



SMALL CLAIMS TRIBUNAL

**ADJUDICATOR
ADV. DR. ILONA SCHEMBRI
LL.B., LL.D., LL.M (LOND.), Ph.D. (Birm.)**

Sitting of Tuesday, 28 September 2023

Claim number: 16/2022

ANTONIO CARDILLO (I.D. 2284958(A))

Vs

JEFIER CUTAJAR (I.D. 449286 (M))

THE TRIBUNAL,

Having seen that by means of Notice of Claim filed on the 14 January 2021, the plaintiff requested this Tribunal to condemn the defendant to pay the amount of one thousand five hundred Euro (EUR 1,500) which amount was lent to the defendant by the plaintiff on 4 December 2020 as a deposit. The plaintiff also requested the costs and legal interests (fol. 1 et seq).

Having seen that by means of a decree dated 11 March 2022, the Tribunal issued a decree on 11 March 2022 ordering the plaintiff to notify the defendant (fol. 9).

Having seen that on 22 April 2022, the plaintiff informed the Tribunal that he does not understand the Maltese language and requested the Tribunal for these proceedings to be held in the English language (fol. 13).

Having seen that the defendant was notified on 22 April 2022 (fol. 18).

Having seen that the defendant filed his reply on 9 May 2022 (fol. 14)

Having seen that various sittings were held.

Having seen that the plaintiff declared that he had no further evidence to present on 28 September 2022 (fol. 45).

Having seen that the defendant failed to bring forward any evidence to substantiate his reply, even after the Tribunal had adjourned the case to another date to give him another chance (fol. 50 and 53).

Having seen the proceedings.

Having seen that this case was adjourned for the delivery of the judgment.

Considers

The point of contention between the plaintiff and the defendant was that the plaintiff alleged to have given the sum of one thousand five hundred Euro (EUR1,500) to the defendant as a deposit for the defendant to carry out water and electrical works at the plaintiff's property with the address 32, Triq Erin Serracino Inglott, Bormla but the defendant failed to carry out these works. The parties signed an agreement between them on the 4 December 2022 showing the deposit amount of one thousand five hundred Euro (EUR1,500).

The plaintiff, his wife and a mutual friend of the plaintiff and the defendant have all given the same version of events (fol. 19-43).

The defendant, in his reply, alleged that he bought material to carry out the works with the deposit that he had received from the plaintiff, but the plaintiff had refused to receive such material. However, such assertion was not proven by the defendant during these proceedings.

In this case, Article 1891 of the Maltese Civil Code applies. It defines a deposit and it states that "*Deposit, in general, is a contract whereby a person receives a thing belonging to another person subject to the obligation of preserving it and of returning it in kind.*" This Article, therefore, clarifies that the defendant had to preserve the money by providing the works to the plaintiff. However, the defendant failed to provide these works and also failed to return the money, as also shown in the messages presented by the plaintiff during these proceedings. Considering that the plaintiff, his wife and a mutual friend of the plaintiff and the defendant have all given the same version of events and the defendant failed to appear for these proceedings several times while did not prove his claims presented in his reply, this Tribunal is convinced that the plaintiff's version of events, together with the messages presented by the plaintiff during the proceedings (fol. 19-43), are true.

Therefore, in this case, although it is a deposit of money, Article 1894 of the Maltese Civil Code does not apply because the parties agreed that the defendant will return the amount received in the form of water and electric works. In fact, this Article provides that "*A deposit of money or of other things which are consumed by use, is regulated by the laws*

relating to loan for consumption or mutuum, whenever power has been granted to the depositary to make use of the thing deposited on the sole condition of returning as much of the same kind and quality."

Decide

Therefore, in the light of the above, the Tribunal decides this case by accepting plaintiff's claim to the amount of one thousand five hundred Euro (Eur 1,500) and consequently condemns defendant to pay to the plaintiff the said amount of Eur 1,500 together with an 8% interest which should run as from the 15 July 2021. All costs shall be borne by the defendant.

Avv. Ilona Schembri

Adjudicator