COURT OF MAGISTRATES (MALTA)

DR. RACHEL MONTEBELLO B.A. LL.D.
MAGISTRATE

Application Number : 114/2022 RM

Mihai Leonti

-Vs-

Ana Isabela Trifescu

Today, 13th May 2024

The Court,

Having seen the Application filed by plaintiff, Mihai Leonti, in the Registry on the 31st May 2022 where he requested that defendant Ana Isabela Trifescu is condemned to pay the plaintiff the sum of six thousand, two hundred and ninteen Euros and twelve cents (€6,219.12) in respect of works carried out as instructed by defendant in her property in Ta' Xbiex, including material, as clearly resulting from the documents hereto attached and marked as Doc A. With costs against the defendant, including those of the judicial letter 700/2022 issued against the defendant who is hereby summoned to testify. With interests until the date of effective payment, against the defendant.

Having seen the Reply filed by Ana Isabela Trifsecu on the 30th June 2022 where the following pleas were raised:-

1. That firstly, whereas the respondent shall not be formally requesting the nullity of the acts, it ought to be stated that the applicant, who si also a foreign national, knew or ought to have known that the repondent does not understnd the Maltese language and that consequently the judicial acts ought to have been filed also in the English language. In any case the respondent, who is of Romanian nationality, requests that these proceedings are conducted in the English language so that she could be able to understand and follow all that is being said. In any case, and as prescribed in article 2(a) of Chapter 189 of the Laws of Malta, where both parties do not understand the Maltese language, the proceedings shall be conducted in English;

2. That secondly, and on the merits, respondent pleads that the applicant's claim is unfounded in law and in fact and this principally based on the following reasons:-

   2.1 That prior to any other consideration the applicant must explain and precisely clarify his assertion that the payment of a balance of six thousand two hundred and nineteen Euros and twelve cents (€6,219.12) is due to him. This is being stated for the reason that the statement attached to the application ('A') is not at all clear, apart from the fact that there seems to be no correlation between the figures indicated in the quotation, also exhibited, and which is written in the Romanian language. It is additionally stated that prima facie the applicant is twice reporting the figure of four thousand five hundred Euros (€4,500) in connection with the works relating to the external hand railing and which sum has long been settled by the repondent – as a matter of fact this was settled prior to the applicant providing the invoice numbered "634" as shall be proven;

2.2 That whilst the respondent hereby reserves her rights to present additional pleas following the explanation requested, it also ought to be stated that she has already paid the applicant the sum of ten thousand nine hundred and sixty Euros (€10,960) for the works conducted and/or products supplied by him; which sum actually exceeds the amount indicated in the quotation exhibited by the applicant himself;

2.3 That in any case, and without prejudice to the aforesaid, the applicant not only failed to conclude the works within the agreed timeframes by he also failed to carry out the works with the requisite art and skill of the trade, as certified by Perit Gordon Zammit. As a consequence of the applicant's carelessness and inexperience, the respondent had to incur substantial expenses to remedy such works, apart from the fact that she also incurred loss of income from the property in question until such time that the repairs were carried out.

3. Saving additional please.

With costs against the applicant, including those of the reply to the judicial letter 166A of the 11th April 2022 and the judicial letter numbered 947/2022 of the 2nd May 2022.

Having seen the counter-claim filed by Ana Isabela Trifescu in terms of article 396 of the Code of Organisation and Civil Procedure (Chapter 12) contemporaneously with her Reply, where it was premised:-

1. That the counter-claimant had engaged the counter-claimed to conduct finishings and other works and/or to provide movable objects related to interior design in the penthouse jointly owned by her husband Florin Bumbariu situated in Triq E. Galizia, corner with Triq G. Mitrovich, Ta' Xbiex;

2. That the counter-claimaint and her husband have already paid the counter-claimed the sum of ten thousand nine hundred and sixty Euros (€10,960) for these works and/or supply of moveable objects and for which payment the counter-claimed failed, until the last few weeks, to provide any fiscal receipts, and only after he had been served with a judicial letter (a copy of which is herewith attached) for this purpose;
3. That in any case the counter-claimed not only took a substantial amount of time to execute the works with which he had been commissioned by also failed to carry out such works according to the art and skill required by the trade;
4. That as a consequence of the above the counter-claimant has suffered considerable damages amounting in total to six thousand seven hundred and three Euros (€6,703), or such other greater sum which however does not exceed fifteen thousand Euros (€15,000), and which sum represents costs and professional fees incurred to remedy that bad workmanship conducted by the counter-claimed (€4,703) and also loss of income from the property in question for a period of two months (€2,000);
5. That even though he was officially solicited to pay the above-stated amount by means of a judicial letter dated the 2nd of May 2022, the counter-claimed remained passive and for this reason the counter-claimant is hereby filing this counter-claim against him.

The counter-claimed shall thus state why this Honourable Court should not, for the reasons above stated:

1. Declare and decide that the counter-claimant suffered damages amounting globally to six thousand seven hundred and three Euros (€6,703), or such other greater sum which however does not exceed fifteen thousand Euros (€15,000), as a result of the delay on the part of the counter-claimed to execute the works as well as a resuly of lack of ability, art and skill in particulara trade;

2. Consequently condemns the counter-claimed to pay the counter-claimant the sum of six thousand seven hundred and three Euros (€6,703), or such other greater sum which however does not exceed fifteen thousand Euros (€15,000), together with legal interest running from the date of the judicial demand (2nd May 2022) up to the date of effective payment.

With all costs against the counter-claimed, including those of the reply to the judicial letter 166A filed on the 11th April 2022 and the judicial letter numbered 947/2022 filed on the 2nd May 2022, who is hereby summoned to testify with reference to his oath.

Having seen plaintiff's reply to the counter-claim filed on the 20th October 2022, where he pleaded:-

1. That the applicant categorically denies the respondent's allegation that the same applicant "took a substantial amount of time to execute the work with which he had been commissioned" and this since, as the respondent knows very well, the applicant carried out and completed his work within a very reasonable time of a few months, taking into account the extensive work required of him and also the changes made by the same respondent in the instructions given to the applicant from time to time.

2. That, in the second place and entirely without prejudice to the above, it clearly results that the parties never agreed that the work would be executed, much less completed, within a fixed time and therefore the respondent cannot unilaterally and ex post facto set a term that, according to her, such fwork should have been competed and hence proceed to claim that such a term also applies to the applicant irrespecively of all the circumstances of the case.

3. That the applicant also categorically denies the respondent's allegation that he "also failed to carr yout such works according to the art and skill required by

the trade". Contrary to this, the applicant carried out the work according to the best art and skill, diligently and to the best of his abilities and even offered the respondent to correct a small aspect of the work concerning the installed railing but she chose to keep the work as it is.

4. That also the respondent cannot complain about the work done by the applicant or try to avoid her obligation to pay the price for it when, in contradicition with what she alleged through her counter-claim, she chose to keep the material and all the work done and supplied to her by the same applicant.

5. That the applicant also catergorically denies that he caused any damages to the respondent as a consequence of his work. It is noted that the respondent does not jusify her claim in this regard nor does she state the basis of what she is requesting such damages and what such damages consist of. If there are damages to the work these were certainly not caused by the applicant but possiblly by third parties including workers who entered onsite after he finished the works and/or by the water leakage suffered by the property immediately after he finished the works.

