Court of Magistrates (Malta)

APPLICATION NUMBER 108/2020: **LEOPOLD FRANZ MIZZI (ID. 152614A) TRADING AS PROJECTWORKS V. JOSEPH BONNICI (ID. 884052M) TRADING AS GRF DESIGN CONCEPTS**

(APPLICABLE LEGAL PRINCIPLES WHEN THE COURT IS FACED WITH CONTASTING VERSIONS – ONUS PROBANDI)

MAGISTRATE: DR. VICTOR G. AXIAK

9 October 2023

THE COURT,

having seen the application filed by Leopold Franz Mizzi trading as ProjectWorks ("the applicant") on 14 July 2020[1] by means of which he called upon Joseph Bonnici trading as GRF Design Concepts ("the respondent") to appear before the Court to answer to his claim and indicate why he should not be ordered to:

Pay the debt of €10,596.85 (ten thousand, five hundred ninety-six Euro and eighty-five cents) which is the remaining balance from a larger sum due for construction and renovation works carried out for the defendant in a number of properties as per several invoices and credit notes, attached hereto and marked as **Doc.A.** For all intents and purposes, a translation to English of this notice is also being attached hereto and marked as **Doc. B** since Leopold Franz Mizzi is not Maltese-speaking and in fact, an application in terms of Cap. 189 of the Laws of Malta is being filed concurrently with this notice.

With costs, including those for the precautionary garnishee order bearing reference number 756/2020 and with legal interest accrued until the date of payment, against the defendant who is hereby summoned to testify by reference to the oath.

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[1] Fol. 1-10

having seen the reply[2] filed by the respondent by means of which he held that:

1. Illi t-talbiet tar-Rikorrent huma infondati fil-fatt u fid-dritt u dan għar-raġunijiet li ġejjin:

2. Illi l-ammont mitlub mir-Rikorrent ċertament mhux dovut;

3. Illi mingħajr ħsara għal dak hawn fuq sollevat, jekk xejn is-somma kkontemplata hija ferm inqas u żgur mhux iżjed minn tlett elef, mija u tnejn u tmenin Ewro u sitta u tmenin ċenteżmi (€3,182.86ċ), inkluż VAT.

   Għaldaqstant it-talbiet tar-Rikorrent kif dedotti għandhom jiġu miċħuda in toto.

   Bl-ispejjeż kollha kontra r-Rikorrent, inklużi dawk tal-Mandat ta' Sekwestru Kawtelatorju 756/2020 intavolat quddiem dina l-Qorti.

having seen all the documents in the Court file,

having seen the final notes of submissions of:

- the applicant, represented by Adv. Dr. Martina Camilleri[3],
- the respondent, represented by Adv. Dr. Antonio Depasquale and Adv. Dr. Luca Durovich[4]

gives the following

Judgment

A brief summary of the facts

1. The facts of this case are broadly as follows: the respondent trading as GRF Design Concept is a contractor offering design, finishing, renovation, project management and turnkey services in the construction industry whereas the applicant trading as ProjectWorks is engaged in the business of gypsum and finishing works including the use of micro cement. The respondent regularly subcontracts the works for which he is engaged by his clients to third parties and the applicant has been one of his subcontractors since 2017. The applicant claims that in 2019 they struck a partnership agreement and that with regard to micro-cement works he would, over and above the standard subcontract rate (per square meter), be paid 45% of the net profits. The respondent categorically denies that any such agreement was ever reached and contends that his relationship with the applicant was always of a contractor-subcontractor nature. The applicant claims that he is due the balance of € 3,158.63 for works carried out at Plevna hotel before the partnership agreement

[2] Fol. 20
[3] Fol 131-148
[4] Fol 149-156

was reached and the balance of € 6,069.14, € 708 and € 661.08 for works carried out at the Truevo offices, Faley's apartment and Manduca's apartment respectively after the partnership agreement was reached, for a total of **€10,596.85**. The respondent contends in his reply to the application that the only amount due is at most € 3,182.86. In his sworn affidavit he then decreases this amount to **€ 2,801.50**.

