



# TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR  
AVV. DR. DUNCAN BORG MYATT

**Sitting dated 2<sup>nd</sup> May 2024**

**Claim Number. 180/2022**

**DAVID WATERS  
(KI 0141417A)**

*VERSUS*

**GEORGE PACE  
(KI 0757855M)**

**THE TRIBUNAL,**

Saw the Notice of Claim filed by the claimant on the 17<sup>th</sup> June 2022 whereby plaintiff requested the Tribunal to declare that the defendant is a debtor in favour of plaintiff and to pay the amount of four thousand seven hundred eighty six Euro and forty cents only (Eur 4,786.40) which amount represents storage fees. With legal costs including the judicial letter 618/22 and with interests.

Saw the reply presented by defendant on the 20<sup>th</sup> September 2022 wherein he stated that the amount being claimed is excessive and there is neither an agreement nor an inventory, substantiating the claim.

Saw all evidence.

Heard the submissions.

Saw the acts of the case.

Saw that this case was adjourned for judgment.

## Evidence

Before making its considerations, the Tribunal shall provide a summary of the evidence submitted during the acts of the proceedings.

Plaintiff gave evidence during the sitting of the 17<sup>th</sup> December 2022, whereby he explained that his business, which operates under the name of Waters White Van, consists of “*removal and storage service*”. He explained that in December 2019, defendant had requested plaintiff to remove some boxes from a storage facility. Plaintiff gave a price for the storage facilities and a separate price for the removal of items.

Plaintiff further explains that following the agreement with defendant, plaintiff company collected the items. Defendant was charged the sum of Eur 118 for the collection services but no payment was made for the storage facility. The parties agreed that defendant had to visit plaintiff’s facilities to confirm the amount of items stored and pay accordingly.

Following the storage of defendant's items, plaintiff says that (Fol.12D), “*. . . but unfortunately did not place the client’s name on the palettes, in the items on storage. Also, the following week my office failed to pick up on this and they, failed to realise that we had had a delivery into the warehouse and the items had not been paid for.*”

Plaintiff says that it was only after a couple of months that he realized that there were items stored in the facility without name and no one had any knowledge of who they belonged to. After around 12 months, defendant had contacted plaintiff’s company to inquire about his stored items. It was at this point that plaintiff realized that the unnamed items belonged to defendant and consequently informed defendant that there was an outstanding bill covering the 12 month period.

Defendant had visited the storage facility to check upon his items but did not effect any payments. Plaintiff states that the price quoted for the storage was Eur 35 plus Eur 5 per palette and even though the price during the year 2020 had increased, he was not claiming this increase for the first 12 months of storage.

Ross Yarnold, an office administrator with plaintiff, gave evidence on the 28<sup>th</sup> February 2023. The witness said that defendant had gone to the warehouse and paid Eur 500 and promised to pay the remaining balance. Notwithstanding this promise, no further payments were made.

Defendant exhibited his own affidavit wherein he confirmed that he had requested plaintiff’s service for 40 cubic meter storage facilities. The service was given in mid-December 2019 and defendant paid for the transportation service. Defendant continues saying, “*I was never contacted by Waters White Vans and I put this down to their current workload and the fact that it was after all a long term storage but after a year had almost gone by I came across my diary notes and phoned the telephone number that I had stored on my smart phone. . . . .Sure enough Waters White Vans came back to me by way of an invoice which was more than I ever thought it would be as it was charging at what they said was their standard rate of Euro 40 per pallet and I had 4 pallets according to them.*” (Fol.52)

Defendant states that he had asked plaintiff to draft a written agreement including an inventory of the items stored. Plaintiff replied back that he was keeping the same agreed price covering the

year 2020. According to defendant, the amount requested by plaintiff exceeded the agreed amount by Eur 2000. Defendant states that during a meeting with an office administrator, he paid another installment of Eur 500 *“on account just to show my goodwill”*. He further states that, *“I am now in a position where I can safely say that the matter will be settled one way or another by the end of the year but in the meantime I have received emails showing an increase in payment demands as well as the present case against me in the Tribunal.”*