6. That the applicant is also contesting the figures as indicated by the respondent in her counter-claim and declares that there are no damages to be liquidated against him.

7. That the respondent's counterclaims are unfounded in fact and in law and deserve to be dismissed with costs against the swame repondent.

8. Saving other defences.

Having seen that by virtue of a decree given on the 2nd of November 2022, it was ordered that the proceedings are conducted in the English language;

Having heard the testimony of the parties and their respective witnesses;

Having seen all the evidence and documents produced by the parties;

Having seen all the acts of the proceedings;

Having heard the oral submissions made by the respective legal counsel of the parties during the hearing of the 22nd April 2024;

Having considered;

The facts of the case, as would emerge from the evidence and acts of the proceedings, are as follows.

Plaintiff was engaged by defendant in order to execute a number of works consisting of finishing and refurbishment works relating to the interior design of defendant's penthouse at Ta' Xbiex. These works included laying pipes and wires and other modifications to the electrical and plumbing system, supply of furniture, painting works, installation of light fittings internally and externally, installation of a glass wall, supply and installation of plasterboard partition walls and features in gypsum. Plaintiff was also commissioned to install a hand-railing on the balcony and a wooden grille as well as a timber structure on the external wall.

An initial quote for the price of the works was issued for a total sum of €6,497.50 (document 'a' attached to plaintiff's affidavit). This was subsequently revised in order to reflect the price of additional extra works commissioned by defendant after the commencement of the works. It is undisputed that no formal contract of works was

drawn up and signed by the parties and that the agreement was verbal. The parties also agree that the communicated regularly via messages[1].

Plaintiff's claim is for payment of an unpaid balance due on a contract of works, in the sum of €6,219.12. The parties agree that defendant paid a total sum of €10,960 during the course of the works towards the price of the works.

Defendant contests the plaintiff's claim and submits that he failed to execute the works within the agreed time and according to good standards and practice. She also filed a counter-claim for the payment of the sum of €6,703 representing the damages suffered as a result of the defective works, comprising expenses paid to carry out the necessary remedial works, as well as loss of income from the premises over a two-month period.

Having considered;

That defendant primarily raised the issue that since plaintiff, who is a fellow Romanian national, knew or ought to have known that she is a foreign national who does not understand the Maltese language, he ought to have ensured that the judicial act was filed together with a translation into English language of said act. However she expressly declared that this plea was not to be construed as a formal plea of nullity of the acts of the proceedings.

However, the Court cannot fail to observe that despite the absence of a formal plea of nullity of the acts, defendant's argument in her first plea is in itself unfounded. Plaintiff had no obligation in Law to file a translation of the judicial act commencing proceedings, in the English language notwithstanding whether or not he was aware that defendant was an English-speaking person and his failure to do so could never

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[1] Plaintiff submitted together with his Affidavit translations into English of the correspondence exchanged between the parties and with defendant's husband Florin Bumbariu. The substantive content of these messages is not disputed by defendant.

lead to the nullity of the judicial act. Indeed, article 5 of the Judicial Proceedings (Use of English Language) Act, places this obligation wholly on the registrar and not on the person filing the judicial act:-

(1) Where any act is to be served on any person whom the registrar has reason to believe to be English-speaking, the registrar shall cause a translation thereof to be made into the English language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation.

The registrar is also required to annex a copy in the English language of the provisions of sub-article (1) to (4) of the said article 5 of Chapter 189, to every copy of any act which is to be served on any person, not only those persons who the registrar has reason to believe is English-speaking.

It must also be pointed out that even though in this case the registrar also failed to cause a translation into English of the act to be served on the defendant, evidently an English-speaking person, this failure cannot have the effect of inducing the nullity of the act or of the proceedings themselves, because the sub-article (2) of said article 5 of Chapter 189 provides and makes good for such failure not by prescribing the nullity of the act, but by affording the person served with the act the right to make to the registrar a declaration to the effect that he is an English-speaking person and to apply himself for an English translation of the said act. This right was not availed of by defendant in this case even though she was not served with either an English translation of the application, or a copy in English of sub-articles (1) to (4) of article 5 of Chapter 189.

Therefore, since the nullity is not expressly declared by law and the service of an English translation of the act, in the circumstances, is also not prescribed by law, whether or not on pain of nullity, and nor can it be said that the act served on the defendant is defective in any essential particulars expressly prescribed by law, any plea of nullity that might have been raised could never be successful. In any event,

the violation was capable of remedy and did not cause to the defendant any prejudice which could not be remedied.

In fact, she concurrently requested that in any event, the proceedings are conducted in the English language "*so that she would be able to understand and follow all that is being said*", a request that was upheld by the Court by virtue of a decree given on the 6th October 2022.

Having considered;

That plaintiff submits that he quoted a discounted price of €6,497 (VAT included) for the works, excluding the aluminium handrail which was invoiced for the price of €4,500 (VAT included). He claims that these prices were accepted by defendant and she began to make payments on account via Revolut after commencement of the works on the 3rd October 2021.

Plantiff maintains that as works progressed, defendant increased the list of works to be carried out such that the final bill by far exceeded the inital quotation but this notwithstanding, he managed to complete the entire works including the extra works effectively in about three months. The works commenced on the 3rd October 2021 as agreed with defendant, but as the works progressed, she ordered extra works to be carried out and the price of these extra works, in the total sum of €3,022.12 (VAT included) was added to the original quotation. According to plaintiff, these extra works consisted of: installation of a gas pipe, installation of new electricity sockets and switches both internally and externally which required additional chasing, trunking and re-plastering, new water point for the terrrace, relocation of existing light switches, plastering of airconditioning pipes, production and installation of three gypsum and light features in the living/kitchen room and upgrade of handrail from simple metal to aluminium.

That the disputed balance in the sum of €6,219.12 represents the balance of the price of all the works carried out by plaintiff including the price of the supply and installation of the external hand railings in the sum of €4,500[2].

- External Hand-Rail

Plaintiff submits that the original quotation did not include the price of the external hand-rail and that this was quoted for separately in the invoice dated 18th October 2021 (634) for a price of €4,500. Defendant disagrees that the original quotation in the sum of €6,497 excluded the price of the external railings in the sum of €4,500 and that the price of the railings was invoiced separately. She refers in this regard to quotations marked 'a' and 'c' attached to plaintiff's affidavit, and insists that in both quotations, original and updated, the price of the handrail is included in the total price of the works. She also claims that the separate invoice containing the price of the external handrail in the sum of €4,500 (VAT included)[3] was issued for the sole purpose of submission to the bank in order that the bank would allow drawdown of the payment from the homeloan, after the original quotation that included the price of the handrail, was rejected by the Bank.

The second quotation containing the extra works is also dated 3rd October 2021 as was the original quotation, but defendant insists and indeed the evidence shows, that this was issued by plaintiff and sent on the 10th December 2021. The original quotation was for a price of €6,497.50[4], while the revised quotation was for a total price of €8,424[5] , both inclusive of VAT.