Evidence

Works at the Plevna Hotel

2. In late 2018, the respondent was engaged in carrying out works at the **Plevna hotel** (now know as Hotel 1926) and subcontracted a number of services (venetian plaster and painting works) to the applicant. These were carried out in full by the applicant. Applicant claims that the total amount due to him for the subcontracted works amounted to €19,185.63 (inclusive of VAT) and that this is based on workings calculated by the respondent, sent to him by email dated 22 January 2019 (Dok A a fol 38-48). From this amount, the applicant claims that he was paid €16,000 and that therefore the balance of **€ 3,158.63** is still due[5]. The respondent claims that he could not find records of the remaining balance of his works but he nonetheless had offered the applicant to pay him €3,540 (i.e. more than the amount claimed) in pre-litigation negotiations. The respondent claims that he had offered this amount hoping to reach an amicable agreement in full and final settlement and that he is still owed payment by his client on this project. The applicant claims that after being paid € 16,000, he had waited for several months for the balance as the respondent wanted to confirm the measurements with his architect. However, he contends that the amount claimed by him and the relative measurements result from the documents attached to respondent's email dated 22 January 2019[6].

Alleged change in working relationship between the parties

3. The applicant testified that following the first few subcontracting jobs assigned to him by the respondent, the mutual trust and workload increased and at this point they agreed to enter into a partnership agreement. The arrangement, according to applicant, was that the respondent would-find clients and source the materials required for the projects while he would project manage all works related to ceilings, floors and walls as well as take care of the application and installation of the works.

4. Applicant stated that the joint venture wanted to offer a very high-priced décor finish called micro cement and he was in charge of applying this product. He had

[5] Fol 6
[6] Fol 38

suggested this type of finish due to its much higher durability and because of its very attractive profit margins. According to applicant, both he and the respondent travelled to Valencia, Spain, in January 2019 and following training were both awarded certification in the application of micro-cement.

5. The respondent flatly rejects applicant's assertion that they entered into a partnership and states that at no point, either acting personally or through the undertaking, was ever such an offer made to the applicant. Respondent says that the applicant had introduced him to the concept of microcementing and that he had agreed to support him as the applicant did not have the financial resources to take on such a venture for his own clients. The respondent paid for the trip and the relevant expenses. This was necessary as it was the producer's policy that microcement could only be sold to purchases who attain the relative certification.

6. The respondent also claims that he offered to subcontract to the applicant all microcement works required by the respondent's clients at the standard labour rate of €15 per square metre of material. With regard to clients introduced to him by the applicant, he offered him to pay him the said rate as well as 45% of the net profits (after deducting the expenses incurred for the material).

7. The applicant testified that this was not the case. He held that following the trip to Valencia, the respondent sent him a quotation for works that were going to be carried out to a new client (Victor Farrugia).[7] This client eventually withdrew his brief but the documents sent by the respondent to the applicant contained a blueprint for the new partnership arrangement between the parties. According to the applicant, the respondent was going to be responsible to procure the material while the applicant was to be paid the usual subcontract rate of € 15 per square meter of microcement as well as 45% of the net profits. The respondent denies that this arrangement was going to apply across the board for all future projects, whether or not the client would have been introduced to him by the applicant or not.

8. In support of his assertions, the applicant states that it wouldn't have made sense for him to obtain the relevant certification from Spain to remain a subcontractor given that the subcontract rates were vastly inferior to the market rate he could have otherwise sought as an independent contractor. He also says that in the same month the respondent had copied him with an email sent to a client[8] wherein he

[7] Doc D attached to the applicant's affidavit a fol 63-67
[8] Doc E a fol 66

referred to "our offer" in the sense that the offer was being made by the respondent in partnership with the applicant. The respondent denies that he was in any way referring to any partnership in the said email. Moreover, he reiterates that his undertaking enjoys a positive goodwill and repute, with experience spanning over a number of years within the relative sector and is further sufficiently and independently engaged and profitable. Therefore he implied that he did not need the microcement venture to be profitable and that the profit-sharing agreement was only being proposed to the applicant for clients introduced by the latter, as a means of helping him. He further says that he would have also profited from works carried out by the applicant on an independent basis since he would have to purchase the material from him.

