



IN THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR
DR MARSETTE PORTELLI XERRI LL.D.
LL.B, N.P, LL.D, M.A., Dip. Tesol (Trinity)

Sitting of Tuesday, 18th June, 2024

Case Number: 24/2019 (MPX)

Michael Turnbull (K.I. 41715A)

vs

Jonathan Hall (K.I. 472119L)

The Tribunal,

Having seen the notice of claim filed in on the 12th August, 2019, by means of which he submitted as follows:

That claimant resides in Gozo, and the respondent is the owner of a property, namely Evenly House, Ghonqa Road, Xaghra, Gozo, which property he uses in the few weeks that he is in Gozo during the summer, since during the rest of the year, the respondent resides abroad;

That the claimant was given the responsibility to take care of the property when the respondent was absent from the Maltese Islands, and he has been doing his job for many years;

That amongst the tasks that the claimant had, he was in charge of checking what maintenance had to be done in the house of the respondent, including maintenance of the garden and of other facilities to the house, and he would engage third parties to do the jobs that were needed, and then he would pay himself and later be reimbursed by the respondent;

That what happened was that there was a number of payments that were made by the claimant in the name of the respondent, and a loan that the claimant advanced in favour of the respondent, that were not refunded to the claimant, and this notwithstanding the fact that the claimant asked the respondent numerous times to give him the money for these payments and to be reimbursed for this loan, including with legal letters and even through an advocate. It is to say that the respondent never gave the claimant his money back, which will be proved in the course of these procedures;

That the total amount of these payments was of seven thousand, four hundred and seventeen Euros (€7,417), that of which was paid only the amount of two thousand sterling (GPB 2,000) in May of 2016, which amount is equivalent to two thousand and three hundred Euros (€2,300), according to the rate of conversion of one Euro fifteen cents (€1.15) is to one sterling (GBP 1.00) of which rate was agreed upon by the parties prior to every payment that had to be done that required this conversion;

That, the respondent is still a debtor in the amount of five thousand, hundred and seventeen Euros (€5,117), which amount is certain, liquid and due;

That annexed with this application, the statement originally sent by claimant to respondent, also conversations sent by email, and statements of the bank accounts of the claimant, that show the exchange of money that the claimant did in the name of the respondent, which documents are being annexed as Doc. MT1 to Doc. MT22b.

Therefore, respondent is being challenged to state why this Tribunal is not to:

Condemn the respondent Jonathan Hall to pay the claimant the total amount of five thousand, one hundred and seventeen Euros (€5,117), together with the legal interest applicable from the twenty-first (21st) of October, two thousand and fourteen (2014), till the date of effective payment.

With expenses and legal interest according to the law as requested by the date of effective payment, including fees related to the legal interest dated the nineteenth (19th) July, two thousand and eighteen (2018).

Having seen the sworn declaration of plaintiff, wherein he submits that some years ago he was instructed by defendant to take care of certain maintenance jobs in his property in Gozo, and also to pay various maintenance bills on his behalf. He says that the system worked well

for several years without any hitches, yet, in 2014, apart from having paid many maintenance bills, he was also asked by defendant for a loan of €4,600, which he gave him, and later also for a further loan of €1000, which he also gave him. He further states that he was later asked to pay for a flight to the UK via Bravofly.co.uk for defendant's wife on the 17th of August, 2014, flying out one way on the 21st August, 2014.

He further states that these payments are recorded through receipts held by him, as well as through his bank statements, which clearly show that he had withdrawn the money to give to defendant on loan, and that he also paid for the flight. These receipts and documents all form part of the documents which have been attached to his original application.

Plaintiff further explicates that he wishes to draw the attention to documents marked as MT1 to MT3, which show an exchange of emails between him and defendant. He explains that in the first document, defendant had sent him an email with a breakdown of what he owed him, which, at the time, was in the sum of €7,417. His reply to the email was "All good. Will call you later if you are not on set!" He states that defendant thus acknowledged that the amounts to be paid were correct. This exchange took place between the 21st and the 22nd of October 2014. Plaintiff states that in the Spring of 2016, he needed some Pounds Sterling urgently, in order to make a payment to his son, and since he did not have enough available in Malta, he had requested Jonathan Hall to remit part of the outstanding balance in Pounds Sterling to his Barclays Sterling account. After about 6 to 8 weeks of toing and froing, defendant did send GBP 2,000 on the 31st May 2016 to plaintiff's Barclays account. Plaintiff explains that upon receiving the amount, he set it off against the original balance.