The Court agrees with defendant: plaintiff himself testified that he issued two quotations for the works, the original quotation ('a') for the price of €6,497 and the updated quotation ('c') containing the value of the works including the extra works

[2] Excluding VAT.
[3] Document 'b': Invoice 634 dated 18th October 2021.
[4] Vide page 83.
[5] Vide page 85.

that were subsequently commissioned, in the sum of €3,022.12. He fails to explain why the invoice 634 issued on the 18th October 2021 in the sum of €4,500, was issued as an invoice at that stage, when it is evident that the handrails were quoted in the price of the original quotation and the updated quotation that included the additional works that were subsequently commissioned. It is also clear that the invoice could not refer to the increase in price between the iron railings and the aluminium railings since it results that as at 5th January 2022, plaintiff had only just suggested to defendant the alternative of aluminium railings in lieu of iron railings, and had not yet even obtained a quotation for the aluminium railings[6]. Moreover, the date of the invoice, 18th October 2021, coincides with the Bank's rejection on the 13th October 2021[7] of defendant's request for drawdown of an amount including the price of the railings on the basis of a quotation, and with defendant's re-submission of a request for payment on the 27th October 2021 of an invoice of 'Mihai Leonti' for the sum of €4,500[8]. The authenticity of the screenshots containing communication between defendant and the bank was not contested by plaintiff.

Above all, the exchange of correspondence between Florin Bumbariu and plaintiff, exhibited by plaintiff himself, is evidence in itself of defendant's version, where it would result that defendant's husband requested plaintiff to send an invoice for €4,500 representing the price of the external railings, which invoice was promptly sent by a .pdf attachment only a few minutes later ('E1' page 59).

The Court in view of all these considerations, has no reservations about defendant's version that the sum of €4,500 was extracted from the original quotation dated 3rd October 2021 and issued in the form of an invoice which was duly paid by defendant and consequently, the price of the external handrail in the updated quotation 'c' (attached to plaintiff's affidavit) also dated 3rd October 2021 but undisputedly issued

[6] Vide pages 68 ('E1') and 73 ('E2').
[7] Vide page 88.
[8] Page 89.

later on during the course of the works[9], should not have been reproduced in the said updated quotation, nor included in the statement of account as part of the updated quotation, and is not due by defendant.

Therefore, the sum of €4,500 must be deducted from the balance shown in the statement dated 1st February 2022 ('Document A'[10]).

The only amount that could be due to plaintiff in respect of the external hand-rail is the difference in price, if any, between the iron hand-rail that was originally quoted for, and the aluminium railings that were eventually installed on defendant's terrace. However in his testimony before the Court, plaintiff submitted that the invoice (634) for the sum of €4,500 represents the price of an aluminium external railing. The Court is not convinced of the veracity of this version since, as already pointed out, the aluminium option does not appear to have ever been discussed prior to the 5th January 2022, where in the messages it is evident that defendant did not give an immediate reply and required time to think about the alternative option and even requested an indication of the difference in price between an iron and an aluminium handrail.

It is established from the evidence that aluminium railings, as opposed to the originally-quoted iron railings, were installed on plaintiff's own suggestion, as would result from the exchange of correspondence on the 5th January 2022 where plaintiff proposed to defendant's husband that aluminium railings would be a far more appropriate option to iron railings. This proposal was accepted by defendant. The Court is satisfied, even from plaintiff's own testimony[11] that the aluminium option was raised at a very late stage of the execution of the contract of works and that until then, almost three months after the works had commenced, plaintiff had not yet ordered any railings, iron or otherwise, despite defendant having already paid the price of the railings over two months before,

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[9] On the 10th December 2021, as would result from the exchange of messages exhibited by plaintiff himself ('E1' and 'E2').
[10] Attached to the Application.
[11] See point 1 of plaintiff's Affidavit.

Defendant exhibited a photo of the invoice dated 5th January 2022 for the purchase of a railing[12] for the price of €767.98, sent by plaintiff to defendant on the same date. Plaintiff does not contest that this invoice indeed represents the price of the handrail that he purchased for installation in defendant's terrace and the Court notes that he failed to bring any evidence of other expenses incurred for the installation of the handrail or evidence to show that the ultimate cost of the aluminium railings that he installed was higher than the price invoiced on the 18th October 2021.

The Court therefore concludes that while the sum representing the external handrail in the updated quotation dated 3rd October 2021 ('c') is not due to plaintiff (this sum having already been paid by defendant on the issue of a separate invoice), and must therefore be deducted from that part of the statement representing the price of the updated quotation, since plaintiff failed to bring any evidence to support the argument that the price of the aluminium handrail that was installed, exceeded the price of an equivalent iron handrail, no amount whatsoever is due to plaintiff in respect of the external handrail since this was already duly paid.

Having considered;

Defendant contests plaintiff's claim for the payment of several items of the works which she claims were not completed or inadequately carried out, and demanded a deduction from plaintiff's claim in respect of several items forming part of the agreed works.

It is undisputed that the parties entered into a contract where plaintiff agreed to execute a number of works in defendant's property, which contract falls sqaurely to be regulated as a contract of works or *locatio operis* and thus by the provisions of Article 1633 *et sequitur* of the Civil Code.

[12] Page 111.

It is an established principle of law that in a matter of a contract of works:

"*Min iwettaq bicca xoghol li ghaliha jkun gie inkarigat ghandu obbligu jaghti rizultat tajjeb u ta' vantagg ghall-klijent, u jekk jonqos li jaghti dan ir-rizultat, huwa jkun responsabbli ghad-danni, u la jista' jwahhal fl-ghodda, la fil-materjal li juza', la fl-intromessjoni tal-klijent u lanqas fl-istat jew il-kundizzjoni tax-xoghol preparatorju li fuqu jkun irid iwettaq ix-xoghol tieghu. L-appaltatur ghandu obbligu li jwettaq xoghol li jaghti rizultat konformi mal-htigijiet tal-klijent, u ghandu jirrifjuta jwettaq xoghol li jaf jew li messu kien jaf, mhux se jaghti rizultat utili.*"[13]

In a judgement delivered on the 6th October 2004[14], the Court reaffirmed the principle that the contractor is liable for all damages caused by defective works:-

"*Bhala l-ewwel principju huwa dottrinalment u gurisprudenzjalment ricevut illi l-appaltatur ghandu l-obbligu li jezegwixxi x-xoghol lilu kommess fis-sens li huwa ghandu l-obbligu wkoll li jara li dan ix-xoghol ikun sejjer isir utilment u mhux b'mod li l-quddiem juri difetti. "L'imprenditore ha l'obbligo di eseguire bene l'opera commessagli, secondo i dettami dell'arte sua, e deve prestare almeno una capacita` ordinaria" (Kollez Vol XXVII pI p373). Dan fis-sens li hu "ghandu jiggarantixxi l-bonta` tax-xoghol tieghu" (Kollez Vol XL pI p485).*

"It-tieni principju jghid illi "l-appaltatur li jezegwixxi hazin ix-xoghol li jifforma l-oggett ta' l-appalt huwa responsabbli ghad-dannu kollu li jigi minn dik l-ezekuzzjoni hazina" (Kollez. Vol XXXVII pIII p883). Ghax kif jinsab ritenut ukoll "f'kaz bhal dan hu ghandu mill-ewwel ma jaghmelx ix-xoghol jew ikollu jirrispondi ghad-difetti li jigu 'l quddiem" (Mario Blackman -vs- Carmelo Farrugia et noe", Appell Kummercjali, 27 ta' Marzu 1972). Dan hu hekk avvolja jkun hemm l-approvazzjoni tax-xoghol (Kollez. Vol XLI pl p667) jew l-appaltatur ikun mexa skont l ispecifications jew l-istruzzjonijiet lilu moghtija mill-kommittent."