Works at Truevo premises, Faley's Apartment and Manduca's Apartment

9. The applicant testified that the profit-sharing arrangement as proposed by the respondent for the works that would have been carried out for Mr. Victor Farrugia was going to be adopted for the microcement works that were to be carried out at Truevo's premises in Mriehel. In support of this assertion the applicant testified in his affidavit that the respondent had sent him an email on 15 August 2019 with a bill of quantities showing him the profit that would be made on the entire project.[9] According to the applicant, had the respondent intended to hire him simply as an employee or a sub-contractor for such job he certainly wouldn't have disclosed to him information regarding the projected profits but would have simply kept this to himself and paid him the standard fixed rate per square meter. Moreover in his affidavit the applicant referred to another bill of quantities that he had received from the respondent in the same period which according to him further shows the respondent's intention to execute the profit-sharing agreement. This email was sent to him on 17 August 2019 and in it the respondent whilst referring to "their offer" further asked the applicant to forward the offer to the client.[10] The applicant insists that the respondent wouldn't have asked me to send the quote to the client had he simply been his sub-contractor or employee.

10. The respondent denies that the respective works on the Truevo project were intended to be carried out in joint venture/partnership with the applicant based on the workings given for Mr. Victor Farrugia. In this regard the respondent stated in his affidavit that the only profit-sharing arrangement reached with applicant was his offer to give him 45% of the net profits (after deducting the expenses for materials) for clients introduced by the applicant. According to the respondent this

[9] Doc F a fol 68-70
[10] Doc G a fol 71-77

arrangement never materialised as the applicant did not introduce or refer clients to his business. Indeed when the applicant was independently engaged by a personal client of his (a lawyer by the name of Dr. Stellini – although in cross-examination the respondent conceded that the lawyer may have been a certain Dr. Meli) he did not refer this client to the respondent's business but only purchased the material from the respondent at a discounted price. With regard to the Truevo project, the respondent stated in his affidavit that his undertaking had been engaged to carry out turnkey services with a high budget for all the finishing works and supply of furnishings at the Truevo Offices in Mriehel covering around 2,600m2. Given the high budget allocated by the client, he had proposed the idea of microcement as a finish for given areas within the site, that is the washroom walls and the offices' lobby and this proposal was accepted by the client. The respondent insists that he subcontracted these microcementing works to the applicant at the rates referred to in Doc D (sic! the respondent was here referring to Doc F[11] rather than Doc D) attached to applicant's affidavit and no mention was ever made that they would be sharing any profits on this engagement. The bill of quantities[12] was sent to the applicant simply as a proposal with estimated quantities should he be willing to take up the microcement works in relation to the finishing of the ceiling and walls at the site at the relative labour rates, which rates are clearly indicated in the email.

11. The applicant testified in his affidavit that after works had started, the respondent unilaterally decided that the applicant could not work on the whole project since he was required on a different job (referred to as Faley's Apartment). The works carried out by the applicant were the microcement works in the bathrooms and the foyer of the Truevo offices. He declared that he received two progress payments from the respondent amounting in total to € 7,500. However after he had finished the works he was informed by respondent that he was reneging on the agreement to share his profits and instead insisted on paying him the subcontract rate of € 20 per square metre (without any additional share from the profits) which was an increase on the usual subcontract rate of € 15 per square metre. The applicant refused and issued an invoice for his share from the total profit made from his works (after deducting the expenses of an additional labourer who was brought in to help on the project) and for the cost of his labour at € 15 per square metre. The balance claimed for these works therefore amounts to **€ 6,069.14**.[13]

