IN THE FIRST HALL, CIVIL COURT

HON. JUDGE

IAN SPITERI BAILEY LL.M. LL.D.

Today, Wednesday, 22nd January, 2025

Case Number 1

Application No. 1162/2017 ISB

Lydon Laudi (K.I. nru. 212985M)

Vs

Dolittle & Fishmore Limited (C-79128)

Jan Erik Pantzar (K.I. 110505A)

The Court,

Having seen the **application** filed by the plaintiff **Lydon Laudi**, filed on the 29th December 2017, in virtue of which he has asked the Court to:

1. *Fl-ewwel lok, tiddeċiedi din il-kawża bid-dispensa tas-smiegħ ai termini tal-Artikolu 167 et sequitur tal-Kapitolu 12 tal-Liġijiet ta' Malta in vista tad-dikjarazzjoni ġuramentata hawn annessa, u;*

2. *Fit-tieni lok, tiddikjara lill-intimati Jan Erik Pantzar u lis-soċjeta' kummerċjali Dolittle & Fishmore Limited jew min minhom, bħala debituri versu l-attur fl-ammont ta' tnejn u ħamsin elf, ħamsa u erbgħin Euro u disgħa u sebgħin ċenteżmu (€52,045.79) u konsegwentament tiddikjara lill-attur bħala kreditur tal-intimati fl-istess ammont;*

3. *Fit-tielet lok, tikkundanna lill-intimati Jan Erik Pantzar u lis-soċjeta' Dolittle & Fishmore Limited, jew min minnhom sabiex iħallsu lill-attur l-imsemmi ammont ta' tnejn u ħamsin elf, ħamsa u erbgħin Euro u disgħa u sebgħin ċenteżmu (€52,045.79).*

After having premised that:

1. *Illi l-esponent u l-intimat Jan Erik Pantzar iltaqgħu meta dan tal-aħħar kien għadu direttur ta' kumpannija bl-isem ta' Barking Forg Ltd. li topera zewġ stabbilimenti tal-ikel ossia restaurant u cafeteria, wieħed f Birkirkara u l'ieħor f San Giljan. L-esponent, Lydon Laudi fil-fatt kien u fil-preżent għad impjegat bħala general manager fi ħdan dawn l-istabbilimenti msemmija;*

2. *Illi apparti minn hekk l-esponent, jagħmel ukoll xogħol ta' project management, consultancy, development and design għal rasu taħt il-kappa ta' Teamweb Malta;*

3. *Illi għalhekk fl-2016 l-intimat Jan Erik Pantzar talab lill-esponent Lydon Laudi u fil-fatt ingaġġaħ sabiex, f vesti distinti u separati mill-mansjonijiet tal-esponent bħala general manager u fil-vesti tiegħu deskritti fil-paragrafu preċedenti, huwa jkun project manager u consultant fug proġett ġdid li Jan Erik Pantzar ried iwettaq;*

4. *Illi dan il-proġett kien jikkonsisti fit-tneħħija ta' stabbiliment tal-ikel ġdid ossia restaurant ta' livell għoli f Tigne Seafront, tas-Sliema, li kellu jġib l-isem ta' 'Dolittle & Fishmore';*

5. *Illi għal dan il-għan kellha tinħoloq soċjeta' kummerċjali bl-istess isem, u cioe' 'Dolittle & Fishmore Limited' bejn diversi azzjonisti (fosthom l-istess esponent u wkoll L-intimat Jan Erik*

Pantzar), sabiex tiġġestixxi u topera dan l-istabbiliment fuq imsemmi;

6. *Illi wara diversi laqgħat li saru bejn l-esponent u l-intimat fis-sena 2016 dwar kif kellu jisvolġi l-proġett u dwar x' kellu jkun ir-rwol tar-esponent fiħ, fis-7 ta' Diċembru 2016, l-intimat Jan Erik Pantzar daħal fi ftehim (hawn anness u mmarkat bħala Dok. LL1) ma' Oasis Catering Limited rappreżentata minn ċertu Paul Mizzi (K.I. 18866M) għall-lokazzjoni tal-fond ġjà Caffe Oasis f 19, Tigne Seafront, tas-Sliema, u ċioe' għall-dak li sussegwentement kellu jiġi u jsir l-istabbiliment Dolittle & Fishmore fuq imsemmi. Għalkemm fuq il-ftehim relattiv Jan Erik Pantzar deher għan-nom tas-soċjeta' kummerċjali Dolittle & Fishmore Limited, fil-verita' din kien għadha ma teżistix u kien għadha ma ġietx kostitwita fis-7 ta' Dicembru 2016. Fil-fatt Dolittle & F'ishmore Limited ġiet kostitwita u rreġistrata fis-16 ta' Jannar 2017 (ara Dok. LL2 anness);*

7. *Illi Jan Erik Pantzar, dejjem fil-vesti tiegħu personali, talab u ta struzzjonijiet lill-esponent sabiex jieħu ħsieb, mill-bidu sat-tmiem u f kull dettal, dak kollu li kien hemm bżonn sabiex l-istabbiliment isiru refurbishment komplet u, taħt l-isem il-ġdid ta Dolittle & Fishmore, jiftaħ għall-pubbliku u jibda jopera fl-inqas żmien possibbli;*

8. *Illi kien għalhekk li l-esponent beda jaħdem immedjatament fuq il-proġett fil-vesti ta' project manager kif lilu ordnat minn Jan Erik Pantzar. L-esponent kien diġa' laħaq lesta id-design u l-floor plan tal-istabbiliment. Fil-fatt fit-18 ta' Jannar 2017 l-esponent kien diġa' bagħat il-pjanti u disinji tiegħu ta' kif ġej ir-restaurant lil Jan Erik Pantzar. Mhux talli hekk, talli l-esponent kien diga' żamm laqgħat ukoll ma' rappreżentanti ta' imprendituri lokali, bħal per ezempju fornituri ta' kċejjen u bars, sabiex iġib stimi mingħandhom, jordna li hemm bzonn u jagħmel dak kollu neċessarju biex jarma l-istabbiliment (ara Dok. LL3 anness);*

9. *Illi l-esponent kellu jġib ukoll stimi tax-xogħolijiet ta' ammeljorazzjoni li kellhom isiru fuq il-post, inkluż xogħolijiet ta' kisi, tikħil, suffetti u anke dawl u ilma. Bl-istess mod, sussegwentement huwa kellu jagħżel l-aħjar offerti fosthom u jingaġġa l-persuni konċernati sabiex iwettqu x-xogħolijiet kollha neċessarji. Apparti minn hekk, għat-tul kollu tax-*

xogħolijiet, l-esponent kellu jissorvelja kollox huwa personalment u jikkordina x-xogħol u l-ħaddiema fost l-oħrajn;

10. *Illi l-esponent għażel ukoll il-makkinarju kollu li kellu jinxtara għall-kċina u għall-bar tal-istabbiliment u ssorvelja l-istallazzjoni tal-istess. Bħal f' kull każ ieħor, huwa issielet sabiex igib discounts u credit terms favorevoli mal-ħaddiema u mal-fornituri, bi gwadann aħħari għall-kumpannija. Saħansittra, l-esponent irnexxielu jinnegozja ftehim kummerċjali ma' Farsons (Simonds Farsons Cisk p.l.c.) li għal-bażi tiegħu restaurant kellu jibda jordna x-xorb kollu tiegħu esklussivament mingħand l-istess Farsons li da parti tagħhom aċċettaw li jagħtu forma ta' rebate lir-restaurant ta' għaxart elef Euro (€10,000) - ara Dok. LL4 anness;*

11. *Illi ladarba l-istabbiliment kien lest minn kollox, f perjodu minimu ta' biss tmienja u għoxrin (28) ġurnata, ir-rwol tal-esponent inqaleb għal wieħed ta' consultant. B' hekk l-esponent ħa ħsieb jorganizza u jiddisinja u jordna l-printing tal-menus tal-istabbiliment (ara Dok. LL5 anness), jagħmel l-intervisti tal-staff kollu u jingaġġa lill-dawk kollha li deherlu li kienu idoneji biex jaħdmu fl-istabbiliment, inkluż managers, kokijiet, barmen/barmaids u waiters/waitresses fost l-oħrajn (ara per ezempju Dok. LL6 anness) nonche' jieħu ħsieb u jissorvelja t-taħriġ tal-istess impjegati kollha (Dok. LL7 anness);*