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[13] **Coleiro Yacht Finishes Limited vs Easysell Kia (Malta) Limited**, decided 9th November 2012
[14] **Pierre Darmanin v. Moira Agius**.

In another judgement, **Francica vs Buhagiar**, delivered on the 28th April 2004:-

"*... l-appaltatur ghandu jesegwixxi x-xoghol lilu kommess fis-sens li huwa ghandu l-obbligu wkoll li jara li dan ix-xoghol ikun sejjer issir utilment u mhux b'mod li 'l quddiem juri difetti. F'kaz bhal dan hu ghandu mill-ewwel ma jaghmilx ix-xoghol jew ikollu jwiegeb ghad-difetti li jigu 'l quddiem, izda galadarba huwa accetta li jahdem ix-xoghol, dejjem jibqa' obbligat u responsabbli li jaghti lill-appaltant opera sodisfacenti u spondet peritiam artis u hu obbligat jirrezisti kwalunkwe intromissjoni tal-komittent*"

The basic underlying principle that emerges from settled case-law on this matter is that the contractor who executes works entrusted to him is bound to carry out the works in conformity with the employer's requirements and in a manner that produces an advantageous and positive result to the employer, failing which he is not only not entitled to payment but he is also responsible for ensuing damages that may be suffered.

As far as the remedies available to the employer in the event that the contract of works is not executed diligently or in accordance with the instructions given by the employer or where the contractor produced defective works, the First Hall of the Civil Court in the judgement **Lawrence Formosa et vs Silvio Felice**, explained how different remedies have been afforded according to the particular circumstances of each case, and held:-

"Kif jidher mis-sentenzi fuq citati, il-Qorti taghna f'certi kazijiet ordnaw il-hlas ta' prezz tal-appalt stabbilit "a misura" meta kien hemm difett parzjali mhux sostanzjali fix-xoghol, izda awtorizzaw lill-komittent jirritjeni parti mill-prezz sakemm l-appaltatur isewwi d-difetti. F'kazijiet ohra, fejn ix-xoghol gie ezegwit in parti sewwa u in parti hazin, giet negata lill-appaltatur kull parti mill-prezz fuq il-motiv li x-xoghol ma kienx sar skond ma titlob is-sengha. F'kazijiet ohra, l-Qorti ordnat li titnaqqas,

mis-somma li tigi mhallsa, s-somma stmata mill-perit bhala kumpens ghad-difett fix-xoghol."[15]

And, in the judgement **Borg et vs Galea et**[16], the Court of Appeal stated the following:-

"*Huwa principju assodat in materia li jekk n-nuqqasijiet riskontrati fix-xoghol esegwit huma essenzjali jew radikali, l-appaltant jista' jitlob li jigi dikjarat li l-kuntratt jinhall minhabba nuqqas ta' twettiq, u li jithallas id-danni minghand l-appaltatur. Jekk però n-nuqqasijiet riskontrati ma jkunux essenzjali jew radikali izda, jistghu jigu riparati, l-appaltatur ma ghandux jitqies inadempjenti izda, jkollu l-obbligu li jsewwi x-xoghol hazin jew jaccetta tnaqqis fil-prezz.*"[17]

It is therefore settled case-law that the contractor who carries out defective works or carries out works that are not in conformity with the standards of good workmanship or which produce no useful result to the employer, is liable for all damages that may ensue from the bad execution of the works and that consequently, as a corollary, the employer is not only entitled to reduce the price of those defective works which have no value for him, but also to claim by way of damages, compensation for resultant defects, which compensation may consist also, as the case may be, in those expenses which were incurred for the rectification of the bad workmanship or defective works or for the commissioning of replacement works.[18]

- <u>Internal Timber Partition</u>

Defendant claims that the sum of €240 representing the price of the internal timber feature partition which was allegedly mounted by plaintiff incorrectly and also

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[15] Cit. Nru. 1249/90, decided on the 27th June 2002.
[16] Decided on appeal, 19th May 2009.
[17] Vide also **Jesmar Valletta et v. Patrick Grech et**, First Hall, Civil Court, 20th March 2003.
[18] This principle is reflected in the provisions of Article 1640 of the Civil Code which stipulate that when the contract of works is terminated by the employer for a valid reason, the contractor shall be entitled to receive only such sum which shall not exceed the expenses and work of the contractor, after taking into consideration the usefulness of such expenses and work to the employer as well as any damages which he may have suffered.

damaged by him due to wrong and insecure installation, must be deducted from any balance claimed by plaintiff. She maintans that the partition was damaged by plaintiff and had to be removed and re-done by the designer Alexandru Blagescu, and she consequently incurred the expenses of double materials, work and time as per quotation[19]. These latter expenses form part of defendant's counter-claim for damages.

The Court observes that the interior timber partition wall was not designed by plaintiff, who was only commissioned to install it. However, defendant maintains that this was mounted inadequately and insecurely as well as damaged by plaintiff upon mounting, and cracks were observed in the wooden panels. She claims that there were also scratches and stains on the ceiling and wall that were caused during installation of the panels and the new wooden panels had to be repaired and re-installed by the designer himself.

Alexandru Blagescu testified that the wood that he had designed was damaged during fixing[20] and improperly installed. He explained that the wooden panels were not installed in a correct manner as it simply placed and not fixed either to the gypsum wall or to the ceiling and it was "*totally unsafe*". He also confirmed that the original design was correct and that the partition was eventually installed as it was originally designed to be installed, that is, between a wooden panel fixed to the ceiling and another wooden panel attached to the gypsum wall.

The Court is therefore of the view that since the work carried out by plaintiff produced no useful advantage to the client, so much so that the partition was damaged and had to be repaired, while the installation was unsafe and had to be re-installed, no payment is due to plaintiff for the price of this installation. Defendant states that the price of this item in the updated quotation ('b') is marked as €240 and the Court, from the basic translation service available on-line, agrees that the relative item in Romanian

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[19] Page 96.
[20] Vide crack in photos attached to his affidavit, page 161.

('*sectiune lemn pentru despartitor dormitor*') corresponds to the the work carried out on the internal wooden partition between the bedroom and the living room, the cost of which is marked as €240, excluding VAT. This is not due.

- <u>Bathroom</u>

Defendant claims that the sum of €210 representing the price of repairing and painting the bathroom, must be deducted from plaintiff's bill.

The evidence shows that on the 12th December 2021 when the property was fully decorated and painted except for a few minor touches, rain water seeped into roof and through the window in defendant's property, damaging the already-completed finishings, specifically the plastering and painting, with wet patches appearing on the walls.

