



COURT OF MAGISTRATES (MALTA)
MAGISTRATE DR. LEONARD CARUANA LL.D., M.A. (FIN. SERV)

Notice No: 111/2020 LC

DR JEAN PAUL DEMAJO, EXERCISING HIS TRADE
AS DRS DEMAJO DENTAL CLINICS
(I.D. 88680M)

VS

MOHSEN AL HAWARY SIVE AL HAWARY MOHSEN SIVE
AL HAWARY MOHSEN SELIM MANSOUR
(I.D. 158340A)

Today, the 04th October 2023,

The Court,

Having seen the application of Dr. Jean Paul Demajo exercising his trade as Drs Demajo Dental Clinics wherein he requested this Court to condemn Mohsen Al Hawary sive Al Hawary Mohsen sive Al Hawary Mohsen Selim Mansour to pay him the sum of fourteen thousand, eight hundred and fifty Euro (€14,850) representing the balance from a larger sum due for dental services provided in accordance with his instructions.

With costs, including those of the judicial letter number 188/2019 and all precautionary warrants relating to this case, and with legal interests.

Having seen that the defendant submitted his Reply wherein he stated:

That the plaintiff's demands are completely unfounded both in law and in fact and therefore should be rejected with costs against the plaintiff;

Preliminary, the defendant benefits from *privilegium fori* in regard to this Honourable Court. This is being said because as results from the notification of the present notice and as indicated by the plaintiff, the defendant resides in the island of Gozo and therefore, with the application of Article 741(c) and 767 of Cap. 12 of the Laws of Malta, a case against him should be tried before the Court of Magistrates (Gozo);

Without prejudice to the above, it is not true that the defendant still has to pay any amount as will be shown in more detail during the hearing of the case;

Saving any other plea on the law and on the merits

Having seen the documents exhibited and the acts of the proceedings;

Having heard the witnesses;

Having heard the submissions of the parties' defendants;

Considers:

That the plaintiff is a dentist and practices his profession through the clinic named Drs Demajo Dental Clinics. Further to his profession, he provided dental services to the defendant and his ex-

wife Svitlana Yolana Al Hawary, which dental services included a full mouth rehabilitation. The plaintiff claims that there still remains a pending balance of €14,850 for these treatments. This balance, however, is being challenged by the defendant on the basis that he paid all amounts due.

In his testimony,¹ the plaintiff stated that this was an extensive procedure which included surgery, implantology and new teeth. It is a very lengthy procedure which, at times, may span over six months or even a year. Due to the length of time, he sent various invoices as they went along with the treatment and a final invoice at the conclusion of the treatment in the amount claimed in these proceedings. He stated that the defendant did not want to pay this final balance as he stated that all amounts were settled. Furthermore, the plaintiff stated that although the defendant told him that he had an insurance cover, he was never presented with any claim form and was never told the name of the insurance company.

In his affidavit,² the plaintiff confirms that he received a total of €27,125 from the defendant. He stated that the total bill was of €42,000 and that at the outset he explained how much these treatments would cost. He stated that Bart Enterprises Limited is the clinic's main dental supplier. The €15,000 transfer to Bart Enterprises Limited made by the defendant represented payment for dental supplies and it was divided as to €5,000 in respect to the defendant and €10,000 in respect to his ex-wife. Contrary to what the defendant is stating, there was no extra payment of €15,000. At the end of the treatment, the defendant was told that his balance was zero but at the time the treatment was not complete and there were interventions that were not yet billed. At the completion of the

¹ Vide the testimony tendered on the 20th September 2021, at fol. 45 of the acts of the proceedings.

² Vide Dok JPD1 at fol 127 of the acts of the proceedings.

treatment, the plaintiff issued a final bill and defendant was asked to pay. He stated that the defendant gave a number of excuses so as not to pay. At first he said that he was told the balance was zero, then he said that the insurance company did not want to pay citing fraud and that he was in arbitration proceedings with them. The defendant had asked the plaintiff to produce an affidavit in connection with the arbitration proceedings but ultimately, the insurance excuse turned out to be a sham. Prior to opening these proceedings, the plaintiff asked defendant to pay the balance and at no point did he state that he overpaid. He confirmed that the sum of €14,875 was still due.