12. *Illi apparti minn dak kollu hawn fuq deskritt, l-esponent li huwa wkoll web-designer, ħoloq u ddisinja l-website tal-istabbiliment Dolittle & Fishmore u baqa' jieħu ħsieb l-istess website sakemm dam involut u jippresta s-servizzi tiegħu lill-istabbiliment (ara Dok. LL8). L-esponent saħansittra ħa ħsieb il-promozzjoni tal-istabbiliment, inkluż billi ikkordina u nnegozja ma' stazzjonijiet televiżivi għal spots publiċitarji u anke ma' stazzjonijiet tar-radju lokali għal messaġġi promozzjonali (ara Dok. LL 9 anness);*

13. *Illi L-intimat Jan Erik Pantzar kien f'kull stadju u f'kull ħin aġġornat bil-ħidma tal-esponent, kemm jekk l-esponent kien qiegħed jaġixxi bħala project manager, kemm jekk huwa kien qiegħed jippresta konsulenza ladarba l-istabbiliment beda jopera, u kemm jekk bħala web-designer u promoter tal-istess stabbiliment;*

14. *Illi pero', filwaqt li l-esponent stinka u ħadem kemm felaħ fit-twettiq tad-dmirijiet tiegħu mas-soċjeta' intimata sabiex f qasir żmien il-kumpannija u l-istabbiliment jibdew joperaw u jiġġeneraw profitt, Jan Erik Pantzar min-naħa l-oħra, fi ftit xhur, ġab il-kumpannija kemm-il darba fix-xifer tal-falliment;*

15. *Illi Jan Erik Pantzar ma kienx (u effettivament ma huwiex) idoneju sabiex ikun direttur ta kumpannija, u wisq anqas biex imexxi restaurant. Illi l-esponent għandu suspetti fondati li l-intimat fuq imsemmi seta' anke aġixxa bi frodi u b' qerq għad-detriment tal-bqija tal-azzjonisti fis-soċjeta' kummerċjali intimata Dolittle & Fishmore Limited. Fil-fatt l-azzjonisti minoritarji diġa' bdew proċeduri separati f dan is-sens quddiem din L-istess Onorabbli Qorti fil-konfront tal-istess intimat Jan Erik Pantzar;*

16. *Illi dan kollu wassal biex fil-21 ta' Settembru 2017 l-esponent irriżenja mill-posizzjoni tiegħu mas-soċjeta' intimata għar-raġunijiet fuq imsemmija u għal dawk li jirriżultaw ukoll mid-dokument hawn anness u mmarkat bħala Dok. LL10;*

17. *Illi qabel ma' l-esponent informa lil Jan Erik Pantzar li huwa kien qiegħed jirriżenja, skond kif spjegat hawn fuq, l-imsemmi intimat għamel diversi promessi li huwa kien ser jissalda l-ammonti dovuti mal-esponent, pero' fil-verita' dan qatt ma seħħ. L-esponent fil-fatt bagħat il-fatturi relattivi (hawn annessi u mmarkati bħala Dok. LL11) il-intimati li da parti tagħhom irċivewhom, pero' l-esponent baqa' qatt ma tħallas la in parte u lanqas in toto tas-servizzi kollha minnu rezi lil Jan Erik Pantzar u lill-kumpannija Dolittle & Fishmore fil-vesti tiegħu bħala project manager u consultant għal rasu taħt Teamweb Malta;*

18. *Illi għalhekk sa' llum-il ġurnata, l-ammont li hu dovut u spettanti lill-esponent jammonta għal total ta' tnejn u ħamsin elf, ħamsa u erbgħin Euro u disgħa u sebgħin ċentezmu (€52,045.79c), liema ammont jikkostitwixxi dejn li Jan Erik Pantzar u s-soċjetá Dolittle & Fishmore Limited, jew min minnhom, għandhom fil-konfront tal-istanti u tali dejn hu wieħed ċert, likwidu u dovut hekk kif jirriżulta wkoll mid-dikjarazzjoni ġuramentata hawn annessa u mmarkata bħala Dok. LL12;*

19. *Illi Lydon Laudi qiegħed jikkonferma bil-ġuramentat il-fatti hawn fuq esposti li huwa jaf bihom personalment u jiddikjara li sa fejn jaf hu, l-intimati ma għandhomx eċċezjonijiet x'jissolevaw u x'jagħtu kontra t-talba odjerna. Għalhekk huwa qed iressaq il-preżenti proċeduri sabiex jeċiġi u jottjeni l-pagamenti tal-ammont indikat fil-paragrafu preċedenti, oltre l-imgħax l-ispejjeż ġudizzjarji.*

Having seen the documents presented with the initial application (Dok LL1 sa Dok LL12) (fol 8 sa fol 62).

Having seen its **decree**, as otherwise presided, of the 5th January 2018 in virtue of which the case was appointed for hearing for the Court's audience of the 25th of January 2018 at 9:00 a.m.

Having seen the initial preliminary reply filed by the defendants **Dolitte & Fishmore Limited et** filed on the 22nd of January 2018 (fol 68), with documents there attached, in which they pleaded:

1. *THAT first and foremost, as the applicant and this Honourable Court are aware, the present proceedings are inextricably connected to other proceedings pending before the Civil Court (Commercial Section) wherein the respondent, together with other minority shareholders of Dolittle & Fishmore Limited, are proceeding with an action under Article 402A of Cap. 386 of the Laws of Malta (Application No. 1089/2017/JZM);*

2. *THAT in the latter proceedings - those pending before the Civil Court (Commercial Section), there is specific and ample reference to the fact that the applicant contracted in his own personal name, so much so that even from a cursory look at the documentation already exhibited before this Honourable Court, as well as before the Civil Court (Commercial Section), it results prima facie and ictu oculi, that he company Dolittle & Fishmore Limited was not even formed yet, when Mr. Pantzar entered into a lease agreement with Oasis Catering Ltd. for the lease of the premises situated at 19, Tigne Seafront, Sliema, which premises would later become Dolittle & Fishmore restaurant;*

3. *THAT it is thus the humble opinion of the respondent, that should this Honourable Court accede to the present request at this early stage of the proceedings, this could reasonably be interpreted by the respondent as well as by the co-plaintiffs in the suit pending before the Civil Court (Commercial Section),*

that effectively the Court would be exonerating Jan Erik Pantzar a priori from any personal responsibility whatsoever, thus, not only influencing the merits and outcome of those proceedings, but more worryingly, chipping a good chunk off the principle audi alteram partem;

4. *THAT the main witness in both proceedings, not less the present respondent in this reply - Mr. Lydon Laudi, has not yet testified before this Honourable Court, making the current application by Jan Erik Pantzar even more premature; THAT the Jan Erik Pantzar's defence has been extremely active in these proceedings and very vocal in defending Jan Erik Pantzar - yet not one word was ever said by the same party regarding the easily and readily ascertainable fact (vide incorporation documents as well as information printed from the M.F.S.A. website and exhibited in both proceedings) that - Dolittle & Fishmore Limited had not even been incorporated yet when Jan Erik Pantzar decided to lease the premises at 19, Tigne Seafront, Sliema for €450 a day, in his own personal name;*

5. *THAT likewise, when Jan Erik Pantzar engaged Lydon Laudi and contracted his services, he was acting in his own personal capacity and thus it would have been foolish to say the least, had Lydon Laudi not instituted proceedings both against Dolittle & Fishmore Limited, as well as Jan Erik Pantzar himself.*

Having seen that in its audience of the 25th January 2018, the Court was of the view that the reply filed by the defendants on the 22nd January 2018 contained sufficient reasons for them to be authorised to present their sworn reply.