Plaintiff claims that around that time, in December 2021 when all internal works had been carried out, defendant commissioned him to paint an existing gypsum soffitt ceiling in the ensuite bathroom. When he tried to paint the ceiling, the existing plastering was peeling off and he could not paint it in that state. He submits that the water ingress occurred because the roof of defendant's property was not properly sealed and although following the damage caused by the rainwater he advised defendant to seal the roof properly, until the 8th January 2022 when the external works were nearing completion, the roof had still not been fixed. However, he was not commissioned to carry out any works on the roof as part of the contract of works and defendant did not request that he repair the damage caused by the water ingress. He asked defendant to first find a solution before he could paint the bathroom ceiling properly, as otherwise the solution would have to be the total removal of the soffit and its replacement which he could not carry out himself in a timely manner.

From her part, defendant agrees that the water infiltration in the bathroom was not plaintiff's fault and therefore she is not claiming a refund of the price of the repair

works carried out by third parties. However, she submits that since plaintiff did not re-paint the bathroom ceiling, then he should have deducted the proportionate price from his bill. She testified that she engaged a certain Marius Ciocan to repair and paint the bathroom and for this work she paid a total of €413.00 (Vat included).

The Court observes that it is evident from the exchange of messages on Facebook messenger, that defendant accepted that the damage caused to the walls due to water ingress was not attibutable to plaintiff, and she also acknowledged that this damage was caused by "*infiltrations*"[21] that were not related to plantiff's work "*infiltrations that obviously not related to your work*"[22]. Alexandru Blagescu, defendant's designer, testified that rainwater ingress into defendant's property damaged the ceiling in the bathroom and the living room, meaning that the paint-work in these areas had to be redone through no fault of plaintiff.

The evidence also shows that contrary to defendant's assertions, plaintiff did in fact paint the bathroom ceiling which, however, was damaged by water infiltration which is acknowledged to have occurred through no fault of plaintiff. Therefore, defendant is not correct to insist that a proportionate amount representing the paint-work carried out in the bathroom, is to be deducted from plaintiff's bill, since the work was indeed duly carried out but damaged as a result of extraneous causes. In any event, defendant failed to bring satisfactory evidence to prove that the sum of €210 represents the proportion of plaintiff's fees for the painting of the bathroom.

On the basis of these considerations, the Court must conclude that while the sum of €4,500 (VAT included) representing the price of the external handrail, and the sum of €240 (excluding VAT)[23] representing the cost of the wooden partition installation, must be deducted from the balance claimed by the plaintiff in his statement dated 1st February 2022, no further deductions as requested by

[21] Page 75.
[22] Page 77.
[23] Total of €4,783.20 including VAT.

defendant are justified. Therefore, the balance that is due to plaintiff from the total balance claimed, in the sum of €6,219.12, is €1,435.92[24].

Defendant's Counter-Claim

That in addition to her contestation of certain items claimed by plaintiff in the statement attached to the Application, defendant filed a counter-claim in order to demand a refund of those amounts charged by plaintiff without just cause, and the reimbursement of those expenses that she claims to have disbursed in order to correct the defective works carried out by plaintiff and to effect finishing touches to incomplete or shoddy works, in the global liquidated sum of €6,703.

- Ikea Products

Defendant insists that she is to be refunded the sum of €300 representing one-third of the total price of €1,051 for transport and delivery and installation of the furniture supplied[25]. She maintains that one-third of the furniture items supplied by plaintiff did not require storage or installation but only delivery, since they were items intended for her personal residence, not for the premises where the works were being carried out. However she then claimed that the plaintiff only installed one-third of the furniture products.

In the Court's view, this does not add up. Defendant reproduced a message she sent to defendant on the 13th December 2021 where she requested delivery only of '*Ikea desk*' and '*pillow shelf*'. The Court notes that the furniture items were purchased on the 29th October 2021 (see statement 'A') while defendant requested the delivery of the said items, one and a half months later, meaning that in the interim, the items were

[24] €6,219.12 - €4,783.20.

[25] See document 'A': '*Sicily to Malta furniture transportation, storage, delivery up to premises and workman – 1,051.40 Euro*'.

being stored by plaintff but without any evidence to show that defendant had requested delivery prior to this date but this was not effected by plaintiff. Moreover, no evidence of the complete list of furniture items was brought, so defendant's assertion that the desk and pillow shelf comprised one-third of furniture items costing a total of €1,838.60, cannot be objectively assessed.

- Bathroom Ceiling

Defendant also requested reimbursement of the sum of €210 representing the repair and painting of the bathroom. She claims to have paid the total sum of €413.00 to a certain Marius Ciocan as per a quotation reproduced in her Affidavit[26], of which the sum of €210 forms part.

It has already been determined that plaintiff did indeed paint the bathroom ceiling but this was damaged through no fault of his own - as expressly acknowledged by defendant - as a result of water ingress from the roof which damaged the paint-work, and the Court accordingly rejected defendant's plea that the same amount of €210 must be deducted from the price of the paint-work claimed by plaintiff. Since the paint-work was ineffective not as a result of plaintiff's bad workmanship but due to extranous causes, it therefore follows that any amount that defendant may have paid to third party contractors to paint the same ceiling after the source of the damage was repaired, cannot be recovered in damages from plaintiff who does not bear any responsibility at law for any loss sustained by defendant in this regard.

Above all, and in any event, the purported quotation of Ciocan Marius Emil, shown on page 95 and page 143 of the acts of the case, was not confirmed on oath by the person who allegedly issued the quotation and no evidence was brought to show that defendant paid the said person for the work carried out in this bathroom or that this work was indeed carried out.

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[26] Page 95.

- <u>Timber Feature Partition Wall</u>

The Court has already determined that the sum of €240 representing the price claimed by plaintiff for the internal timber partition, is not due since this was not mounted securely and damage was also caused to the wood. However, this does not mean that defendant's claim for reimbursement of the sum of €493 paid to the designer, Alexandru Blagescu, must be upheld.

In her testimony, plaintiff asserts that all the work in connection with the interior wooden partition was redone[27] and that she had to commission other wooden panels because of the damages caused by plaintiff. She demands that she is refunded the sum of €493 which she paid for the repair and re-installation works, on the basis of an invoice issued by the deisginer Alexander Blagescu.

However, Alexandru Blagescu in his testimony before the Court, declared that the damaged wooden panels had to be restored, not replaced, and he also confirmed that he restored and re-installed the wooden partition himself. Moreover, he never mentioned that he charged any amount by way of fees or expenses for this additional work and neither did he make any reference, in his testimony by Affidavit or in cross-examination, to the copy of the invoice reproduced in defendant's original affidavit, and never confirmed that this document represents the price of the materials and design of the original structure. In the absence of further evidence, it is the Court's view that the invoice at page for the price of €493, which is undated, refers to the price of the original design and purchase of the materials for the internal wooden partition - which partition was not replaced but restored and re-used and re-installed by the designer himself – not of a new structure.

Therefore, once it does not satisfactorily result that defendant incurred further expenses for the restoration and re-installation of the said partition, plaintiff cannot be expected to make good for any damages that were not actually suffered.

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[27] See page 77 of the record of the proceedings.