[11] a fol 68-70
[12] a fol 70
[13] a fol 51

12. On his part, in his affidavit respondent held that the areas earmarked for microcementing works were intended to be completed at the initial stages of the project. This notwithstanding, applicant was caught up carrying out other works at the Faley apartment (also subcontracted to the applicant by respondent) which were prolonged due to delays on his part as a result of his slow pace of work. Besides giving him an extension to finish the works at the Faley apartment, the respondent agreed with the applicant to rope in an assistant subcontractor to assist the applicant with the completion of the works at the Truevo offices. The parties agreed that the payment due to this assistant amounting to € 1,500 would be deducted from the payment due to the applicant. The applicant was to be paid at the rate of € 15 per square metre. According to respondent, half-way through the assignment the applicant demanded a part payment of his services and refused to continue working for €15 per square metre. The respondent agreed to revised the rate to € 20 per square metre. For the umpteenth time the respondent reiterated in his affidavit that there was no mention, or even a remote intention from his end, of forming a partnership or profit-sharing agreement with the applicant. The respondent declared that the payment for the applicant's services at the Truevo premises, at the agreed rates and quantities, was of **€ 5,947.20**. He also stated that the part payment of € 7,500 was for all the applicant's engagements (i.e. Plevna Hotel, Truevo, Faley's Apartment and Manduca's Apartment).

13. With regard to works carried out at Faley's Apartment the applicant claims that the sum due to him amounts to € 708.[14] This amount is due for extra works carried out at the private house of Mr Faley. This sum was accepted and agreed to by the respondent in March 2020 as per correspondence dated 17 and 19 March 2020 respectively but has remained unpaid [15]. In his affidavit the respondent agrees that the sum of € 708 inclusive of VAT is due and payable to the applicant for the Faley engagement.

14. As for the works carried out at Manduca's apartment, the applicant stated in his affidavit that this project marks the last time that he worked with the respondent. For this project he was meant to take care of the gypsum works in the whole apartment. However, shortly after the commencement of these works, a dispute arose about the outstanding payments on all the projects. As a result, the applicant stopped his works in the apartment and took the measurements of all completed tasks. Based on these measurements, he invoiced the respondent the amount of **€**

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[14] Fol 54
[15] Fol 56-62 particularly the email a fol 57

<u>661.08</u>[16]. The respondent was reluctant to pay this amount as he did not bother to verify the measurements. The applicant contends that nonetheless the respondent acknowledged that he was due compensation for the unfinished works and in his email of 17 March 2020 he offered €420.[17] He then increased his offer to € 487 in May 2020. [18] The respondent also mentioned that he would be verifying the measurements through an independent surveyor but never got around to do it.

15. The respondent declared in his affidavit that at the Manduca apartment, his undertaking had been engaged to execute a couple of works, including plasterboard works which were subcontracted to the applicant. The amount due to the applicant according to the respondent is **<u>€ 487.67</u>** inclusive of VAT.

Considerations

16. By way of a summary, the amounts in dispute are as follows:

Project Name	**Amount claimed by applicant in application**	**Amount that respondent says is due in his reply**
Plevna Hotel	€ 3,158.63	€ 3,540
Truevo Offices	€ 13,596.14	€ 5,947.20
Faley Apartment	€ 708	€ 708
Manduca Apartment	€ 661.08	€ 487.67
(minus part payment)	(- € 7,500)	(- € 7,500)
Balance due	**€ 10,596.85**[19]	**€ 3,182.86**[20]

17. With regard to the works at the Plevna Hotel (that were carried out prior to the profit-sharing arrangement alleged by the applicant) Court notes that the respondent did not contest that he paid the amount of € 16,000 to the applicant and neither did he contest the documents attached to his email dated 22 January 2019 which contain a series of measurements. Moreover, in the sitting held on 18 October 2021, the respondent declared that he was not contesting that the works referred to in applicant's affidavit were indeed carried out.[21] Whether or not the respondent was paid by his client is irrelevant given that the subcontractual relationship between the contending parties was independent of any other contract reached by