Michael Turnbull further explains that on the 30th of May 2017, that is, a year after the above-mentioned money was received, he had still not received the remaining balance, and hence proceeded to make a formal request via email. He states that the situation back then is till that of today, where no settlement took place.

In his affidavit, plaintiff also mentions that on the 11th May, 2016, defendant had transferred to him the sum of €4,163.91, which amount was entirely withdrawn by plaintiff and was remitted in cash to a certain Joseph Bonello (gardener) and Michael Bajada (for pool services) upon defendant's own request, and this for services rendered in connection with defendant's property, namely Evenley Garden, Ghonqa Street, Xaghra, Gozo. He further explains that this was never a payment intended to be set against the outstanding balance in his regard, but separate monies owed to Bonello and Bajada for work that they has carried out in relation to the mentioned house and for which they had not been paid by plaintiff on defendant's behalf.

Plaintiff concludes his sown declaration by stating that despite various other emails and telephone calls, together with letters sent through plaintiff's legal advisor, the outstanding balance owed to him by defendant remains that of €5,177.

Having seen the reply filed in by defendant on the 5th December, 2019, wherein he submits as follows:

1. That, primarily, the respondent was not notified with an English version of the original claim, and this despite the fact that claimant was fully aware of the fact that the respondent does not understand the Maltese language. The claimant should therefore file a translation in English, and the respondent is presently reserving the right to file an additional reply should he deem it necessary to do so;
2. That without prejudice to the afore-mentioned, this Tribunal does not have the competence to take cognizance of the claim being raised before it. This is due to the fact that the amount which is being claimed by plaintiff goes beyond the competence of this Tribunal. Consequentially, the respondent should be declared non-suited;
3. Thirdly, and without prejudice to the afore-said, the amount claimed by the claimant is not due, since the expenses incurred by the claimant, as well as any amount which was due to the claimant, was refunded by the respondent in its entirety, and no other amount is therefore due;
4. Saving further pleas in law and in fact.

Having seen plaintiff's declaration, limiting the claim to the sum of €5,000;

Having seen the testimony given by witness Michael Bajada, during the sitting of the 10th June, 2022, whereat he testified as follows:

That he has known plaintiff through encounters at defendant's property, saying that he lives close to his house in Xaghra. He states that when he used to meet him, plaintiff used to be doing some work there. He further explicates that he used to send his bill for work related to pool maintenance to defendant and then plaintiff would pay him. Asked whether he used to deal directly with defendant, witness answers in the affirmative. Questioned whether he ever had any problems with payments, witness says that sometimes payments were a little bit late, but that all payments are up to date. When asked how he can compare plaintiff to defendant in relation to late payments or otherwise, witness replies that he used to send emails to Jonathan Hall, and then he would go and pick the money that he would have sent to Michael Turnbull from the same plaintiff. Asked whether he had ever requested assistance from plaintiff regarding payments, witness states that he always contacted defendant, saying that this was because he is the one who owns him money, explaining that plaintiff was like an intermediate man between him and defendant. He affirms that plaintiff used to pay him on behalf of defendant, with there being times when plaintiff used to call him, informing him that he had the money, which could be collected from his end.

