documents are being withheld by the defendant without a valid reason in fact or at law being that the defendant are paid for the apertures [2] in default of furnishing the applicant with the items named point 1 and remedying the serious shortcomings in the UPVC apertures: to refund the applicant in their respective value of four hundred Euro (€ 400) and five thousand seven hundred and fifty-one Euro and eighty-five cents (€ 5,751.85) as already paid to the defendant by the plaintiff; [3] to refund with the applicant the sum of fifty Euro (€ 50) in expenses he incurred due to having to replace wall tiles in his kitchen after these were laid inappropriately by the defendant and his employee/s and this as has already been requested from the defendant, to no avail [i] by legal letter of the 11<sup>th</sup> October, 2017; [ii] by legal letter of the 8<sup>th</sup> January, 2018, and; [iii] by judicial letter number 59/2018 as notified to the defendant on the 31<sup>st</sup> January, 2018 [copies of which are herewith attached as document "JCB01", "JCB02" and "JCB03"] and by virtue also of the defendant's admission regarding each of the above claims as will be proved during the hearing of this case.

This demand is being made without prejudice to any other rights the applicant may have against the defendant.

With costs, including for the letters above mentioned and the precautionary garnishee order presented contemporaneously with this act and with legal interest applicable according to law at your charge as herewith already summoned to give testimony.

**Having seen the reply filed by Terence Zammit sive Terence William Zammit sive Terence Zammit McKeon in which he declared that:**

THAT in relation to claim 1(a) in order to supply the claimant with the railing ordered by him, the applicant agrees that this has not been supplied but the amount must be set-off with the balance due by the claimant and this as will be explained in more detail in the counter-claim;

THAT in relation to claim 1(b) the applicant insists that the work was done according to craftsmanship and art, and in case the claimant has any complaint about these apertures he must indicate what these consist of, and without prejudice declare that he is ready to execute any work that is allegedly necessary. That the keys and documents are all in the possession of the respondent and these will be handed over contextually with the payment of the balance still owed by the claimant and this as will be explained in more detail in the counter-claim;

With regard to the second claim, it must be rejected for the reasons indicated above;

Regarding the second claim, the respondent replies that he himself was not happy with the final result because of the design and it was his idea and at his expense that the work will be done again, however the fifty Euros (€50) in question must be deducted from the balance owed by the claimant and this as will be explained in more detail in the counter-claim;

The present plaintiff is a debtor of the respondent for various amounts, regarding which a counter-claim is being presented in the second stage of this reply, and therefore the

amounts owed to the respondent must be off-set against the same amount due from him;

3. SAVE further replies both in law and in fact;
4. THEREFORE the claims of the plaintiff should be rejected in that a partial set-off be ordered against the amount due by the plaintiff to the respondent - in that the entire amount owed by the respondent is set-off against the same amount due by the plaintiff to the respondent; and in that the second claim be rejected on its merit; with all costs against him.

**Having seen the counterclaim filed by Terence Zammit sive Terence William Zammit sive Terence Zammit McKeon in which he premised that:**

Whereas the plaintiff is a debtor of the respondent in the following amounts:

An amount of one thousand nine hundred and twenty-seven Euros and fifty-three Euro cents (€1,927.53) representing balance due on invoice 1719 in relation to works performed at The Old Stone House, Triq Liberat Grech, Xagħra, copy of the invoice is herewith attached and marked as Doc TZ1;

An amount of three thousand one hundred and nine Euros and twenty-six Euro cents (€3,109.26) representing balance due on invoice 1718 in relation to works carried out at The Old Stone House, Triq Liberat Grech, Xagħra a copy of the invoice here attached and marked as Doc TZ2;

To finally declare that the amount of four hundred and fifty Euros (€450) relative to the requested railing in the amount of four hundred Euros (€400) and the fifty Euros (€50)

requested by the plaintiff in relation to costs that he incurred for changing some tiles on the wall that have already been paid for and deducted from the balance that is owed by the claimant.