Having seen the sworn reply filed by the defendants on the 13th February 2018 (fol 88), through which they pleaded:

1. *The facts stated by the plaintiff in his sworn application are being contested both factually and legally.*

2. *As a preliminary objection, the documentation exhibited by the plaintiff with the sworn application and as found in the acts of the proceedings are confused and not in order thus leading to a possible lack of defence which can be raised by the defendants. In this regard, the defendants are*

reserving their right to submit further pleadings in their defence when these documents are properly put in order.

3. Also, as a preliminary objection, the defendants state that no amount is due to the plaintiff and if there are any amounts due, this is a fraction of what is being asked for. This is being stated for the following reasons:

(i) Firstly the defendant Jan Erik Pantzar never contracted personally the plaintiff to do anything for him and thus, the said defendant should be declared not suited in these proceedings. This fact should also result from the invoices which were allegedly issued by the plaintiff on the dates indicated in the said invoices.

(ii) Secondly, for the works mentioned by the plaintiff, not all of which were done through his intervention or exclusive intervention, the same plaintiff had to be paid in their majority by being given shares in defendant company. For reasons which the plaintiff only knows, he did not mention this fact in his sworn application nor did he exhibit a copy of the memorandum and articles of association from were it results that he is a minority shareholder in defendant company Dolittle & Fishmore Limited.

iii) That when the plaintiff saw that the business which defendant company was conducting was not doing well, he created the exhibited invoices with fenomenal amounts and not agreed to between the parties so that he could ask from defendant company the amount requested in these proceedings and thus cause financial damage to the company in which he is a shareholder.

(iv) With regards to the invoices bearing numbers:

(a) 0111 dated 11 th February, 2017 - Amount due of €1,717.75c and €309.20c (VAT)

(b) 0112 dated 21 st February, 2017 - Amount due of €2,388.85c and €429.99c (VAT)

(c) 0119 dated 10 th January, 2017 - Amount due of €40,000 and €7,200 (VAT)

There are many issues to be pointed out amongst which:

(i) *Firstly VAT number MT22200230 does not belong to the plaintiff but to a certain Lorraine Gatt from gura. Thus any request for the payment of VAT, which from the invoices exhibit amounts to €7,939.19c is not due to the plaintiff. This Lorraine Gatt ma never asked or requested to do any work for the defendant or the defendant company qatt and therefore they do not understand how the plaintiff can declare on oath that this amount is due to him.*

(ii) *(ii) Secondly, invoice number 0119, is dated 10 th January, 2017 whilst the other invoices bearing preceding numbers 0111 and 0112 are dated 11 th February 2017 and 21 st February, 2017 respectively. Logic would tell you that invoice 0119 should have had a number which was inferior to the other two invoices which where issued after it. Moreover, as results from the documentation already exhibited by the defendants with their note made under article 170 of Chapter 12, it results that defendant company was registered on the 16 th January, 2017. Its relative VAT number was issued, logically, after it was registered and not before. Logic tells you that this is the procedure which the VAT Department uses. Therefore how could the plaintiff have known on the 10th of January, 2017 what the VAT number of the company was when it had not been even registered when the invoice numbered 0119 (dated 10th of January, 2017). This goes to show that this invoice was not really issued on that date but was issued after in order to help plaintiff put forward this unfounded case.*

(iii) *(iii) Thirdly, the original invoices numbered 0111 and 0112 (which have not been exhibited, but others with increased amounts) and for which payment was requested were for the amounts of €180 and €323.85. On the 23rd february, 2017 a cheque was issued in favour of the plaintiff for the amount of €500. This amount was to cover for the expenses mentioned therein, leaving a balance of €385c. These invoices where for the adverts, wbedesign and facebook posts relating to the restaurant which was being run by defendant company. These payments were effected because, even though they were related to*

defendant company and the restaurant which it was running, they had nothing to do with the work which the plaintiff had agreed to do on behalf of defendant company, for which work, he had to be given, and was given, shares in defendant company. This was the agreement between the parties.

(iv) *(Iv) Fourthly with regards to invoice number 0119 it must be stated that no amount is due in this regard. It was for these works, which the plaintiff is asking the Honourable Court to condemn the defendants to pay him, which works were not all carried out by plaintiff or exclusively by him, that he was given shares in defendant company. Plaintiff never put forward any financial capital investment and, as already stated, it was for this reason and for the work carried out by him on behalf of defendant company that he was given shares in defendant company. There were never any discussions between the parties for the plaintiff to be paid for the works he had to carry out for defendant company, for which works, plaintiff is now requesting payment. The agreement, as already stated was for him to be given shares in defendant company. Plaintiff had also ordered business cards with the words "co-founder". . What the plaintiff has done is to intentionally put the company in a financial situation where it would not be financially viable for it to continue trading and thus close done. Secondly, defendants would like to point out that plaintiff is requesting to be paid for works which had not yet been carried out when the invoice was issued. Thus, the invoice dated 10 th January, 2017 (0119), is requesting the payment for works which had still to be carried out in the future. Thirdly, there was never any agreement between the parties as to the rate of payment which the plaintiff is requesting because plaintiff had to be given shares in defendant company. For these reasons, and more, the claim put forward by the plaintiff for the payment of €40,000 is not legally sustianable also because it is arbitrary and not agreed to.*

(v) *(v) Fifthly, what the plaintiff is requesting by these proceedings is in their opinion illegal. This is due to the*

fact that he does not have a VAT number, and is requesting, unilaterally payment for works carried out by him with someone else's VAT number and he cannot request this for the simple reason that before someone starts an economic activity, even where the amount generated from said activity is non Vatable, must by law apply to the VAT Department so that a VAT number can be issued. If the plaintiff, now, unilterally is asking for the payment of an economic activity which he carried out without registering with the VAT Department, he is doing so illegally and thus the Honourable Court cannot acceed to his request to condemn the defendants to pay him for such illegal work.

4. *Defendants reserve the right to put forward further issues, both in fact and at law.*

5. *Thus the sworn application filed by the plaintiff in their regard should be refused with costs against the plaintiff. The plaintiff is being asked to appear in court for reference to the oath according to law.*

Having seen that in the Court's audience of 10th April 2018, the case was transferred to this Court, as differently presided, to be heard together with the law suit in the names **Grisar Frank et vs Dolittle & Fishmore Limited** (Ref: 1089/2017) as there exists a relationship of substance between the two pending cases.

Having seen that in the Court's audience of the 17th April 2018, on the plaintiff's request, it was agreed that these proceedings were to be conducted in the English language.

Having also seen that in the Court's audience of the 17th April 2018, the plaintiffs heard the testimony of **Arsenio Agius** and **Roderick Abela.**

Having seen that in the Court's audience of the 10th May 2018 the Court heard the testimony of **Kevin Schembri**.

Having seen that in the Court's audience of the 19th June 2019, the Court heard the testimony of **Robert Galea**.

Having seen that in the Court's audience of the 30th April 2019, the Court heard the testimony of **Lydon Laudi** who presented a document (Doc LL1, fol 142 to fol 144).

Having seen that same **Lydon Laudi** testified again during the Court's audience of the 21st October 2019, that of 26th November 2019, when presented several documents (Doc LL1 to Doc LL62, fol 117 to fol 222), that of the 23rd January 2020, when he presented two documents (Doc LL64 and LL65, fol 266 to fol 283), that of the 13th October 2020 when in cross-examination he presented three documents (Doc AZ1 to Doc AZ3, fol 321 to fol 328), that of the 19th January 2021, during which defendants' counsel presented six documents (Doc AZ4 to Doc AZ9 – fol 331 to fol 344), and that of the 6th December 2021, when presented several documents (Doc LLX1 to Doc LLX6 – fol 440 to fol 453).

Having seen that in the Court's audience of the 11th March 2022, the defendant **Jan Erik Pantzar** presented a note (fol 455) with his own affidavit and documents attached thereto (fol 456 to fol 538). Having also seen that the Court heard the testimony of **Frank Grisar**.