In his cross-examination³ the plaintiff said that he explained to the defendant how much his and his ex-wife's procedure would cost and the defendant said he would pay the both bills himself. With regards to billing, they do not input the full amount at the beginning of the procedures but add on the bill as the work goes by and issue invoices as they go along. Although there was an instance where the person behind the front desk confirmed to the defendant that his account was marked as zero, this was because some of his interventions had not yet been input in the system and therefore were not billed. With regard to payments made, the clinic would input them in their computer system. It was also common practice for the clinic to write down payments made in the patient's medical chart. However, these would be written in the financial part of the chart, such as that at fol. 35 of the acts of the proceedings. He was instructed by the defendant to issue invoices to him for the interventions done on him and on his ex-wife. The document dated 8th August 2017 (at fol. 108) is a brief description of the interventions done on the defendant and his ex-wife and the amounts quoted are all found in their respective Clinical Charts.

³ Vide the testimony tendered on the 19th May 2023.

The defendant stated in his testimony⁴ that he approached Drs. Demajo Dental Clinics on the 2nd December 2015 for a major dental intervention and was given a quotation in the amount of circa €22,000.⁵ He stated that in February 2016 he had a major operation at their clinic and on that day he forwarded him €10,000.⁶ He was very impressed with the plaintiff's professionalism. His ex-wife also needed an intervention and the defendant took her to the plaintiff's clinic for her intervention. The plaintiff examined her and issued a quotation of €15,000, which amount was then transferred by the defendant. He also stated to have paid €2,000⁷ and made another payment of €5,000.⁸ In all, the defendant claims to have paid the sum of €44,125 to the plaintiff, which were transferred at different times and to different accounts. In support of this, he submitted his calculations of the payments he made amounting to €44,125⁹.

He states that in the statement presented to him¹⁰ there is no indication of a pending sum of €11,000 nor is there any indication of the payments of €15,000, €5,000, €2,125 and €2,000 made, but only shows the payment of €10,000. He further states that he made a payment of £7,925.95¹¹ (equivalent to €10,217.34).¹²

⁴ Vide the testimony tendered on the 24th May 2022, at fol. 64 of the acts of the proceedings.

⁵ Vide Dok "MH1" at fol. 80 of the acts of the proceedings.

⁶ The transaction appears to be indicated at fol. 84 and fol. 25 of the acts of the proceedings.

⁷ Vide Dok "MH4" at fol 83 which is also reflected at fol 26 of the acts of the proceedings.

⁸ Vide Dok 'MH5' at fol. 85 which is also reflected at fol. 27 of the acts of the proceedings.

⁹ Vide Dok "MH8" at fol. 88 of the acts of the proceedings.

¹⁰ Vide dok "MH 6" at fol 86 which is also reflected at fol. 30 of the acts of the proceedings.

¹¹ Vide Dok MH7 at fol. 87 of the acts of the proceedings.

¹² £7,925.95 X 1.2891 = €10,217.34. (the exchange rate of 1.2891 is the conversion rate from UK STG to Euro on the 8th February 2016, obtained from <https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/gbp/GBP-to-EUR-2016>)

The defendant further testified¹³ that the plaintiff indicated a total cost for both his and his ex-wife's interventions of €36,500. He stated that the medical intervention lasted till the end of 2016. His ex-wife's medical intervention lasted between the 28th October 2016 and 26th June 2017.¹⁴ He submitted an email sent to him by the plaintiff on the 8th August 2017¹⁵ containing a breakdown, payment and balance, which indicates the total cost.

In his cross-examination¹⁶ he confirmed that the payment of €15,000 was made by his partner Jacqueline Sandra Ann Cox. He said that his insurance refused to pay for the intervention, yet he has no letter with this confirmation.

Considered;

That from the evidence produced by the plaintiff, it results that sum of €14,850.00 requested in these proceedings is composed of the balance of €3,850 allegedly due for the interventions carried out on the defendant¹⁷ and the balance of €11,000 allegedly due on those carried out on his ex-wife¹⁸ The defendant told the plaintiff that he will pay both his and his ex-wife's bill for the interventions.

In his testimony, the defendant stated that the agreed total cost for both interventions was to be of €36,500 and he refers to an email sent to him by the plaintiff on the 8th August 2017. This email contains a very brief description of the treatments executed on both

¹³ Vide the testimony tendered on the 17th October 2022, at fol. 97 of the acts of the proceedings.

¹⁴ Vide Dok "MH13" at fol. 104 of the acts of the proceedings.

¹⁵ Vide Dok "MH14" at fol. 107 of the acts of the proceedings.

¹⁶ Vide the testimony tendered on the 16th January 2023, at fol. 119 of the acts of the proceedings.