**Plaintiff is being asked to state why this Court should not:**

Condemn the plaintiff to pay the defendant the sum of five thousand and thirty-six Euros and seventy-nine Euros cent (€5,036.79) being balance due on invoice number 1718 and invoice number 1719;

Order the partial set-off of the amount due by the plaintiff to the respondent – in that the entire amount owed by the respondent is settled with such an amount due by the plaintiff to the respondent;

With costs against the plaintiff.

With the reference to the oath for which he is as of now summoned.

**Having seen the reply of Jean-Christopher Bennavil for the counter-claim filed by Terence Zammit sive Terence William Zammit sive Terence Zammit McKeon who declared:**

1. THAT the demands as contained in the counter-claim filed by the defendant are to be denied with costs being that they are unfounded in fact and at law as will be shown by the evidence brought forth in these proceedings;
2. THAT **without any prejudice to the above**, the invoices attached to the defendant's counter-claim are fictitious and issued well after the juridical relationship between

the parties to this suit was terminated and this as will also be shown by the evidence brought forth in these proceedings;

3. THAT **without any prejudice to the above**, no amount is due by the plaintiff to the defendant as claimed in the defendant's counter-claim and this due to the fact that all amounts requested by the defendant from the plaintiff were paid as requested and:
  - a. There is no balance due on invoice number 16021 [in the counter-claim referred to as 1718];
  - b. There is no balance due on invoice number 17003 [in the counter-claim referred to as 1719];

And this due to the fact that the two invoices were paid by the plaintiff to the defendant in their entirety but, after said payment was effected, the defendant charged the invoices more than once including in them additional amounts (including alleged VAT) which aren't due, and this as will be proved through the evidence which will be brought forth in these proceedings but as already previously explained on several occasions through correspondence sent by the plaintiff as attached to the application with which these current proceedings were commenced.

Henceforth, once there is no amount due by the plaintiff to the defendant there is no space for set-off.

4. SAVE additional replies in fact and law as may be necessary and without prejudice to the above;

**So Therefore;** the defendant's counter-claims against the plaintiff are to be denied with costs being that they are unfounded as fact and in law.

With the summoning of the defendant to give testimony in examination and cross-examination as of now called to do so.

**Noting** that on the sitting of the 8th May, 2018 the Court acceded to the plaintiff's request that the proceedings be conducted in the English language;<sup>1</sup>

**Noting** all the documents submitted and all the testimonies given throughout the present case;

**Noting** the minute of the sitting of the 16th February, 2022 wherein the Court declared that should the defendant fail to appear and present his evidence then the Court would proceed to declare that the defendant has no evidence to produce;<sup>2</sup>

**Noting** the minute of the sitting of the 13th May, 2022, wherein the Court declared that the defendant had no evidence to produce and this on account of his non-appearance in court;<sup>3</sup>

**Noting** that during the sitting of the 23rd November, 2022, counsel for the defendant renounced his brief;

**Noting** that the defendant in spite of being duly subpoenaed by the plaintiff to appear in court on the 2nd February, 2023, and in spite of being personally served with the subpoena failed to appear in court on the aforementioned date;

**Noting** that during the sitting of the 2nd February, 2023, the plaintiff filed a list of questions to be answered by the defendant in the following sitting;

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<sup>1</sup> A fol. 23 of the records.

<sup>2</sup> A fol. 195 of the records.

**Noting** that the defendant failed to appear in the following sitting to answer the questions set by the plaintiff in the previous sitting;

**Noting** that during the sitting of the 15th February, 2023, the Court struck off the counterclaim and adjourned the case for today for judgement regarding the claims made by the plaintiff;

**CONSIDERS:**

Noting that despite having filed a reply and a counterclaim against the plaintiff, the defendant failed to appear in court on numerous occasions and failed to substantiate his claims and defence.

Noting that by virtue of Articles 698 and 702 *et seq* of Chapter 12 of the Laws of Malta, the plaintiff filed the questions to be answered by the defendant, which questions however remained unanswered as the defendant failed to appear in court even though duly served with the writ of summons.