Having seen that in the Court's audience of the 14th December 2022, the defendants presented a note (fol 556) with an affidavit of **Thomas Pantzar** (fol 557).

Having seen that in the Court's audience of the 9th October 2023, the Court heard the testimony of **Jan Erik Pantzar** in cross-examination, which continued on the 26th April 2024. Having also seen, that the defendants presented a note (fol 566) with a copy of the Lease Agreement concerning the Dolittle & Fishmore outlet (Doc DFL – fol 567 to fol 573) Having also seen the declaration of the defendants' counsel during this same audience to the effect that the defendants had no further evidence to produce.

Having seen the exhaustive notes of submissions filed by the parties.

Having seen that in the Court's audience of the 16th October 2024, in agreement with the parties, the Court put off the case for today for judgement.

Having seen all the acts of the case.

The Court considers:

That it results that this is an action brought forward by the plaintiff asking the Court to declare the defendants as his debtors for the sum amounting to fifty two thousand, and forty five Euros and seventy nine cents (€52,045.79) and to order them to pay the said sum.

In his sworn application, the plaintiff explains that he met the defendant Jan Erik Pantzar when he was director of the company Barkling Frog Limited which operated food establishments in St. Julian's and Birkirkara, in respect of which he is still employed as General Manager. He explains that apart from that, he carries out work related to project management, consultancy, development and design through his own operation under the name Teamweb Malta.

He states that in 2016, Jan Erik Pantzar asked him and engage him as a general manager and as a project manager and consultant in a new project which consisted of the establishment of a high level restaurant at Tigne` Seafront Sliema which was to be called 'Dolittle & Fishmore'.

He explains that for this purpose a new company was to be created with the name 'Dolittle and Fishmore Limited' with several shareholders, amongst whom were the plaintiff and Jan Erik Pantzar, to run and operate the said establishment.

He states that after various meetings between the two in 2016, regarding how the project was to proceed and the plaintiff's role, on the 7th December 2016, Jan Erik Pantzar entered into a lease agreement with Oasis Café Limited for the lease of the premises, then known as, Caffe Oasis at 19, Tigne Seafront, Sliema. The said agreement was signed by Jan Erik Pantzar on behalf of the defendant company which was incorporated later on the 16th January 2017.

He explains that Jan Erik Pantzar had in his personal capacity instructed the plaintiff to take care of the project from beginning to end so that the premises be completely refurbished and prepared to open for the public. For this reason, the plaintiff went ahead with the work and by January 2017, he had already designed the premises and its floor plan and sent everything to Jan Erik Pantzar and met with entrepreneurs for the supply of equipment and furniture.

He was also tasked with getting quotations for the improvements which were to be made such as plastering, soffits, plumbing and electricity. Subsequently he was to choose the best offers and engage services. Moreover, he was to oversee the entire project personally and co-ordinate the day-to-day work amongst workers.

He explains that he had chosen all the equipment that was to be purchased for the kitchen and the bar of the establishment and oversee the installation. In every case, he negotiated the best credit terms and

discounts for the benefit of the company. Amongst such, he managed to negotiate a commercial agreement with a prominent drink supplier who was to supply the restaurant exclusively and in return provide a rebate.

Once the refurbishment was complete in a twenty-eight day period, the role of the plaintiff became that of consultant where the plaintiff organised, designed and printed the menus and engaged the staff in its entirety.

Furthermore, he was the web-designer and designed the website for Dolittle & Fishmore and continued to maintain the website throughout his involvement. The plaintiff also handled promoting the establishment through advertising.

He explains that Jan Erik Pantzar was kept abreast at all stages of the project, regardless of the role that the plaintiff was playing. He states that despite his best efforts, in the span of a few months, Jan Erik Pantzar had rendered the company on the brink of bankruptcy.

He submits that Jan Erik Pantzar is not the right person to manage a company and a restaurant. The plaintiff even suspects that Jan Erik Pantzar acted fraudulently and wrongfully to the detriment of the rest of the shareholders of Dolittle and Fishmore Limited, and in fact the minority shareholders have taken court action against him.

All of the above led towards the plaintiff resigning from his position on the 21st September 2017. This followed several promises from Jan Erik Pantzar to the effect that he would settle all payments due to him, which were never settled despite having sent numerous bills from his end to both defendants. Hence, the reason why the plaintiff had to institute these same proceedings.

Further considers:

That the defendants state that the plaintiff's version of events as found in his sworn application are being contested both factually and legally.

They state that no amount is due to the plaintiff and if there are any amounts due, then they are much less than what is being claimed. This statement is being made for the following reasons:

1. The defendant Jan Erik Pantzar never contracted the plaintiff personally and hence he should be declared not suited in these proceedings.

2. The works mentioned by the plaintiff, not all of which were done through his intervention or exclusive intervention, were paid by shareholding in the defendant company.

3. When the plaintiff realised that the business was not fairing well, he created fake invoices with large amounts which had never been agreed to and this caused further financial damage to the company.

4. There are a number of issues with the invoices presented by the plaintiff:

   a) First of all the VAT Number MT2220 0230 belongs to Lorraine Gatt and not to the plaintiff, and the said Lorraine Gatt was never contracted to perform any works;

   b) The invoices do not follow the correct chronological order and the dates on the invoices do not make any logical sense;

   c) The original invoices numbered 0111 and 0112 which were replaced by those presented, called for a much less amount which has been settled;

   d) With regard to invoice numbered 0119, no payment is due as the works mentioned in the said invoice were to be compensated by shares in the defendant company. Moreover, the invoice is dated months before such date when the works were carried out;

   e) What the plaintiff is requesting is illegal as the plaintiff is requesting payment with someone else's VAT Number.

Further considers:

That from the **evidence** presented the following **facts** result:

Documentary Evidence

The **plaintiff,** in support of his claim, has submitted the following documentary evidence with the Court has taken note of:

Doc LL1: The Lease Agreement concerning the premises at Sliema Seafront;

Doc LL2: Extract from the MBR website showing details of the defendant company;

Doc LL3: Floorplan designs and email correspondence with the representatives of Cose Casa and Jamar Malta Ltd;

Doc LL4: Email correspondence with Simonds Farsons Cisk plc;

Doc LL5: Email correspondence with Innovative Solutions;

Doc LL6 and LL7: Email correspondence with employees of Dolittle and Fishmore;

Doc LL8: Email correspondence with Jan Erik Pantzar regarding the website and advertising;

Doc LL9: Email correspondence with 89.7Bay Radio Station;

Doc LL10: the plaintiff's resignation and email correspondence in its regard;

Doc LL11: Invoices issued by the plaintiff in her personal capacity from Teamweb Malta;

Doc LL12: Sworn declaration of the plaintiff;

Doc LL1 (at fol 142): email correspondence between Jan Pantzar and Maria Beany about investment in Dolittle & Fishmore;

Doc LL1 (at fol 177): 3D Designs of the Kitchen of Dolittle & Fishmore Restaurant;

Doc LL2 (at fol 184): Menu designs for Dolittle & Fishmore Restaurant and photos of the restaurant;

Doc LL3 to LL14 (at fol 214): a sealed envelope containing 11 cheques payable on the 18th and 19th of May 2017 issued by the defendant company but never cashed;

Doc LL15 to LL27 (fol 215): a sealed envelope containing 13 cheques payable on the 7th of June 2017 issued by the defendant company but never cashed;

Doc LL28 to LL43 (fol 216): a sealed envelope containing 16 cheques payable on the 10th July 2017 issued by the defendant company but never cashed;

Doc LL44 to LL60 (fol 217): a sealed envelope containing 17 cheques payable on the 14th August 2017 issued by the defendant company but never cashed;

Doc LL61: Message correspondence between the plaintiff and the defendant;

Doc LL62: An agreement signed by the plaintiff regarding advertising for Dolittle & Fishmore Restaurant;

Doc LL63: Z reading from the cash register of Dolittle & Fishmore Restaurant for the month of August 2017;

Doc LL64: Vat registration certificate for Lydon Laudi & Lorraine Gatt;

Doc LL65: An invoice issued by the plaintiff to the defendant company for Social Media marketing;

