



# TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR  
AVV. DR. DUNCAN BORG MYATT

Udjenza tat-23 t'April 2024

Talba nru. 25/2019

JOSEPH GAUCI NOE  
(KI 479555M)

*VERSUS*

DARMENIA FIORENTINA ET  
(KI 285563M)

THE TRIBUNAL,

Saw the Claim filed on the 4<sup>th</sup> of September 2019, whereby plaintiff on behalf of Absolute Services Limited claimed that defendants should be condemned to pay the amount of five thousand three hundred and eight Euros and eighty seven cents (€5308.87), an amount representing cleaning services carried out between the 25<sup>th</sup> January 2018 and the 14<sup>th</sup> March 2018, together with judicial costs including that of the judicial letter and interests.

Saw the note filed by plaintiff on the 17<sup>th</sup> of July 2019 whereby he declared that the amount being claimed was being reduced to the amount of five thousand Euros (€5000.00). (Fol.14)

Saw that defendant Josephine Darmenia was duly notified on the 30<sup>th</sup> of September 2019 (Fol.16) and notwithstanding the notification, defendant neither did she file any reply within the time period established by law nor attended the sitting of the 22<sup>nd</sup> October 2019. Hence, the Tribunal declared that defendant Josephine Darmenia as contumacious.

Saw that in the same sitting of the 22<sup>nd</sup> of October 2019, defendant Fiorentina Darmenia was duly notified but the period for the filing of a reply was still running.

Saw that defendant Fiorentina Darmenia appeared before the Tribunal during the hearing of the 21<sup>st</sup> of November 2019 and informed the said Tribunal that she does not understand the Maltese language and therefore, she requested that all the acts of the proceedings be translated into the

English language. Upon the Tribunal's order, plaintiff filed a note on the 26<sup>th</sup> of November 2019 with the Claim translated into the English language.

Saw that defendant Fiorentina Darmania filed her reply on the 27<sup>th</sup> of December 2019, wherein she claimed that the proceedings should be held in English, that the claim should be deemed as null and that there is no amount due since this cleaning service was never given.

Saw all documents.

Heard all evidence.

Saw the acts of the proceedings.

Saw the note of submissions of both parties.

Saw that this case was adjourned for judgment.

### Evidence

Joseph Gauci submitted an affidavit whereby he stated that he occupies the post of a Director of Absolute Services Ltd, a company which provides carer services. Plaintiff had exchanged emails with defendant Fiorentina Darmania, wherein he explained the services offered by his company. During this exchange of communication, plaintiff explained to the defendant that the *"carer will have a log sheet which they will have to sign, wherein there would be recorded the work and hours done by the carer and confirmed by them . . ."* This log sheet would then be used to calculate the payment due to the carer based on the number of hours worked. Following this communication, a meeting was held between plaintiff and defendant wherein further details of the service offered by plaintiff were given.

Plaintiff states that defendant confirmed the service for a carer on the 7<sup>th</sup> of March 2017. However, on the 30<sup>th</sup> July 2017, Fiorentina Darmania *"cancelled her interest in our service as she found out that Agenzija Support are not going to pay for it. . ."* Notwithstanding that plaintiff had already found a carer to assist defendant, he acknowledged the cancellation for this service. Following defendant's cancellation, plaintiff states that *". . . another email was subsequently sent asking for the service again . . ."* (Fol.95)

Due to defendant's change of mind, plaintiff had re-applied in September 2017 for another carer. The process to was taking long and defendant had suggested to plaintiff to *"go to Rome myself and get the papers sorted as she really needed this service . . ."* Throughout this process, plaintiff kept defendant informed of every development. Eventually, the carer, Heidi Dugarin, arrived in Malta on the 14<sup>th</sup> January 2018 and commenced working on the 24<sup>th</sup> January 2018.

Plaintiff states that, *". . . as from the beginning had already started complaining as she wanted the carer to serve breakfast in the morning on a Sunday and stay till 9:30am and then to return back Sunday evening by 5pm."* The carer was supposed to have a day off every week which was meant to be on a Sunday and therefore, *"Heidi would have had to be paid an additional fee to cover these hours being worked over-time. This was explained to Fiorentina to which she had agreed."*

In March 2018, Heidi had informed plaintiff, that defendant had given her a list of chores, which were being carried out between 5am and midnight. The company's Human Resources department had sent an email to the defendant informing her about the need to sign off the hours worked by the carer. Defendant refused to sign these log sheets. When plaintiff's company realised that the carer was indeed carrying out cleaning and housekeeping tasks, defendant was informed that a charge of €8.50 per hour was going to be charged for these extra jobs. Plaintiff states that they had informed Agenzija Support, *"In fact, whilst Stefan was at work, Heidi carried out jobs in the house like cleaning clothes and any other chores which were not concerned solely with the up-keep and care of Stefan, but which were for the benefit of anyone else living there as well."*

Plaintiff continues by saying that when Agenzija Support visited defendant's house to check upon the carer's tasks, defendant had stopped the carer from staying in their house. Subsequently, defendant asked plaintiff to terminate the contract of service.