Noting that in principle «*il-materja tas-subizzjoni hija materja delikata u deciziva peress li biha jekk il-parti tonqos li tidher, il-kapitoli jittieħdu bħala konfessati u l-konvenut ikun impedut li jagħmel appell amenokke ma jiġġustifikax il-kontumacċja tiegħu.*»<sup>4</sup>

Furthermore «*jibda biex jiġi osservat illi in linea ta' principju l-kapitolu hu fatt proċesswali li jgħib miegħu effetti speċifiċi, espressament prevvisti u determinati mil-liġi taħt il-Kapitolu 12. Ara Artikoli 698 (2) u 702 (3). Minnhom huwa deżunt illi l-kapitolu hu mezz dirett biex jipprovoka konfessjoni ġudizzjali f'min lilu jiġi deferit ta' fatt sfavorevoli għal kapitolat u ta' vantaġġ għall-parti li*

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<sup>3</sup> A fol. 197 of the records.

<sup>4</sup> Dr John Buttigieg -vs- Michael Marletta, Appeal, 11th November, 1986.



eskoġitatu. Jingħad fid-deċiżjoni fl-ismijiet “Anthony Borg -vs- Samwel Veneziani”, Appell Inferjuri, 28 ta’ April 1998, illi “din iċ-ċirkustanza hi ħafna rilevanti għaliex tfisser illi bin-nuqqas tal-konvenut appellat li jidher biex jikkontesta l-kapitolu, saret prova posittiva li l-ammont rekalmat mill-attur kien doout lilu għal ragunijiet minnu pretiżi u dana bl-ammissjoni – anke jekk negattiva fis-sens ta’ non kontestazzjoni – ta’ l-istess [sic] konvenut.

In tema, kemm id-duttrina legali kif ukoll il-ġurisprudenza, issoktaw jaffermaw, u jikkawtelaw ukoll, illi tali prova wehida mhux neċessarjament u bilfors għandha tiddemostra l-fondatezza tal-pretensjoni ta’ l-attur [sic] in kwantu dak l-istat miġjub in essere bil-kapitolu ma għandux ifisser li qed jintroduci derogi għall-prinċipju tal-piż tal-provi. Kif rilevat mill-Qorti ta’ l-Appell [sic] kolleġġjali fil-kawza “James Trapani et -vs- Vincent Cilia” (28 ta’ April 2000), “il-kapitolu jitqiesu konfessati però dan ma jfisserx li l-Qorti kienet obbligata toqgħod fuq dik il-preżunta ammississjoni [sic]. Dik il-prova kellha tiġi evalwata u meqjusa flimkien ma’ kull prova oħra li sa dak l-istadju setgħet kienet diġà prodotta quddiem il-Qorti. Dan għaliex kif ġja nġhad is-subizzjoni setgħet tintalab f’kull parti tal-proċedura”;

Naturalment, l-apprezzament relattiv ta’ dik il-prova b’ dak il-kapitolu hu rimess għall-poter diskrezzjonali tal-Qorti adita mill-mertu, u f’ dan il-każ, tajjeb jew ħażin, l-ewwel Qorti dehrilha li setgħet tiġbed il-konklużjoni illi l-fatt dedott mill-atturi kien għaliha suffragat bil-prova kostitwita mill-kapitolu;»<sup>5</sup>

On the basis of the jurisprudence cited this Court examined and weighed all the evidence and documentation submitted by the plaintiff and concludes that the claims made are justified and duly proven according to law.

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<sup>5</sup> Stephen Vella et v. Bollicine Limited, Appell (Sede Inferjuri) deċiża fid-9 ta’ Jannar 2008.

This Court further adds that she has examined the questions posed by the plaintiff which but for which no answer was given by the defendant as he failed to appear in court. This Court notes that the questions are very much in line with the claim put forth by the plaintiff and therefore this Court shall proceed to accede to all the requests made by the plaintiff in his application of the 2nd March, 2018.

**DECIDE:**

Therefore in line with all the aforementioned reasons and considerations this Court accedes to all the claims made by the plaintiff.

Costs to be borne solely and exclusively by the defendant.

**(sgn.) Dr Brigitte Sultana  
Magistrate**

**(sgn.) John Vella  
D/Registrar**

**True Copy**

**For the Registrar**