Document from fol 269 to fol 283: documentation related to the marketing of Dolittle & Fishmore restaurant including a CD;

Doc LLX1: Confirmation issued from ETC (today Jobsplus) regarding the plaintiff's employment in 2014;

Doc LLX2: Employment contract dated 5th June 2014 between the plaintiff and a third party company;

Doc LLX3 to LLX5: breakdown of expenses for advertising for Dolittle & Fishmore restaurant;

The **defendants,** in support of their defence, presented the following documents which the Court has taken note of:

Doc JP1: Correspondence with Architect Jakobsen with designs;

Doc JP2: Registration of trademark for Dolittle & Fishmore restaurant;

Doc JP3: Artwork and designs for Dolittle & Fishmore restaurant;

Doc JP4: Correspondence regarding VAT Registration for Dolittle & Fishmore;

Doc JP5: Correspondence from GeoMatix with survey of Sliema property;

Doc JP6: Correspondence with Architect Jakobsen regarding the design of the Sliema outlet;

Doc JP7: Correspondence with regard to refurbishment of the premises;

Doc JP8: Quotation from Turnkey contractors regarding refurbishment of the premises;

Doc JP9: Invoice from Pro Kitchen with regard to kitchen equipment;

Doc JP10: Design by Pro Kitchen;

Doc JP11: Counter design;

Doc JP12 to JP20: A series of Photos showing scaffolding on top of outlet and crane opposite and construction photos;

Doc JP21: Email correspondence with legal advisor regarding the scaffolding situation;

Doc JP22 to JP24: Email correspondence between defendant and other shareholders regarding the scaffolding situation and dealing with landlord;

Doc JP25: Agreement with landlord regarding reduced rent and payment received;

Doc JP26: Receipt for website domain for dandfmalta.com;

Doc JP27: Website process;

Doc JP28 to Doc JP31: Correspondence with plaintiff regarding advertising and payment thereof;

Doc JP32: Business Card template for plaintiff with Co-founder denomination;

Doc JP33: Correspondence between defendant and plaintiff whereby defendant sent restaurant menus to plaintiff;

Doc JP34: Picture of Invitation for restaurant's grand opening;

Doc JP35: Correspondence with shareholders regarding cost cutting;

Doc JP36 to Doc JP46: Correspondence with shareholders and plaintiff regarding outstanding payments;

Doc JP47 to DocJP49: Legal letter and correspondence with plaintiff regarding uncashed signed cheques which he held onto;

Doc JEP1 (in Court file relating to case 1089/2017): Revenue Simulation for Dolittle & Fishmore Restaurant;

<u>Witnesses</u>

In his testimony, **Arsenio Agius,** as a representative of his company APTC Limited, explains that his company had a meeting with Team Web Malta to prepare a website and during the meeting Lydon Laudi had informed him that he required works to be carried out in an outlet he was managing. He states that they carried out works which they were paid for in full. The work consisted in plastering, electricity and tile laying. He explains that the outlet was previously operating in a different format and hence it was stripped down to shell form and done from scratch and this in less than a month. He states that the fact that works were carried out in such a short time meant more dedication to the site in particular and longer hours.

Asked who their point of contact for this work was, he says that it was always Lydon Laudi, that is the engagement, the planning, the supervision of works and finally the payment. He explains that he was paid by cheque but does not remember who the issuer was. Asked whether they had contact with Jan Pantzar, he says it was little to none as everything was discussed with Lydon Laudi.

Roderick Abela, a salesman for Pro Kitchen Cose Casa Limited, stated that he sells catering equipment, plates, cutlery and the sort. He confirms that he made several deliveries to the outlet in question. He explains that they have outstanding invoices with client Dolittle & Fishmore for six hundred and fifty Euros and sixty nine cents (€650.69). The witness presented an invoice of the said amount (Dok RA1) which the Court took note of.

He explains that in November 2016, Lydon Laudi had a meeting with him and told him about the project. Following several meetings, an equipment order was made on behalf of the defendant company. He confirms that payments were made through the company but all his dealings were done with the plaintiff. Asked about the payment terms, he says there was a six-month agreement which was paid as a deposit on commissioning and after six months of all deliveries. He explains that then there were more deliveries to replace broken glassware, plates etc. He states that the initial terms were negotiated with Mr Laudi but eventually Mr Laudi resigned and they dealt with Mr Pantzar. However, in the last three months no contact was made. He confirms that initially every decision was made by Mr Laudi.

Kevin Schembri stated that he knows Lydon Laudi from his work since he supplies coffee in various shops and he was also called by same Laudi to supply the machinery and coffee to Dolittle & Fishmore. He confirms that there are outstanding invoices vis-à-vis the coffee supply and that he had sent a number of messages to Mr Pantzar about them but they remain unpaid.

Robert Galea, sales manager of Simmonds Farsons Cisk plc, stated that he first met Lydon Laudi in the Birkirkara outlet where he introduced him to Jan Pantzar. He explained that when the two took over the Birkirkara outlet they had come to an agreement to stock their products. He stated that it's very normal for Farsons to enter into these types of agreements whereby they give discounts in advance. He says that a few months later Lydon called him again and together with Vania Calleja, their head of sales, they met with Lydon and Pantzar and they were presented with the idea of Dolittle & Fishmore restaurant and they made an agreement regarding the same whereby they gave discounts in advance called a loan of ten thousand Euros (€10,000), of which amount a balance is still pending.

Asked whether Farsons is still delivering to them, he states that they are still delivering to the Birkirkara outlet but not to Dolittle & Fishmore as there were balances due and in September/October 2017, he had contacted Mr Pantzar again but then they had to interrupt supplies and remove their assets from Dolittle & Fishmore, which assets consisted of draught equipment, cooling equipment fridges and a reverse osmosis. The said equipment cost around five to six thousand Euros. He stated that there was also a wine cooler but he does not have the cost of that as it is a separate department.

The witness explained that apart from the mentioned loan, there is a balance due to Farsons of approximately three thousand Euros. Asked who their point of contact was throughout the relationship, he says that their main contact was Lydon Laudi. However, when it came to negotiations, both Lydon and Mr Pantzar were present.

Asked whether an explanation was given by Mr Pantzar due to the late payment, he says that no explanation was given. The witness stated that he had communicated by sms with Mr Pantzar but when pressed for payment there was no reply. He explained that following such, he went to Dolittle & Fishmore restaurant himself with the control manager Silvio Ellul

and Mr Pantzar explained to them that he was having problems with the accounts being blocked and paid part of the balance in cash. He states that Mr Pantzar told them that he was willing to pay but required time to do so.

The witness explains that he received a total of four (4) cheques from Lydon Laudi, all from the Dolittle & Fishmore account.

Plaintiff **Lydon Laudi** stated that for the past twenty years he had been working in the restaurant industry, catering and design and in property design and digital design. He explained that he has worked and managed big companies both in Malta and abroad. He explained that his role in Dolittle & Fishmore was practically that of doing everything from the setting up of the establishment to their day-to-day management. He states that he was continuously involved as he was consulted all the time until he decided to end his consultancy, which meant that the outlet could not operate without him.

Asked what he was paid for his services, he says that he was never paid anything. He disputes the assertion that payment of his dues was meant to be part of the shareholding.

The plaintiff explains that he had moved into the Birkirkara outlet after the Directors who ran it at the time asked him to do so as it was not doing well and the owners did not want to have anything to do with catering anymore and hence in 2016, Barking Frog Limited took over. It was there that he got to know Jan Pantzar. When they took over, he got to know that they had another establishment in St. Julian's which was having some difficulties and had not yet begun to operate. He stated that he stepped in and in two months, the outlet was operational.

Once this took place, Jan Pantzar introduced him to the new project in Sliema. At the time everything was going well and everything with the St. Julian's outlet was proceeding well. With regard to Dolittle & Fishmore, plaintiff insists that Pantzar had explained to him that this would be a separate project but it had to go well due to the hefty rent of four hundred and fifty Euros (€450) daily. The plaintiff explains that there were tight targets but that he was willing to take it on. He states that at the time they were very close and spent a lot of time together and he had asked for a lump sum payment of thirty-five thousand Euros (€35,000) which included the project management. This was the end of November 2016. The

plaintiff states that Jan Pantzar verbally accepted to pay him the said sum for his services.