It must also be pointed out, in connection with the re-installation of the wooden partition, that Alexandru Blagescu also confirmed in his testimony, that the ceiling of the room was scratched during re-installation works, thus excluding that these damages were caused by plaintiff.

- Damages caused by delayed works and the repair of badly-executed works

Defendant claims that plaintiff was in breach of the contract of works because he failed to complete the works by the agreed deadline, which she claims was the 18th December 2021. In her affidavit, she explained that the plan was that she and her husband would be able to move into the new apartment for Christmas and that plaintiff was aware of this deadline and agreed to it during a meeting held with the designer Alexandru Blagescu[28]. She admits, however, that there was no deadline agreed to in writing.

Plaintiff rebuts this assertion and insists that no deadline for the completion of the works was agreed to between the parties[29], save that defendant had advised him that the kitchen furniture was ready to be installed on the 18th December 2021. He maintains that prior to this date, all internal works had been completed and he had moved out onto the terrace to commence the external works, allowing the kitchen to be installed as scheduled and without interference or delay caused to other contractors. All works were completed within three months.

In support of her assertion, defendant testified that the bathroom sliding door was only installed on the 5th January 2022 and that the external handrail was also only installed on the 12th January 2022 after plaintiff, on the 4th January 2022, proposed as an alternative solution aluminium instead of the metal/iron railings which were quoted

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[28] However in an exchange of correspondence with plaintiff on the 15th January 2022 she claims to have lost "***two clients*** *because we didn't have anything to present to them*" (the Court's emphasis) – page 78 – thus seemingly contradicting her assertion that she intended to move into the premises with her family for Christmas.
[29] He also testified that as of 15th January 2022 the sanitrary facilities were not even connected to the water supply and also that water ingress problems in the premises had not yet been resoleved.

for and an invoice issued and paid in full, way back in October 2021. Moreover, she maintains that the timber feature partition was not even installed on the 27th December 2021 although the furniture was delivered at the premises on the 18th December 2021[30]. She claims that this contradicts plaintiff's assertions that the interior works were finished on the 15th December 2021.

From an examination of the messages exchanged between the parties, it would result that plaintiff acknowledges that the furniture was scheduled to be delivered in the premises on the 18th December 2021 but plaintiff argues, as would also result from his message dated 13th December 2021[31], that the agreement was that only the interior works were required to be completed by that date. He refutes that this agreement also applied to the exterior works. Alexandru Blagescu, the interior designer who oversaw the implementation of the project, confirmed in his testimony that the internal works were completed by the end of the year.

In the Court's view, the fact that the furniture was scheduled to be delivered on a particular date does not constitute conclusive evidence of an agreed deadline for the conclusion of all works. Nor does plaintiff's message to defendant that he "*wants*" to finish both interior and exterior design works within the next two days, constitute evidence of an agreed deadline for completion of works by that date. In fact, Alexandru Blagescu testified that during the initial meeting held at the beginning of October 2021 in the presence of both parties, "*a **preferred** period for completing the works, before Christmas 2021*"[32] was discussed.

Moreover, defendant contradicts herself when she claims that she had agreed with plaintiff for the works to be completed by the 18th December 2021. From a cursory examination of the correspondence exchanged with plaintiff, it would result that defendant claimed that the works had to be completed within three weeks. If the

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[30] See photo page 107.
[31] See page 72 of the record.
[32] Emphasis made by the Court.

works commenced in October 2021, according to defendant these would have had to be completed by the end of that month.

Defendant herself acknowledges that she ordered extra works after the original quotation was issued and therefore, even if one had to accept her version that the parties had agreed that the original works would be carried out within three weeks, this agreement was evidently superseded by the additional works that she commissioned herself as per updated quotation that was sent to her on the 10th December 2021[33] and also additionally confirmed by Alexander Blagescu in his testimony in cross-examination. In fact, due to extra works that were subsequently commissioned, the cost of the contract of works shot up from €5,750 to €8,424. This could only mean that if on the 10th December 2021, the additional works were not even approved, defendant's version that all the works, interior and exterior, had to be completed by the 18th December 2021, is unlikely.

Consequently, it is not satisfactorily proved that plaintiff was in breach of an express contractual obligation to complete the agreed works by a stipulated date.

In any event however, the fact that plaintiff might have been defaulted on a contractual obligation concerning the date of completion of the works, is hardly relevant in this particular case where no penalty clause was agreed to or is being invoked for the payment of pre-liquidated damages for delay. As for any damages claimed by defendant as a result of delayed works, these would need to be specifically proved by concrete evidence that defendant incurred a financial loss as a direct result of the delay.

From an examination of the messages exchanged on Facebook messenger on the 14th January 2022[34], it would result that defendant had expressly acknowledged that the

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[33] See page 64 of the record of the proceedings, attached to plaintiff's affidavit: message dated 10th December 2021 containing a .pdf attachment of "*Refurbishment up to date quote*". See also defendant's testimony in her affidavit.

[34] Page 77 – plaintiff's Affidavit.

works were complete, although she insisted that these were completed after the agreed deadline and were of an inferior quality[35]. In her counter-claim, she demands payment in the sum of €3,150 representing damages suffered as a result of the fact that she was prevented from making use of her property for a prolonged period due to the delay in the completion of the works and additionally, due to the repair works that had to be carried out to rectify the defective and or unfinished works.

In her testimony under cross-examination, defendant explained that this sum of €3,150 represents "*the time that we lost, the usage of the property because we bought the property and we wanted to use it so I had to pay rent for that period when I was not using the apartment.*"[36] However, she failed to support this assertion with concrete evidence that she did in fact lease a property during the period beyond the alleged agreed deadline for the completion of the works and rectification of any defects, and she also failed to convince the Court in any event, that any rental of property was the direct and inevitable consequence of plaintiff's failure to honour his contractual obligations.

As for the cleaning expenses claimed by defendant in the sum of €100, defendant again not only failed to support her claim for damages by proof of payment of the said sum for the cleaning of the property at the time when the plaintiff completed the works, but also failed to convince the Court that it was plaintiff, to the exclusion of other third party contractors engaged by her, who left the property in the state shown in the photos forming part of her Affidavit. She also failed to show that plaintff was contractually bound to leave the premises in a determined condition.

Therefore, this part of the counter-claim must also be rejected.

- <u>Cost to fix and repair works identified by Architect</u>

[35] See page 79 of the record.
[36] She also testified: "*So we kind of lost money, time and nerves...*"

It would result that defendant engaged an architect, Perit Gerald Zammit, to inspect the works carried out by plaintiff in her property and to identify the level of finishings and installations. A report was prepared by the said architect and exhibited in the record as Dok. GZ1.

External Timber Grid

Defendant claims that the Bricoman timber grille on the terrace, was not securely installed by the plaintiff. She derides plaintiff's assertion that he asked her to come up with a proper technical solution for the proper and secure installation of the grille when he was paid to ensure that the grid is mounted properly and securely.

From his end, plaintiff maintains that the brick wall to which the grille was attached, was hollow brick which would not securely and soldily support the grille and therefore, he was worried that the structure would weaken over time due to exposure to the elements and pose a risk to pedestrians in the street below. Although he admits that he requested instructions from the client for an additional fastening system to be created by the designer, no solution was forthcoming so he added two wooden reinforcements himself in order to ensure that the grille would be safely installed.