Defendant was cross examined on the 18<sup>th</sup> May 2023, wherein he stated that, following the collection of all items, plaintiff was meant to phone him to give him an appointment to visit the storage facilities. Asked about the fees charged by plaintiff, defendant replied that, (Fol.63), *“That wasn’t the agreement that I had. The arrangement was for long term storage. I called at the office of Mr. Waters after one year.”*

Upon being asked what defendant implied in his affidavit when he stated that this issue was going to be solved in one way or another, defendant replied that, *“In other words, I am about to receive an amount of money. I am purchasing my own garage and consolidating everything in one place.”*

### Considerations

Plaintiff has instituted these proceedings claiming that defendant owes him the amount of Eur 4786.40 for storage facilities given to defendant. The latter contests this amount and states that this exceeds what was agreed between both parties.

There is no contestation as to the storage services given. Plaintiff has exhibited various exchanges with defendant, whereby the service was confirmed and actually given. On the other hand, defendant confirms that he requested the service and that his items were stored with plaintiff.

Hence, the only question to be determined by this Tribunal is whether, the amount of Eur 4786.40 is all due by defendant.

During his testimony, defendant confirms that he has already given the sum of Eur 500 on account of what is due by him. He also acknowledges that he owes money to plaintiff for this service given, particularly when he reiterates in his affidavit that, he received an invoice which was far off from what he expected and that he wanted to solve the balance due. The question that remains is the quantum.

Plaintiff’s claim of Eur 4786.40 is based on Eur 5,286.40 storage facilities for the period covering the 28<sup>th</sup> December 2019 till the 1<sup>st</sup> March 2022 less the amount of Eur 500 paid by defendant on the 20<sup>th</sup> December 2021.(Fol. 3A). This invoice was issued on the 8<sup>th</sup> March 2022.

The Tribunal notes that plaintiff had obliged himself to set up an appointment with defendant, following the collection of all items. During this particular meeting, defendant was supposed to pay an amount covering storage facilities. However, this meeting was never convened due to no fault from defendant. Had it not been for defendant who phoned to check upon his items, plaintiff would not have known, after a year, that those items belonged to defendant. Within the ambit of a storage facility business, the Tribunal considers this as carelessness.

The period for which plaintiff is requesting payment is between the 28<sup>th</sup> December 2019 and the 1<sup>st</sup> March 2022. Defendant has not contested this period. Hence, defendant owes plaintiff for

storage facilities for a period of 26 months (Year 2020, Year 2021 and 2 months in Year 2022). The original agreement, which plaintiff had sent to defendant and upon which the service was agreed, was based on a rate of Eur 35 per pallet per month plus Eur 5 per pallet. Defendant had four pallets stored at plaintiff's facilities. This brings the amount to a total of Eur 140 per month plus the Eur 20 per pallet.

The Tribunal does not agree with plaintiff that the rate should be increased to Eur 40 per pallet following the first year, since this rate was never mentioned or communicated to defendant. The Tribunal reiterates that plaintiff was careless in his service given to defendant when one considers that defendant's items were not labelled and the fact that there was no communication whatsoever for a period of one year. Hence, the Tribunal shall consider the original rate communicated with defendant when it comes to the total computation of the sum owed for the storage period.

Given the above, the Tribunal finds that defendant shall pay plaintiff the amount of Eur 20 for the pallets (Eur 5 per pallet per month) and Eur 140 (Eur 35 x4) for the storage facility for the whole period, which brings the total amount owed by plaintiff to Eur 4160. Out of this amount, defendant had paid Eur 500 and hence the balance due to plaintiff amounts to Eur 3660.

### **Decision**

Therefore, this Tribunal is deciding this case by upholding plaintiff's claim limitedly to the amount of three thousand six hundred and sixty Euro (Eur 3660.00) and orders defendant to pay plaintiff the sum of Eur 3660.00 together with interest at a rate not higher than the maximum rate allowed under Maltese law, calculable from the 17th June 2022 until the date of effective payment together with all costs of this case.

**Avv. Duncan Borg Myatt**

Adjudicator