At that point he explains that Maria Beeny backed out of the new project as she felt that it was too much too soon. He states that this panicked Mr Pantzar, as the project, although still at the planning stage, had already begun and he needed the investment. In addition to this, the rent agreement had already been signed.

Plaintiff states that Mr Pantzar had asked him to help find investors who could invest three hundred thousand Euros (€300,000). He had approached Farsons and a certain Brian Azzopardi whom he had worked with before. He explains that Mr Pantzar was pressuring him to close the investment as he needed the money to pay to take over the lease. However, Brian Azzopardi backed out as he did not feel it made sense that for three hundred thousand Euros (€300,000) he would only be getting thirty per cent (30%) of the share capital. Plaintiff saus this panicked Pantzar who decided to go for a soft refurbishment which would require a one hundred and fifty thousand Euro (€150,000) investment instead of the previous amount.

He explains that subsequently, he discussed the matter with Kevin Schembri who had offered to invest thirty thousand Euros (€30,000) and Jan Pantzar spoke with Frank Grizar who on his part was willing to invest another fifty thousand Euros (€50,000). At that point, Jan Pantzar had asked him if he was willing to invest the difference. He explains that at that point he had already invested a lot of time preparing the designs.

Yet, plaintiff explains that he was willing to be part of the project but did not have the money to pay the difference, but offered to pay thirty thousand Euros (€30,000) which he had put aside for a personal project as long as he was paid back first, to which Jan Pantzar agreed. Hence, the plaintiff explains that he gave him the thirty thousand Euros (€30,000) in cash and after chasing after Kevin Schembri he also gave Jan Pantzar thirty thousand and eight hundred Euros (€30,800) in endorsed cheques from Kevin Schembri. As far as the plaintiff was concerned the money was going to be paid to the landlord as key money and the eight hundred Euros extra which Kevin Schembri had passed on was to be returned to Kevin Schembri.

Plaintiff explains that Jan Pantzar had told him that they would be getting the key to the outlet on the 12th February and so from thereon he started contacting people to get everything ready for the refurbishment, which

involved measurements, planning, recruitment, menus etc so that the restaurant would be refurbished and set to open within twenty eight (28) days. This meant, he explained, that he worked day and night to put everything in place.

Asked about the formation of the company, plaintiff says that in the beginning of January 2017, Jan Pantzar had come with the Memorandum & Articles of Association and it was signed. He states that a few days later they had signed for a change to the memorandum without checking what it was.

The plaintiff explains that once they were given the keys to the outlet, the works started at once. The plaintiff presented to the Court a document with the design of the outlet. The documents show the work which was done. His first job had been to prepare the 3D designs. When the work started there were some unanticipated problems which were managed. He explains that there were around fourteen persons working day and night and by the 20th of March the work was finished, and the furniture started to arrive, and the final touches took around three days. On the 26th of March 2017 everything was ready and there was a soft launch whereby the restaurant started serving coffee and light snacks.

The plaintiff explains that during the refurbishment time he also created the menu, designed the layout, priced it and cost it. Following the soft launch, a problem resulted in a property above the outlet which was causing huge water leak and hence the grand opening had to be postponed until that problem was solved, which took around two weeks to complete. In the meantime, the outlet remained open. At that point, the plaintiff explained that his work had to stop. However, Jan Pantzar had asked him to stay on to help with the grand opening and with marketing and they had agreed that this would be at a cost of five thousand Euros (€5,000).

The grand opening took place, in April, which was a grand success and the restaurant started to operate and all looked promising. He explains that he was limited as to what he could see as Jan Pantzar took care of accounts and other things. He states that he used to take care of suppliers to oversee that orders were being done well and invoiced, due to his work experience. He explains that Jan used to give him cheques for payments with strict instructions not to issue them before being told. The Court took note of fifty eight original cheques exhibited which were never redeemed

as there were never instructions to give them out as there was no money. Hence, orders were being made but payments were not.

In May, the plaintiff started asking for his payments for the services he had rendered and Jan Pantzar had informed him that he was going to pay him in instalments but no payment was ever made. After a month, he started trying to understand how the restaurant was full and yet no one was being paid. In the meantime, suppliers were pressuring the plaintiff for payment. At the time, Jan Pantzar had told him and the other shareholders that it was due to the rent amount, which rent, after negotiations with the landlord, was reduced to two hundred and fifty Euros (€250) per day and this after a meeting with the landlord in June and July of 2017, due to the scaffolding which was erected in front of the restaurant.

Asked whether Jan Pantzar had ever informed them what was happening with the takings, plaintiff stated that none of them were ever informed. Whenever he asked, the reply was that they were not making enough sales.

The plaintiff explains that in order to pay for advertising he had entered into an agreement to provide food to a television programme and even this deal was not honoured.

He states that in August 2017, Jan Pantzar had told him not to speak to a particular supplier as they owed them circa twenty one thousand Euros. This frustrated the plaintiff who was suffering prejudice in respect of his own business.

Plaintiff explained that at the end of August, he went to Dolittle & Fishmore and got a Z reading for the whole month which amounted to fifty six thousand Euros. The Court noted the full report of consumption for that month. Following such, he confronted Jan Pantzar and at that point the plaintiff offered his resignation from any association he had with Jan Pantzar and the company. He states that he also informed all the suppliers of his resignation.

He confirms that he was and remains a shareholder of the company Dolittle & Fishmore Limited. He confirms that he did not resign as shareholder but terminated all contact with Jan Pantzar. Nevertheless, to this day suppliers still chase him for payments.

Following his resignation, the plaintiff and the other shareholders asked multiple times for shareholders' meetings, which requests were done in person, through telephone, through messages and also through email, but

the meeting never took place. In the end they spoke to a lawyer and ended up before the Court.

At one point a meeting was called and the plaintiff, Frank Grisar, Kevin Schembri, Jan Pantzar and Charles Cassano were present and as the plaintiff was not comfortable, he requested to record the meeting and Mr Pantzar and Charles Cassano asked the rest of them to leave. There was no further contact after that.

The plaintiff refers to invoices presented by him at fol 59, 61 and 62 and explains that they were drawn up by him, refer to the services rendered and they are still due. The only time he was paid was the amount of five hundred Euros, and this was a separate invoice and it was paid due to him pressuring him that unless he was paid, he wouldn't do more work.

Under **cross-examination**, the plaintiff explains that the invoice numbers progress according to due date. The system utilised to generate invoices is the wave system. He explains that invoices are drawn up in draft form so that one can add and change according to need.

Asked if he ever informed Jan Pantzar of the price of things he was requesting, he says that at one point he sent him a price list but this was limited to web designs only. He explains that the website was shut down as he was incurring yearly costs to it.

He confirms that it was he who prepared all the plans for the restaurant and not the architect engaged by Jan Pantzar. He explains that Jan Pantzar had referred the designs drawn up by himself to the architect, whom he does not know. He clarifies that he went on site, he took measurements and prepared the drawings and when everything was finalized he passed it on to Jan. The plaintiff was shown plans drawn up by an Architect Jacobsen and confirms that those were drawn up on what the he himself produced. The 3D designs were drawn up with the help of ProKitchen as they had the appliance sizes, based on the information the he gave them.

He confirms that the fourteen workers who worked on site were employed by the contractor but he was the person in charge. Asked whether at the time he was working elsewhere, he says he was and still is employed with Barking Frog, but at the time he spent most of his time at Dolittle & Fishmore because it was a priority. He confirms that while carrying out and overseeing work at Dolittle & Fishmore he was still being paid from the Birkirkara outlet.

He confirms that he completed all the work on the menu design except for the logo which Jan had given him. He explains that Jan had sent him ideas for the beer menu which he wanted highlighted, but it was he who drew up the final product. Asked then why he had asked Jan Pantzar to send him the menu, he says he had gone to print them and forgot to take his pen drive and hence asked him to forward them by email. However, the date of when he prepared them was 17th May, whereas the email in question was later on in June.