However, the Court is of the view that the grille was not properly mounted by plaintiff. This is evident from the video found on the USB Dok. ATZ, which shows that the grille was not securely fastened to the wall and shook easily with very little effort. In fact, in his report, duly confirmed on oath, Perit Gerald Zammit described the structure as 'unreinforced and clearly unsafe', while Marius Stansecu and the designer Alexander Blagescu, both testified that the installation was effected wrongly and together identified a different method of attachment which ensured a secure installation.

Plaintiff cannot be entitled to any payment for an installation that was clearly defective and not carried out according to the standards of good workmanship. The

Court would also point out that once plaintiff determined that the brick wall on which the grille was to be installed, was hollow and thus did not provide a solid base for securing the grille, it was his responsibility, in accordance with settled principles of relevant case-law, to inspect the structure in order to ensure that the installation of the grille could be carried out effectively according to the client's instructions, despite extraneous factors existing in the premises, and to refuse installation should circumstances so require, rather than to install a structure which he knew would not be secure and therefore a constitute a safety risk. Moreover, Marius Stanescu testified that he had securely re-installed the same Bricoman timber grille using a different clamping method[37], eliminating the security risks identified in the mounting carried out by plaintiff.

Consequently, no payment is due to plaintiff for this sub-standard and faulty installation. However defendant failed to bring forward evidence that would identify the price of the relative item on the quotation 'a' dated 3rd October 2021, attached to plaintiff's affidavit, which means that the Court, due to an abject lack of evidence, is prevented from liquidating an appropriate amount that represents the price of this particular item on plaintiff's bill.

Moreover, applying the principles that emerge from case-law on the matter, defendant is also entitled to payment of damages arising from the defective works, in the form of the corresponding expenses incurred for the secure re-mounting of the grille, which as already observed, was not a matter of mere aesthetics but one of security and safety posed by an ineffective and sub-standard installation.

Marius Stanescu testified that the price that he charged, and was paid, for the repair of the Bricoman timber grille on the terrace, was for €750 excluding VAT. It is undisputed that he did not purchase a new replacement grille but re-installed the original grille. He also claimed in his further cross-examination that he purchased the material in order to re-install the grille and also that this re-installation took many

[37] See affidavit Alexandru Blagescu.

hours to complete. He declared that his labour is charged at a rate of €25 per hour and confirmed that this job took around six to seven hours to complete. This means that while the cost of labour for the re-installation could not have amounted to more that €175, excluding VAT, the material required in order to re-mount the original grille, cost €575.

However, no evidence was brought in order to support the expenses that were incurred for the purchase of the installation material in the said sum of €575, a sum which in the Court's view, is manifestly exorbitant, particularly considering that the total cost of the ten items (including the terrace grille) in the original quotation issued by plaintiff (after deducting the price of the external hand rail of €3,813.36 excluding VAT) is of €1,936.64 excluding VAT. This means that the cost of the material allegedly purchased by Marius Stanescu to install the grille (€575 excluding VAT) amounted to circa **one-third of the total price of the original contract of works**, which is highly questionable.

In such circumstances, the Court expects that defendant produces a receipt for the expenses of the material amounting to €575 and considers Marius Stanescu's testimony alone to be insufficient evidence of the expenses he claims to have paid for purchase of the installation materials. Consequently, in the absence of such crucial evidence when the cost of support materials appears to be manifestly unrealistic, **the Court is of the firm view that defendant has only sufficiently proved the labour cost of the re-installation process (€175 plus VAT) and shall be entitled solely to reimbursement of this amount, and not also of expenses that were not sufficiently proved to have been incurred.**

The Court must also emphasise that the fact that defendant might have accepted to pay Marius Stanescu the amount claimed in his invoice for the remedial works that she required, does not in itself validate her claim for reimbursement of such expenses by way of damages, if it is proven that the executed works were not defective, faulty or

sub-standard and did not cause damages and or that the amount she chose to pay, is unrealistic and excessive.

Timber Wall Tile Feature

Defendant also claims that the timber wall tile feature on the terrace which had to be installed by plaintiff, was not evenly installed and the fixing alingnment was uneven, while the screws were visible. This was confirmed by Marius Stanescu who was commissioned to fix the timber wall: he testified that he had to re-measure and properly align the wall, and also adequately conceal the visible screws, while Alexandru Blagescu, the designer, testified that the effect was not aesthetically pleasing.

However, it does not result to the satisfaction of the court that the work carried out by plaintiff was defective, unstable and or of no use to the defendant. In fact, Perit Gerald Zammit, who was engaged to inspect the level of the installations carried out by plaintiff, did not identify any defect in the alignment of this feature on the terrace wall, but only an inadequate concealment of the fixing screws, as did also Alexandru Blagescu, the designer engaged by defendant[38]. In the Court's view, this is nothing more than a minor aesthetic concern, as confirmed also by Alexandru Blagescu, that has no bearing whatsoever on the utility of the works carried out by plaintiff. Indeed, this installation does not result to have presented any defect that could reasonably make plaintiff responsible in damages for defendant's decision to engage a third party contactor to conceal the screws for a cost of €100.

In conclusion, the Court cannot but note that no evidence was brought to show the difference between the installation carried out by plaintiff and the result of the adjustments made by the contactor engaged for the purpose, in order to convince the Court that plaintiff's work was of a substantially lesser quality that justifies defendant's claim for damages.

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[38] See page 162 – Affidavit of Alexandru Blagescu.

Glass brick wall

Alexandru Blagescu described the joints between the bricks on this small glass brick wall[39] as "*not very complete, aesthetically it does not look perfect*". Marius Stanescu, engaged by defendant to carry out remedial works, testified that he covered "*the little holes and align(ed) the painting to be in a uniform manner*"[40] and described the fault as "*aesthetic*" not requiring any correction[41]. However, when testifying in cross-examination, while he confirmed that the glass brick wall mostly remained unchanged, he also declared that he might have removed the last two rows of bricks but does not recall properly and does not recall how many glass bricks were removed[42]. This contradicts his previous sworn statement and therefore, the Court will not attribute much weight to this subsequent declaration which the witness himself was unsure of, and will attribute even less weight to his assertion that this work could have cost €400 excluding VAT (Dok. MS1A[43]), particularly when he also confirmed that the only materials he used were glue and filler.

Sliding Glass Door

Defendant complained of a gap between the sliding glass door of bathroom and the wall, and also that door does not close fully. She also complained, in her testimony, that the sliding door had no lock installed, while the the rail frame detail was not adequately sized and trimmed during installation. She claimed that Marius Stanescu repaired these defects.

According to plaintiff, the glass door presented no defects, and it was the brick wall itself which was not built vertically straight and needed to be corrected with an extra

[39] Vide top photo on page 128.
[40] Affidavit Marius Stanescu – page 153 of the record of the proceedings.
[41] Testimony of Marius Stanescu, 20th November 2023.
[42] He then testified that he might have removed the first three lines not the last two rows.
[43] Page 295 of the record of proceedings.

profile. In fact, he claimed that these corrective works were carried out and the gap was eliminated.