The amount being claimed represents *"the amount of hours worked by Heidi from her log notes and found out that she had worked the total of five hundred fifteen hours extra for the duration in which the service was given, from that agreed upon. . ."* (Fol.97)

The carer, Heidi Bugarin submitted an affidavit (Fol.137 et seq) wherein she stated that she arrived in Malta on the 15<sup>th</sup> January 2018 and started working with Absolute Services Limited as a carer. Her first assignment was taking care of Stefan Darmenia. The witness states that Stefan Darmenia lives with his mother in an apartment in Rudolph Street Sliema whilst Fiorentina Darmenia lives in a different residence in the same street. The witness presented a list of tasks which was given to her by defendant Darmenia Fiorentina. (Fol. 140).

In her affidavit, the witness says that she was expected to work 40 hours a week and anything over this amount was to be considered as overtime. These 40 hours were distributed on 7 days, Monday to Sunday. The witness states, that she was finding it very difficult to carry out all the tasks given to her by defendant in 40 hours. Notwithstanding that the witness used to fill in the log sheets, as requested by her employer, the defendant refused to counter sign these sheets. Amongst the tasks given, the witness had to accompany Josephine Darmenia to mass, to hospital and clean the whole house.

When the witness refused to carry out a particular task given by Josephine Darmenia, the latter called Fiorentina Darmenia (Fol.138) who told her, *"You need to do everything my mother says, we are your bosses."* Following this incident, the witness called her employers and told them about what was going on. The witness states, that, *"I continued to work at the residence of Josephine Darmenia until one day Josephine realised that her son, Stefan Darmenia, was signing the contract of service with Absolute Services Ltd, the company which I work for."*

Defendant Fiorentina Darmenia exhibited an affidavit, wherein she stated that her brother Stefan Darmenia did not sign any contract with Absolute Services Ltd. She also denies having entered herself into any contractual obligations with Absolute Services Ltd. (Fol.155)

During the sitting of the 1<sup>st</sup> November 2021, defendant was cross examined. (Fol.164A et seq). Defendant states that there was no agreement with Absolute Services Ltd. However, asked whether her brother had signed the agreement, defendant replied, *"I have no idea to be honest what my brother did. I am here to witness for what I have done. So, I really, I mean I can't say"*

*what my brother signature looks like in general; but if he actually signed a paper that you are showing me now, I am sorry, that is not written in my affidavit."*

Pressed with further questions under cross examination, defendant replied that ". . . *this is now 3 years ago, but as far as I remember this is nothing to do with me.*" (Fol 164C) Defendant kept replying that she did not know anything or remember anything.

### Considerations

Plaintiff instituted this case to claim five thousand Euro (Eur 5000), representing an unpaid amount of money for cleaning services rendered extra by his employee upon defendant's orders. The employee, who had signed a contract to work as a carer, was supposed to be taking care and assisting defendant's son and brother. Although, plaintiff states that his employee was tasked to do several house chores which were outside the scope of her assignment, defendant claims that there is no contractual obligation between the parties.

Primarily, the Tribunal refers to Fol.99 of the acts, an exchange of emails between plaintiff and defendant wherein plaintiff had explained clearly the carer's conditions. These conditions provided that the carer should have a ". . . .*day off every week to be determined by yourselves. Not expected to work more than 6 ½ hours a day. Daily log in time sheet will be required to be filled and signed. Carer will help in house cleaning and washing if needed*".

The job description (Fol.124 et seq) further confirms that the carer's main job was to provide personal care and support the client, which in this case was Stefan Darmenia.

Defendant claims that there was no agreement signed with Absolute Services Ltd and in fact at Fol 155 defendant states that, "*the evidence exhibited by Messrs. Absolute to the Hon. Tribunal indeed does not display any such relation and hence confirms this.*" However, plaintiff have exhibited the "General Service Agreement" a Fol.128, which is signed between plaintiff and Stefan Darmenia. This agreement follows several email exchanges between plaintiff and defendant in which defendant personally had confirmed and even pressed plaintiff to act fast to provide a carer for her brother. In fact, defendant had personally chosen between the option of services offered by plaintiff.