As for the agreement with Jan Pantzar, for the latter to pay him five thousand Euros to help with the grand opening and marketing, he explains that nothing was done in writing as he had trusted Jan completely.

He confirms that the invitations for the grand opening were taken care of by Jan Pantzar who ordered them off a foreign website. He confirms that he took care of some radio clips and emphasises that there was an agreement that he would get paid for them, although he confirms that for one of them the editing was free.

Asked about the restaurant safe, he explains that there were two safes, one which he used to keep and one which was exclusively used by Jan Pantzar.

The plaintiff confirms that in April the restaurant was fully functioning, but the grand opening had to be delayed. He explains that from a purchasing point of view, the sales from April to July were increasing as the purchasing demand was greater, however, Jan Pantzar kept saying that they were slow. Asked whether they decreased staff because of slow sales, he says they had reduced some employees from the kitchen staff as they were paid very high wages, and were replaced by undeclared and unregistered foreign workers.

Asked about when the scaffolding was erected on site and its effects, he says that he remembers it was summer and they couldn't open the tent for shade. Asked about the biggest problems the restaurant faced, he explained that there was a problem with the gas cylinders as workers did not want to change them as there was waste from the overlying apartments falling on them. The second problem was the scaffolding and the construction. The third issue was the wood which was not good. He explains that all problems were tackled eventually. Another issue was the high rent which was reduced until the scaffolding was removed.

He confirms that he knew about the rent amount before becoming a shareholder, but the landlord had said that the previous outlet had a turnover of three thousand to five thousand Euros (€3,000 - €5,000) per day which would make it viable.

Asked whether he ever discussed the business and turnover matters with Mr Cassano, he says that he did not as he had had issues with Mr Cassano with regard to the other company and lost contact with him around May 2017.

Asked where his investment of thirty thousand Euros (€30,000) cash came from, he says they were his personal savings. He explains that they came from various works and past savings and it was a normal thing for him to keep them at home. He confirms that sometimes his salary was paid in cash. The said sum of money was given to Jan Pantzar before the lease started but after the lease agreement was signed. He says he asked for a receipt of the money, but it was never given.

During the cross-examination three documents were presented and made reference to (Doc AZ4 to AZ9) which the Court took cognisance of.

Asked if he ever met up with the landlord when the rent issue was settled, he says he met up with him and was informed that the rent was being paid and that he would do what was best for him.

In his affidavit, defendant **Jan Erik Pantzar** stated that the original idea of Dolittle & Fishmore started being developed by his architect Rune Bo Jakobsen and himself in 2015. He says that the original idea was to open a fast-food establishment in St. Julian's and the plans were developed for this, but they were later not used in St. Julian's and the concept remained for future discussions.

In early 2016, discussions were initiated by the landlord with regard to renting the premises at Sliema Seafront, which discussions were drawing to an end in September 2016. Hence, he initiated a feasibility and design study as well as created a company name and logo and registered the logo as a trademark.

He states that the original concept was re-visited and he created a more elaborate proposal which he then presented to investors based on the plans which the landlord had provided. He shared the proposal with potential investors during negotiations which started on 13th November 2016, and hence he moved on with negotiations with the landlord with the

aim of putting an agreement in place before the end of 2016 and for the refurbishment to be finished by Easter 2017. Subsequently, a lease agreement was signed by him on behalf of Dolittle & Fishmore Limited and access to the premises was given by the landlord on 15th February 2017.

He explains that Euromed Limited were chosen as the accountants and kept all financial records throughout the process, which records were available for review by directors and shareholders during office hours, but as far as he knew, none of them ever asked for any information or for an independent review of the bookkeeping and financials. He states that Euromed had electronic access to the bank accounts for review, without the ability to make payments.

He says that Dolittle & Fishmore Limited was incorporated on 16th January 2017 and the ownership was divided between Lydon Laudi, Kevin Schembri, Frank Grisar and himself. Euromed applied for the VAT registration which was received in March 2017.

With regard to Lydon Laudi, the defendant says that he was the General Manager of the Birkirkara outlet which was acquired by Barking Frog Limited in August, a company which up to that day ran an outlet in St. Julian's. It was agreed that Lydon Laudi be kept in order to ensure a smooth operation and eventually it was decided to promote him to manage both outlets, which promotion came with a noticeable pay increase.

In November 2016 the proposal for Dolittle & Fishmore had reached the point of discussion with potential investors. If they were interested, they would specify the amount they would be investing which would be split in paid-up capital (€1,200) and shareholder loans which was detailed in the Memorandum of Understanding and would be following by a shareholder loan agreement. The amounts were collected and were applied against outstanding invoices or deposited into the clients' account until the Bank of Valletta account was formed.

He explains that Lydon Laudi wanted to be part of the business but did not have any money so it was agreed that in return for his work efforts in the refurbishment of the outlet he would be paid by shares in the company and expenses incurred by him in the refurbishment and running of operations would be reimbursed, as long as they were approved in writing. He emphasises that he never received money from Lydon Laudi.

He states that the plan with regard to the operations of Dolittle & Fishmore restaurant was to hire an experienced manager for the front of house and an experienced chef to turn the kitchen. Then, himself or Lydon Laudi would visit the restaurant daily, take the daily returns from the small safe, which staff had access to, into the big safe which only he and Lydon Laudi had keys for. He explains that Lydon Laudi had told him that he did not require compensation for the little work he was doing as what he was receiving from Barking Frog Limited was enough. Nevertheless, as an incentive, from March 2017 he started giving Lydon Laudi some cash from his own pocket as encouragement, whereby the frequency and the amount were not fixed which went on until the end of summer 2017, when Laudi decided to leave.

With regards to the refurbishment, defendant Pantzar says that a professional survey was commissioned by himself and executed on 17th January 2017 by GeoMatix Surveying. The survey was sent to the Architect who provided the reference drawings for future activities. He emphasises that Lydon Laudi was not involved in the process.

He says that the survey plans were shown to a particular contractor which proved too expensive and then they started dealing with APTC mostly through Lydon Laudi due to a language barrier and since they provided a better offer, the agreement with them was signed on 13th February 2017 and works commenced on 16th February 2017. The work involved basically dismantling everything and redoing from scratch.

In terms of the kitchen, he says an agreement was signed with ProKitchen/Cose Casa on 25th January 2017 for the supply of the majority of kitchen equipment and were based on the architect drawings. In this process Lydon Laudi sometimes acted an intermediary.

He lists a number of other suppliers which were used to finish the restaurant which were arranged through Darren Bartolo, and claims that Lydon Laudi was not involved. He explains that Laudi's involvement was as a contact for daily issues during the refurbishment but was never authorised to take decisions. He states that small decisions were taken by him but bigger issues were referred to the shareholders and discussed either in person or through telephone, messages or emails.

He explains that the plan was to complete the refurbishment in twenty eight (28) days and soft launch on 15th March 2017 which was delayed to 5th April 2017, during which salaries were being issued and the chef asked

for additional equipment and hence there was an unplanned cost of twenty-thousand Euros (€20,000).

He states that Lydon Laudi was the point of contact for suppliers as they knew him from the Barking Frog but he was not the main contact as all negotiations had been carried out by himself, who signed all the agreements.

With regard to the scaffolding, he states that when the restaurant was set to open, there was construction above the restaurant as additional floors were being added to the building. This resulted in a scaffolding blocked use of the terrace and a crane blocking the sea view. He explains that he immediately entered into negotiations to have the rent reduced. Following a number of meetings, he came to an agreement with the landlord that the rent would be reduced to two hundred Euros daily from February 2017 until such time when the scaffolding was removed. In turn, the landlord insisted that by end June 2017, the sixty thousand Euro premium be paid in full along with the rent until July 2017. Since rent until the end of May 2017 was already settled, the outstanding amount came to forty five thousand Euros (€45,000). He informed the shareholders of this and none of them wanted to invest further. Hence, he funded thirty thousand Euros (€30,000) from a personal loan and fifteen thousand (€15,000) from the restaurant account and hence rent was settled until 8th September 2017. The scaffolding was later removed in October 2017.