[16] Fol 55
[17] Fol 61
[18] Fol 57
[19] The balance due as per invoice PW00420 a fol 51 was worked out incorrectly by the applicant as the amount of € 13,596.14 less the claimed party payment of € 7,500 leaves a balance of € 6,096.14 rather than € 6,069.14. This means that the total amount claimed in the lawsuit should have been € 10,623.85 rather than € 10,596.85
[20] In his sworn affidavit the respondent moreover stated that the amount due by him is €2,801.50.
[21] Fol 90

the contractor with his client (or the employer). Therefore, the Court finds that the balance of **<u>€ 3,158.63</u>** for works carried out by the applicant at the former Plevna Hotel is due and payable by the respondent.

18. Thereafter the applicant contends that the parties had entered into a profit-sharing agreement along the lines of the quotation sent by the respondent for the works that were to be carried out to Mr. Victor Farrugia (that never materialised), that is, the applicant would be paid for the microcement works at the rate of Eur 15 per square meter and would also be paid 45% of the net profits after deducting the expenses for the material (purchased from the respondent at a discounted price). The respondent flatly denies that the proposed arrangement for Farrugia's works was going to apply across the board for all further projects and contends that the only profit-sharing agreement in place was for clients that would be referred to respondent's undertaking by the applicant. The applicant insists that he is due a share of the profits earned by the respondent for works carried out by applicant at the Truevo premises. According to the invoice raised by the applicant[22], the price charged by the respondent for the works was € 37,245.76 (including VAT). After decreasing the costs amounting to € 21,664.11 (that include both the labour at € 15 per square meter amounting to € 6,584.40 that were payable separately to the applicant, the cost of the extra assistant employed for the works and the cost of materials) the gross profit stands at € 15,581.65 and therefore the amount of profit stated as due by the applicant at the rate of 45% amounts to € 7,011.74. The **<u>total</u>** amount due to applicant for this project was therefore € 13,596.14 and following payment of € 7,500, the balance due is € 6,069.14. The respondent claims that the payment of € 7,500 was on account of all the jobs entrusted to the applicant (i.e. including the other projects). He also insists that the total amount payable to applicant for this job was the rate of 327 m^2 at € 20 per square meter (€ 5,040) less the amount of € 1,500 paid for the assistant (allegedly on account of the applicant's delays), i.e. € 5.947.20 (including VAT).

19. The Court is here faced with two diametrically opposed versions. As held by the Court of Appeal (Inferior) in the case: **<u>Anthony Camilleri v. Maurice Cauchi et.</u>** (2021/1997/1 PS, 22/11/2002):

> *"In tema legali jiġi osservat li huwa prinċipju fil-ġurisprudenza li f'każ ta' żewġ verżjonijiet diametrikament opposti u li jkunu plawsibbli jew possibbli dan jiffavorixxi l-konvenuti in bażi*

[22] Fol 51

għall-prinċipju li onus probanti incumbit ei qui dicit non ei qui negat…Huwa l-attur li jrid jipprova l-fatti minnu premessi u allegati fiċ-ċitazzjoni."

20. Two fundamental rules of procedure under Maltese law are: *onus probandi incumbit ei qui dicit non ei qui negat* (the burden of the proof lies upon him who affirms, not him who denies) and *actore non probante reus absolvitur* (when the plaintiff does not prove his case, the defendant is absolved). These are enshrined in Art 562 of Chapter 12 of the Laws of Malta that provides as follows:

    562. Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it.