Having seen the testimony of Joseph Bonello, given during the sitting of the 22nd November, 2023, whereat he testified as follows:

That defendant is a client of his and he helps him with his garden. He says that, as far as he knows, plaintiff is married to defendant's sister, and that he used to see plaintiff at defendant's place, at times. Asked whether he ever had any conversations with plaintiff regarding payments due to defendant for services rendered by the witness, witness says that not really. He says that he however thinks that there was an instance, or a maximum of two times, where defendant had sent him some money with plaintiff. Asked how this had taken place, witness explains that defendant had sent money to plaintiff, and then plaintiff would proceed to pay him. Asked whether he has any recollection as to whether plaintiff had spent a period of time taking care of Jonathan Hall's property while Hall was abroad, witness says that he (the witness) didn't use to be present on site all the time. Further asked whom did he use to see on site when accessing the property, witness answers that unless it was defendant himself, he wouldn't see anyone. He also says that he has the key to the property, and hence never needed to ask anyone permission to access the same. Asked whether he can confirm if the money passed over to him by plaintiff had been actually paid by plaintiff or defendant, witness answers that as far as he knows, defendant sent the money to plaintiff, plaintiff would proceed to withdraw it from the bank, and then give it to witness. Asked how he knows this, witness says that when he had called plaintiff informing him that defendant had sent him money, it would not be immediately passed over to him, meaning that defendant would have transacted the money to plaintiff's account. Witness further recounts an episode where defendant had not managed to pass him over the money owed prior to leaving the island, and he had informed him that money from his end would be transferred to plaintiff, who would then proceed to pay him. Asked whether defendant was usually late in his payments, witness says that defendant usually paid him when he was in Gozo. He explains that defendant doesn't come to these islands every month, but usually a maximum of twice a year, and that's when he used to pay him, hence, not on a pattern of every month or every two months. Witness says that it has always been like this. Asked if he still takes care of defendant's garden, witness says that yes, he still does.

Asked in counter-examination which is the property of the defendant that he takes care of the garden thereof, witness replies that it is called 'Evenly' or 'Heavenly House', and that it is in Ghonqa Street, Xaghra. Asked whether defendant always paid him for his services, and whether there are no pending monies due to him, witness confirms that defendant always paid him for his services and for the materials provided from his end.

Having seen defendant's sworn declaration, wherein he states the following:

That, together with his wife, he owns the house named 'Evenly House', in Triq Ta' Ghonqa, Xaghra, Gozo, which house they use as their summer residence.

That he has know Michael Turnbull for the last 23 years, and that since plaintiff had a property which is close to his, Turnbull used to offer to do some odd jobs at defendant's property, during the time when he was absent from Gozo. He states that he never gave plaintiff the responsibility to take care of the full maintenance of the house, and that the maintenance of the garden is taken care of by a certain Joseph Bonello, whom he always paid for his services. He further explains that maintenance of the pool is taken care of by a certain

Michael Bajada, whom he always paid directly. He says that Michael Bajada and himself always kept in direct contact with each other via email or telephone, as also happened with Joseph Bonello. He insists that, therefore, plaintiff never did any works related to either the garden or the pool.

He confirms that numerous payments to plaintiff for small jobs were made over the years in cash, and that due to family relations, he used to trust him, and there were never any problems with this mode of payment. He further says that the only amounts transferred were when there was a longer timeframe before he and his wife came to Gozo, or when it was an urgent matter.

He explains that as regards the email dated the 22nd October, 2014, wherein he had stated "All good", he was not in any way acknowledging the expenses enlisted on the email dated the 21st October, 2014, but merely replying to the line, "Hope all is well". He says that it is hence incorrect for plaintiff to assume or to declare that he was acknowledging the listed amounts as due.

Defendant goes on to say that disagreements between the parties started when he questioned the items on the spreadsheet which plaintiff had sent him, and which allegedly showed the amount owed to him as being €7,417. He says that following the lack of agreement on the outstanding amount that plaintiff was claiming, he made a payment equivalent to €2,300 via Barclays Bank, and this in accordance with a conversion rate that was agreed between them. He declares that this payment, made on the 31st May, 2016, was made as a full and final settlement payment of whatever sum was owed to plaintiff.

He further declares that he eventually made the following payments to plaintiff:

- (a) A transfer of €4,163.91, made on the 11th May, 2016;
- (b) A bank transfer of €700 made on the 26th September, 2016, this being a 3rd party bill;
- (c) A bank transfer of €800, made on the 3rd December, 2016, in connection with a 3rd party bill, namely that of Charlie Borg, which payment was requested to him on the 19th December, 2016, in the sum of €780;
- (d) A payment in the amount of €350, made on the 13th March, 2017, relating to the cleaning fee of plaintiff's wife, confirmation of receipt of which was given through the email dated the 18th July, 2017.