¹⁷ Vide fol. 30 – 31 of the acts of the proceedings.

¹⁸ Vide fol. 35 of the acts of the proceedings.

the plaintiff (totalling to €21,000) and on his ex-wife (incidentally, also amounting to €21,000), for a total of €42,000.

In his testimony, the plaintiff stated that the clinical chart is a medical record and it is common practice for the clinic to keep note of payments made in the clinical chart of the patient. In fact, from the clinical chart pertaining to the defendant, there is noted a payment of €5,000 dated 2nd November 2016 and another payment of €10,000 dated 05th December 2016. From the clinical chart pertaining to the defendant's ex-wife, Svitlana Al Hawary, there is noted a payment of €10,000 dated 2nd November 2016.

Upon an examination of what appears to be a statement of account attached to the clinical chart of the defendant, there only results one payment (of €10,000) dated the 11th February 2016 and no record of any other payments. More surprisingly, the statement of account attached to Svitlana Al Hawary's clinical chart carries no record of any payment made. Both statements of account are dated the 24th August 2018 – nearly a year after the defendant's treatment was complete and more than a year after Svitlana Al Hawary's treatments were complete.

Moreover, the figures quoted by the plaintiff in his brief description of the treatments dated the 8th August 2017 are not in any way reflected in the statement of accounts mentioned above.

From the documents submitted and examination of figures, it is abundantly clear to the Court that the plaintiff's management of the defendant's account leaves a lot to be desired and does not provide a clear and truthful picture of the defendant's financial position with his practice. Although, understandably, the plaintiff stated that the clinic bills as they go along, it is evident that in this case this procedure was not strictly adhered to. In fact, there was an instance

were the defendant was told, at the completion of the interventions, that the bill was zero.

Considered;

That our Courts have repeatedly retained that:

“Min jallega l-pagament għandu jipprovañ għas-sodisfazzjon tal-Qorti, u fid-dubju u fin-nuqqas ta’ riċevuta għandha tipprevali l-preżunzjoni li d-dejn ma tħallsax (Kollez. XXXVII.1.535), jekk ma jiġix pruvat, kif del resto ma sarx, b’mezzi oħra li l-attur huwa sodisfatt (Kollez. XXXV.iii.604; App. Inf. in re “Cassar vs Agius”, deċiż fid-9 ta’ Lulju 1924; P.A. in re “Cricchiola vs Pulis” deċiża fid-19 ta’ Jannar 1965).”¹⁹

In this case, the defendant stated that all the amounts due were paid by him. In light of this allegation, the Court shall examine the proof brought in this case in regard to the payments made by the defendant.

From the handwritten notes submitted by the defendant as doc MH8, it would appear that the defendant paid a total of €44,125. However, when the figures were compared with the evidence submitted in these proceedings, it results that the defendant paid:

€	Description	Fol no.
15,000	Paid to Bart Enterprises Ltd	24, 81,82
10,000	Paid from Santander Account	25,84,86, 87
2,000	No date indicated, but before 11 Dec 2015	26, 83
5,000	From Defendant's clinic chart	85
2,123	From Defendant's clinic chart	80
34,123	Total Paid by the Defendant	

¹⁹ **Giuseppe Darmanin vs Salvatore Muscat**, Qorti Ċivili, Prim' Awla, 23 ta' Frar 1956.

There is an entry in the defendant's notes of a payment of €10,000 which is marked as "no date" in the same notes and which was not proven by the defendant from any other document or statement.

Therefore, from the acts of the proceedings it results that the defendant paid a total of €34,123 to the plaintiff, thus leaving a balance of €7,877 in favour of the plaintiff. No proof was provided by the defendant that this amount was paid and therefore, it is the Court's view that this amount is still outstanding.

Decide:

Therefore, on the basis of the above, the Court is deciding this present case by acceding, in part, to the plaintiff's request and condemns the defendant Mohsen Al Hawary sive Al Hawary Mohsen sive Al Hawary Mohsen Selim Mansour to pay the sum of seven thousand, eight hundred and seventy-seven Euros (€7,877) to the plaintiff with the interests running from the date of this judgement.

Defendant is to pay 2/3 of the costs of the judicial letter number 188/2019, the precautionary warrant and of these proceedings whilst the plaintiff is to pay the remaining 1/3 of the said costs.

Ft. Dr Leonard Caruana
Magistrate

Sharonne Borg
Deputy Registrar