21. As eloquently held by the Small Claims Tribunal in the case **Joerg Bauerle v. Co-Gaming Limited** (European Small Claims Procedure, Claim no. 5/2017 KCX, 28/11/2017):

    … the burden of proof or, as is it is legally known, the "onus probandi" … is the duty of a party during proceedings (in this case the claimant) to produce the evidence that will substantiate the claims it has made against the opposite party (in this case the defendant company). That burden (onus) is shifted from one party to the other solely when a party initially burdened with the same manages to substantially prove its allegations. In that case, the burden of proof switches (or shifts) to the other side who must counter produce evidence to rebut the evidence submitted by its adversary (i.e., "reus in excipiendo fit actor"). Thus, fulfilling the burden of proof effectively attracts the benefit of assumption, passing the burden of proof off onto the opposing party.

    The present proceedings are of a civil nature and … the relative standard is that the claimant must prove his claim on 'preponderance of the evidence', also known as 'balance of probabilities'. This standard is met if the proposition is more likely to be true rather than not true…

    … From the Tribunal's vantage point, it is rather like a pair of scales – to win the case one needs to tip them a little bit past level. Therefore, if a judge reaches the conclusion that it is fifty per cent (50%) likely that the claimant is in the right, the claimant will have his case rejected or dismissed. On the other hands, if the judge reaches the conclusion that it is fifty one per cent (51%), or more, likely that the claimant is in the right, then the claimant will win the case.

    In the present case, it is the claimant who is 'burdened' to prove his allegations against the defendant company. Only when this burden is discharged, the onus passes onto the defendant company to show, through evidence, otherwise.

> *Moreover, it must be also underlined that the person who is ultimately to decide any issue of a factual nature must, necessarily, base his reasoning, findings and eventual decision, on the evidence formally produced before him and not by means of any ulterior investigations conducted motu proprio or ex officio (i.e., of his/her own initiative). This is all implicitly enshrined in our domestic legal system in the Latin maxims of "quod non est in actis non est in mundo" (what is not kept in records of the case does not exist), "secundum acta et probata non secundum privatam scientiam" (according to the evidence and not according to private knowledge of the deciding authority) and "non refert quid notum sit judici si notum non sit in forma judicii" (it matters not what is known to the judge, if it be not known in a judicial form or manner)."*

22. In this case, it is therefore the applicant who's required to discharge the burden of proving beyond a balance of probabilities that the parties had indeed agreed on a profit-sharing arrangement across the board for all projects following the works carried out at the Plevna Hotel. Such proof must inadvertently consist in objective and relevant evidence.

23. The Court notes that in his sworn affidavit[23], **Joseph Mizzi**, who is the father of the applicant's partner and also a childhood friend of the respondent, stated that prior to the trip to Valencia the applicant had informed him about the respondent's offer of a partnership whereby the parties would share the profits for the application of microcement. The witness also testified in the said affidavit that the respondent reneged on this agreement when the dispute about the outstanding payments cropped up and that this is evidenced in his correspondence with the respondent when he tried to intervene to settle the matter. This notwithstanding in the email attached to the affidavit dated 7 March 2020[24], which email was sent by the respondent to Joseph Mizzi in reply to the latter's email sent on the previous day, the respondent emphatically stated that:

> "*As for his invoice attached above, it is merely a fiction of Leo's imagination. I have entered into the micro cement only to help Leo and have gone through a certain expense to do so. I had verbally agreed that for any business in microcement, generated from his end, I was prepared to share the profits with him. This most certainly did not include any business that I would generate, as is the case for the works on this invoice…*"

24. The applicant sought to back up his profit-sharing claim by *inter alia* saying that:

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[23] Fol 81-82
[24] Fol 83

- it wouldn't have made sense for him to obtain the relevant certification from Spain to remain a subcontractor given that the subcontract rates were vastly inferior to the market rate he could have otherwise sought as an independent contractor
- the respondent's email dated 6 February 2019 sent to a client shows that he was referring to the undertaking's offer as "our offer" thereby implying that at that stage there was indeed a joint venture between the parties in relation to microcement works.