There is no doubt that plaintiff sent a carer to give the service required and chosen by defendant. The conditions for the service are set in the agreement signed by Stefan Darmenia. Although, defendant claims that her brother should not have signed such an agreement, she confirms that there is no impediment holding her brother from signing. Hence, the agreement shall be considered as valid and enforceable.

Hence, this Tribunal will examine whether the amount claimed by plaintiff is due by defendants.

The Tribunal notes that defendant Josephine Darmenia was declared contumacious. However, this does not mean that such defendant has aborted her defence pleas. Our jurisprudence is clear about this legal stance and plaintiff should prove his claim against defendant. However, from the acts of this case, the Tribunal is of the opinion, that defendant Josephine Darmenia played no part in the exchanges, negotiations or discussions with plaintiff company. Plaintiff did not produce any evidence linking defendant Josephine Darmenia with their claims except for the fact that the

services to her son were being given in her residence. Hence, the Tribunal declares that defendant Josephine Darmania is not the person who should answer for plaintiff's claims.

The same cannot be said with regards to defendant Fiorentina Darmania. She was the person who asked plaintiff company to provide the service. Defendant used to communicate continuously with plaintiff company to push them to provide the service. At one point, defendant cancelled the request for the service but then again requested the service, analysed the options offered to her and chose the required services from plaintiff company. She inquired about plaintiff's service and led the discussions up to the point where she decided which 'package' she takes for her brother's needs.

The carer, Heidi Bugarin, confirmed under oath that she was being tasked with several house chores such as cleaning the common parts, cleaning of windows and other chores. She states, that the list of chores was so long, that it was hardly possible to carry out all the tasks within a 40 hour week. Furthermore, the carer used to present her logged worked hours to defendant, who refused to countersign such sheets. When the carer refused to carry out certain tasks which were not covered by her job description, defendant Fiorentina Darmania instructed her to do what they were asking her to do since they were the 'bosses'.

The Tribunal notes, that the signing of such logs was not only an obligation stipulated in the contract, but also the means to keep track of the number of hours being worked. Defendant gives no reason why she kept refusing to sign these logs, even when she was reminded of such an obligation by plaintiff company.

The Tribunal is convinced that although defendant asked for a carer to assist her brother, the job description was being extended to take care of anything happening and needed within the residence. The cleaning of the common parts, cleaning of windows and medical visits with defendant Josephine Darmania did not fall within the carer's scope of services.

It is pertinent to note that although the discussions and the final decision on which option to take were all taken by defendant Fiorentina Darmania, the contract with plaintiff company was signed by defendant's brother Stefan Darmania, who is not a party in these proceedings. Based on the evidence presented to this Tribunal, Stefan Darmania had no say and had nothing to do with plaintiff company even though the agreement bears his signature. Notwithstanding this, the Tribunal notes that it is undisputed that defendant Fiorentina Darmania, requested and accepted plaintiff's service, pressed plaintiff company to send the carer, gave several orders to plaintiff's employee and kept negotiating on behalf of her brother with plaintiff company till the day she ordered the carer to leave the house.

According to plaintiff company, their employee's logs show that the carer had worked for 515 hours in a 7 week period. According to the agreement, the carer should have worked a total of 280 hours at a normal rate. Hence, plaintiff are seeking compensation for the balance of 235 hours worked extra at an hourly rate of Eur 8.50, which brings the total amount to Eur 1,997.50. Furthermore, the agreement states that if the agreement is terminated without giving 30 days notice, the Client is liable to pay two months service fee. Given that defendant was paying Eur 1235.00 per month, the amount due in terms of penalty amounts to Eur 2470.00. Hence, according to the Tribunal the amount due is Eur 4,467.50.

**Decision**

Therefore, the Tribunal decides this case by upholding claimant's claim only in relation to defendant Fiorentina Darmania and orders defendant Fiorentina Darmania to pay the claimant the sum of four thousand four hundred and sixty seven Euro and fifty cents (Eur 4467.50) and orders defendant to pay interest at a rate not higher than the maximum rate allowed under Maltese law, calculable from the date of the filing of this claim (4<sup>th</sup> September 2019) until the date of effective payment and orders defendant to pay claimant the costs of this case.

**Adv. Duncan Borg Myatt**

Adjudicator