In his testimony before the Court, Marius Stanescu confimed that in order to address this complaint, he merely placed a rubber stopper/gasket on the side of the door to re-size it to fit the rail-frame and installed a lock, but he claimed to have not touched to door. This convinces the Court that plaintiff had indeed carried out the necessary corrective works.

Marius Stanescu charged €250 for this work but again, no receipt was produced to support the cost of this lock and / or the gasket, which cost in the Court's view is exorbitant when one considers that Marius Stanescu did not claim to have spent many hours working on this particular job[44].

In any event, the Court cannot but point out that the lack of a gasket is a slight shortcoming that required only a minor correction and had no bearing on the functionality of the door that was installed, which door, it is understood, remained in place and serves its purpose. In fact, Marius Stanescu confirmed in his testimony that he "did not touch the door". Consequently - and also because the Court, applying basic common sense, cannot accept that a lock and or a rubber gasket and its installation could realistically cost €250 excluding VAT – it is not satisfactorily proved that defendant suffered damages as a result of defective works carried out by plaintiff, less so damages in the sum of €250 excluding VAT.

Aluminium Handrail

Defendant claims that the aluminium hand-rail on the terrance was not properly and securely installed and that it posed a security hazard, especially in strong wind. She

[44] In particular, it does not result that Marius Stanescu re-sized the rail frame detail – see Dok. GZ1, page 165 of the record of the proceedings.

demands reimbursement of the price she paid to Marius Stanescu for carrying out the relative repair works.

However, in her testimony she confirmed that she accepts the aluminium handrail installed by plaintiff and affirmed also that it is still installed in her property but claimed that "*... we need to fix, to align to do the finishing basically*"[45].

Perit Gerald Zammit testified[46] that the aluminium railing installed on the terrrace was not fixed properly and was dangerous. He confirmed that although the material was adequate, it was necessary for the rail to be secured structurally to the building fabric in order to strengthen it, and that this was not merely a matter of aesthetics. Some channels also had missing caps, which meant that rain would penetrate the aluminium frame causing it to rust. This was confirmed by Marius Stanescu who testified that the railing was not aligned and was not securely fastened to the wall, and that he carried out the necessary repairs by straightening the rail and securing it to the wall.

The Court, in view of this evidence, deems that the price that defendant paid to Marius Stanescu for the repair works consisting in the alignment and strengthening of the structure of the aluminium handrail in the sum of €250 excluding VAT, represents the damages suffered by defendant as a result of faulty and defective installation works and thus is recoverable from plaintiff in terms of principles of settled case-law in the realm of the obligations of the contractor.

Other remedial works

The remainder of the remedial works that Marius Stanescu, in his Affidavit, testified that he carried out in defendant's property, consist of "*cleaning and finishing all the interior painting*". In her testimony, defendant claims that the wall paint work and the

[45] Cross-examination of the 26th Octobe 2023.
[46] Testimony of the 20th November 2023.

quality of the paint used by plaintiff, were both very poor. She also complained of paint stains on the ceiling, hung appliances and floor skirting.

From an examination of the relevant evidence adduced by the parties, it would result that the paint work carried out by plaintiff was "*aesthetically not perfect*"[47], and the joining line at the points of intersection between ceiling (white) and walls (blue), and between walls and skirting, was not uniform. The Court also understands that the paint work executed by plaintiff lacked finishing touches of a merely aesthetically nature that had no impact on the utility and functionality of the paint work carried out.

In fact, Alexandru Blagescu testified that the works carried out by plaintiff required "*... just a few retouches ... for example small touches of paint, or small plug fixing ... just aesthetic*". One must also recall that the ceiling of the bedroom/living room was damaged during the re-installation of the wooden partition by Alexandru Blagescu, meaning that this damage was not a necessary consequence of the original improper installation.

Bearing all this in mind, the Court is not satisfied that the paint work carried out by plaintiff was defective and of such poor quality that it had to be repaired, or that it was not adequately executed or was damaged due to negligence or sub-standard worksmanship on the part of plaintiff.

It is also pertinent to point out that in the breakdown of his original invoice, which was drawn up and exhibited during his cross-examination on plaintiff's demand (Dok. MS1A), the Court notes that Marius Stanescu claims to have also carried out the above-mentioned "*small repairs*" for a total cost of €150 excluding VAT. However, he never made any reference in this Affidavit or even during his testimony before the Court, to the fact that he also carried out remedial works consisting in the repair of sockets, fixing of cables and fuses and painting of external walls. Since he never testified about these other "*small repairs*", the Court is not sufficiently convinced that

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[47] See page 159 of the record of proceedings – testimony of Alexandru Blagescu.

these were indeed carried out or, in the best-case scenario for defendant, executed for the price of €150 excluding VAT. In any event, as already pointed out, these works were described by defendant's own witnesses, as mere finishing touches that were carried out for aesthetic purposes and consequently, are not in the nature of defective works that caused damages to defendant. Consequently, defendant is not entitled to claim damages consisting in the price she paid to Marius Stanescu for such repairs allegedly carried out.

Finally, the Court is of the view that the fees paid to Perit Gerald Zammit in the sum of €283, are not an inevitable and necessary consequence of the faulty works that have been identified to have been executed by plaintiff. The engagement of an *ex parte* architect and the payment of his fees is an expense that defendant, in this case, voluntarily undertook and is not an expense that was incurred due to plaintiff's fault.

That therefore, the total amount due to defendant by way of reimbursement of expenses incurred to correct faulty and defective installation works carried out by plaintiff, is of €425 excluding VAT[48].

For all the above reasons, the Court disposes of:-

1. **The principal claim, by abstaining from taking cognisance of defendant's first plea in her Reply, acceding only partly to the second plea and consequently, acceding only partly to plaintiff's demand by condemning ANA ISABELA TRIFESCU to pay unto MIHAI LEONTI the sum of one thousand four hundred and thirty five Euro and ninety two cents (€1,435,92), representing the balance due for works carried out and material supplied in her property at Ta' Xbiex as claimed in the Application, with interest from the 25th March 2022, the date of filing of the judicial letter 700/2022 duly notified to defendant, where plaintiff**

[48] A total of €501.50 inclusive of VAT.

demanded payment of the sum of €6,219.12, and with costs as claimed in the Application to be borne by both parties as to one-half (1/2) each; and

2. **The counter-claim, by acceding to the first and second plea raised in the Reply, and rejecting the remaining pleas only in so far as these are not compatible with this decision and consequently, by acceding only partly to defendant's demands in the counter-claim, declaring that defendant suffered damages amounting to five hundred and one Euro and fifty cents (€501.50) and condemning MIHAI LEONTI to pay unto ANA ISABELA TRIFESCU the said sum of five hundred and one Euro and fifty cents (€501.50) with interest from the 2nd May 2022, the date of filing of the judicial letter Number 947/22, and with costs as claimed in the counter-claim to be borne as to one fourth (1/4) by Mihai Leonti and as to the remaining three fourths (3/4) by Ana Isabela Trifescu.**

DR. RACHEL MONTEBELLO
MAĠISTRAT.