- the respondent's email dated 15 August 2019 sent to the applicant together with a bill of quantities showing the projected profit from the Truevo project is a clear indication of the profit-sharing enterprise since otherwise the respondent wouldn't have shared this information with him.

- the respondent's email dated 17 August 2019 sent to the applicant wherein he refers to "our offer" in connection with a quotation that the respondent asks applicant to forward to the client.

- it wouldn't have made sense for the applicant to bring the client himself, do the physical labour himself and then share the profits with the respondent for doing nothing at all.

25. The Court does not agree with the applicant that this evidence proves the existence of the profit-sharing agreement. At best it is a testament to a close professional relationship between the parties but it does not establish, beyond a balance of probabilities, that they were in a partnership as alleged by the applicant. Mere suppositions and deductions amount to nothing if not properly accompanied by relevant evidence supporting the same. The Court feels that the applicant could have, and indeed should have, produced other evidence and summoned other witnesses to back up his claims. For instance the applicant could have summoned Victor Farrugia to testify whether this client had been introduced to the respondent by the applicant or whether Farrugia had approached the respondent directly for his services. Evidence of the latter would have been a strong indication that the profit sharing arrangement outlined in the respondent's email dated 9 February 2019[25] in connection with Victor Farrugia was intended to apply across the board for all projects involving microcement irrespective of whether the client was

[25] Fol 63

introduced by the applicant or otherwise. As it happened, the only question in this regard was only put forward by counsel for the applicant by way of cross examination of the respondent when he was asked to confirm whether Farrugia was brought in by the applicant or not to which the respondent replied that he had absolutely no idea and that he had no idea of this client.

26. The Court considers that the amount that was therefore payable to the applicant for his works at Truevo was the subcontract rate of €20 per square meter (as subsequently increased by the respondent), i.e. 327 m^2 at € 20 per square meter amounting to **€ 7,717.20**. There is no sufficient evidence that proves respondent's assertion that the parties agreed to deduct the costs of employing an assistant (amount to approximately € 1,500) from this amount due.

27. With regard to the amount claimed by the applicant for works carried out at Faley's Apartment, i.e. **€ 708,** the Court notes that this amount is not in dispute.

28. Finally with regard to the amount claimed by the applicant for works carried out at Manduca's Apartment **(€ 661.08**)[26] the Court notes that the discrepancy between the parties lies in the respective measurements. Whereas the applicant calculated 44.51 m^2 of "Frame and Board" and 11.5 m of "Bulkhead", the respondent calculated 24.15 m^2 of "Frame and Board" and 8.2 m of "Bulkhead" (together with a separate measurement of 4.9m of "Bulkhead" at a separate rate).[27] This explains why the respondent claims that the amount due for this job is € 487.67. The Court notes that in the sitting held on 18 October 2021, the respondent declared that he was not contesting that the works referred to in applicant's affidavit were indeed carried out.[28] Therefore based on this declaration the Court finds that the applicant's measurements of his work are no longer contested and that the amount of **€ 661.08** is due for this job.

29. The amounts due and payable to the applicant are therefore: € 3,158.63 (Plevna Hotel) + € 7,717.20 (Truevo) + € 708 (Faley) + € 661.08 (Manduca), less the amount of € 7,500 which was paid on account by the respondent, for a total of **€ 4,744.91.**

Decision

30. **For the reasons above the Court partially accepts applicant's claim and condemns the respondent to pay him the amount of four thousand seven**

[26] Invoice fol 55
[27] Fol 57
[28] Fol 90

hundred and forty-four euro and ninety-one cents (€ 4,744.91) together with legal interest accruing from the respective invoice dates until date of payment. Given that the amount awarded to the applicant is substantially less than that claimed, all judicial costs (including those in relation to the precautionary garnishee order bearing reference number 756/2020) shall be apportioned as to 55% at the charge of the applicant and 45% at the charge of the respondent.

V.G. Axiak	Y.M. Pace
Magistrate	Dep. Registrar