Defendant further confirms that, with regard to the expenses that plaintiff is alleging to have paid on his behalf, namely those in the amount of €500, he has no knowledge thereof and was never presented with any receipt or invoice.

He states that, moreover, he was never presented with any documents showing or confirming the amounts allegedly due to Charlie Borg for pool water, in the amount of €698. He explains that on the 3rd December, 2016, he paid plaintiff the sum of €800, a larger amount than the requested €780. He says that apart from not being presented with any documents, defendant usually takes care of filling the pool himself when returning to Gozo for the summer months, paying Charlie Borg directly.

He says that, as regards the sum of €69 relating to pool pump repair, he was never given any invoices, confirming that Michael Bajada had always been paid for his services. He further says that in plaintiff's email dated the 2nd June, 2017, plaintiff had himself confirmed that he had stopped paying Charles Borg and Michael Bajada on his behalf for quite some time. He goes on to say that, as regards the €400 claimed by plaintiff, in connection with flights, he has no recollection of any such payments.

Defendant also makes reference to the sum of €5,750, being described by plaintiff as 'cash to Jonathan', saying that he has absolutely no idea where these could have come from, posing the question that, if it were the case that money was owed to plaintiff, why would he go on to advance further sums?

Having seen the testimony given by both parties, in counter-examination.

Considers

That, from the evidence produced, the Tribunal could deduce that there used to be an amicable relationship between both parties, founded on trust, and essentially emanating from family ties. The Tribunal is also convinced that, defendant used to rely on plaintiff's willingness to offer help, having the latter performing what was necessary while defendant and his wife were away, without there being any unneeded meticulousness as to amounts due. This scenario seemed, however, to take a bitter shift, leading the parties to the present proceedings.

Subsequently, while the Tribunal is led to understand that the level of trust that had existed between the parties could have led to chores being carried out at the initial plaintiff's expense, the Tribunal cannot but remark that the claims being made, remain very much unsubstantiated. Despite the several amounts being claimed, all relating to separate expenses enlisted by plaintiff, not only have no invoices and/or receipts been produced, but also no witnesses who could have delivered the service or performed the relative chore, have been asked to confirm on oath the requested amounts. Plaintiff's failure to produce the relative bank transfers attesting to the amounts referred to as being 'loaned' to defendant, and the categorical denial by defendant about ever having requested money from plaintiff, also prohibit such claims to be satisfactorily proven as due.

Additionally, the Tribunal, with specific reference to the email dated the 22nd October, 2014, wherein defendant had replied using the words "All good", cannot arrive at the conclusion that the used words meant a full acknowledgement of the requested amounts, but is more of the belief that it was a direct reply to plaintiff's line as to whether everything was going on well at defendant's end. This particularly when it is followed by a line saying that defendant was going to get in touch via a call later, hinting at discussions thereabout to be made.

The Tribunal has also thoroughly gone through all the documents exhibited by plaintiff, from which, there could be made no conclusive deduction as to what the amounts indicated on the bank statements could have referred to, and to whose account, or in whose benefit, they

were remitted. This, not to mention the lack of conviction emanating from both parties' evidence tendered in counter-examination, with both parties attributing, at times, their failure to give conclusive and persuasive replies, to the passage of time.

At this stage, however, reference is made to document '16A', at folio 27, which refers to a flight via BravoFly, and which plaintiff consistently refers to as having been booked and paid for and on behalf of defendant's wife, at her request. In view of the annotated details made on the relative statement, and taking also into consideration that, when asked thereabout, defendant merely says that he has no recollection of the same without however denying it, the Tribunal deems that request relating to the payment of the relative amount merits to be upheld.

Decide:

In view of the above considerations, the Tribunal hence decides by upholding the plaintiffs' claim limitedly to the amount of €400.12, with legal interest as requested in the notice of claim. Costs are to borne as to 1/12 by defendant and 11/12 by plaintiff.

(ft.) Dr. Marsette Portelli Xerri
Adjudicator

(ft.) Daniel Sacco
Deputy Registrar

True Copy

For the Registrar