With regard to the website, defendant states that he is well qualified in Electrical Engineering and Computer Science and does not require to hire third parties to do a website, which work he has been doing for years. However, this was not a priority. He emphasises that he never instructed Lydon Laudi to build or design a website but at one point Luadi had put this up and never provided him with any information as to visitor tracking and handover. Since it was not a priority and Lydon wanted to do it for free, he let it be. He emphasises that he never discussed any potential costs and charges and if Laudi had told him that he'd been designing the website at a cost he would have refused.

With regard to radio and television commercials he says that it was agreed that radio commercials would run and Lydon Laudi had helped set them up. He states that he paid Lydon Laudi a total of five hundred Euros (€500) from the company for this work as well as facebook posts as this was above and beyond the work they had agreed to in exchange for the shares in the company. He explains that he never saw the invoices presented in

Court #0113 and #0119. He emphasises that payment for the work that Lydon Laudi carried out during the refurbishment was never discussed and hence no agreement was reached. When the company suffered opening delays, all commercials were stopped and television commercials never did happen. He explains that he never saw the agreement that Lydon Laudi entered into before this Court case and Lydon Laudi was not authorised to sign such an agreement.

With regard to menu content and design, he says that Lydon Laudi contributed to the food selection part of the menu but was neither creator nor designer. He explains that the content was created by himself, his wife and the chef. In fact, he sent the menu to Lydon Laudi himself on the 20th June 2017. He states that he also designed and created the invitation for the grand opening which was printed with Vistaprint.

With regard to the financial situation of Dolittle & Fishmore Limited, he says that at the start of the refurbishment, the suppliers of the Birkirkara outlet were contacted and offered to become the suppliers of the new restaurant with the same conditions and a thirty-day end of month credit system. He would prepare the cheques which would be kept in the safe and only handed out by Lydon Laudi at his instructions in order to control the cashflow. He explains that there were separate agreements with Farsons who offered to sponsor the restaurant by providing a loan as well as fridges and a beer tower, which agreement was signed by the defendant on behalf of the company.

He explains that all shareholders were made aware of the financial situation due to the delay in opening but despite the situation being made very clear, none offered any assistance. Lydon Laudi was made particularly aware of the situation due to his involvement in the day-to-day running of the restaurant.

On September 7th September 2017, the defendant, Thomas Pantzar and Frank Grisar discussed the financial situation and came to the conclusion that the income from sales was insufficient and the investment would allow the company to keep operating until there could be a potential sale. He states that he put in a cash injection personally to allow operations to continue which payments were from personal money that he received as part of the shareholders loans from Kalataka Limited. The payments amount to twenty-eight thousand Euros (€28,000).

He explains that Lydon Laudi handed in his resignation on the 21st September 2017, and the he was asked to provide data due to payroll so

that the staff could be paid as well as the keys to the safe and the cheques which were no longer in the safe. However, despite agreeing to this, Lydon Laudi went to the restaurant and handed out cheques to particular suppliers against his orders.

He states that the cheques were never returned until they were presented in this case and keys and operational documentation were not returned, despite having even sent a legal letter.

In October and November 2017, he found may discrepancies from reports made by Lydon Laudi and he spent considerable time coming up with repayment plans and re-balancing operations, which involved paying all purchases there and adjusting headcount. He explains that by the end of November 2017, the situation had stabilised and the suppliers were satisfied with repayment efforts and continued supplying the restaurant.

He states that on 6th November 2017, Frank Grisar sent a request for a shareholders' meeting and the defendant asked for a clarification as to the request. On 17th November 2017 Thomas Pantzar intervened and asked Frank Grisar for help, to which there was no reply.

He explains that two shareholders' meetings were held on 22nd December 2017 and 20th March 2018, for the former only himself, Thomas Pantzar and Charles Cassano attended, whereas for the second all shareholders attended by Lydon Laudi, Frank Grisar and Kevin Schembri left once their request to record the meeting was voted down.

He states that on the 12th December 2017, Lydon Laudi filed a garnishee order against the company which made it difficult to manage any payments. In addition to that, January is a low month and hence it was not financially viable to continue trading and hence they had no choice but to close down. He emphasises that it was the garnishee order that forced the close down as by December 2017 the situation had stabilized.

Defendant also emphasises that it is not true that he managed the business of the company in a way that was not financially sustainable and he has always served his duties and acted as a director in good faith and exercised his powers properly with care and diligence in the best interests of the company.

He concluded by stating that all shareholders, including the plaintiff, know very well the reasons for the financial difficulties of the company and they were kept informed of the progress of the business of the company and whenever requested all information was provided to them.

Under **cross-examination,** defendant Pantzar states that he graduated in 1981 and worked internationally most of his life at various companies and also worked as head of sales sourcing and product management for various mobile platforms.

Asked about how the idea of a catering business came about, he says that his wife had an opportunity to come to Malta and he felt it was time to retire and for a while did nothing. He explains that then, he and four colleagues decided to open up a catering business and formed Calataca Limited which owns Amorino which opened in 2014. He confirms that after this he opened an outlet in St. Julians with Thomas and Maria Beaney under a separate company. He confirms that this was the first time in a catering business. Following that he ventured into the Birkirkara restaurant in around 2016.

He explains that Amorino employs eight to ten people on a full-time basis and more according to the particular season. He confirms that he had a hands on approach in all outlets. He says that he had always been interested in cooking and as there was no high tech business in Malta, it was a good alternative. He explains that prior to going into the business, extensive market research was carried out.

He confirms that the idea for Dolittle & Fishmore came about in 2015 and would be his fourth catering outlet. He states that he came up with the initial calculations for the outlet but everyone involved had a say. Asked whether he spoke to banks for loans, he said that this was not done as banks in Malta are not very keen to bank with foreigners. He explains that he started seeking investors for this project as he did not have enough to do it on his own.

He confirms that the lease of the outlet was signed on 7th December 2016 at the rate of four hundred and fifty Euros (€450) per day and a one hundred thousand Euro (€100,000) premium. The target was to open the outlet by Easter 2017 as the projected sales were to depend largely on tourism. He confirms that when the lease was signed, it was signed on behalf of a company which was not yet formed and hence he signed in his name on behalf of a company which was to be formed.

Defendant Pantzar says that when Laudi got to know about the concept of Dolittle & Fishmore, he showed interest and wanted to be involved but had no money to invest, and hence it was agreed that he participates in the set up and the build-up from the beginning in return for ownership and hence was given shareholding without forking out any money. He states

that Lydon Laudi was helpful with setting up and suppliers as he spoke Maltese.

He states that Lydon Laudi's role extended even to after opening, helping with marketing in particular. He had a supervisory role as there were people employed to run the restaurant. Hence, he was not given a salary and there was complete agreement as to that. He re-iterates that to keep him motivated he used to give him money from his own pocket.

In his subsequent testimony in cross-examination, the witness presented the latest business plan from December 2016 and 2017. He confirms that the document was prepared by himself but then discussed with all potential investors.

He confirms that the outlet first opened on the 5th April 2017. Asked as to why, by the end of June, there was already an issue with financial resourcing, he says that there were additional costs in the kitchen, which delayed the opening and construction began on the floors above the restaurant which blocked both the sunlight and the view and also debris was falling from the construction. He states that this had a direct impact on sales, but this was stabilised by the end of 2017.

Asked about what his role in the restaurant was, he says that he was director and also managed operations. He explains that in the beginning either him or Lydon Laudi would be present in the restaurant and later on would transition to performing spot-checks. Asked whether reviews about the restaurant were brought to his attention, he says they were not and he was not aware of them.

He explains that due to the hindrance caused, the rent amount was reduced until the scaffolding was dismantled and there was a total reduction of around thirty thousand Euros (€30,000).

Asked whether the VAT return reports were truthful, he says they are based on amounts passed on to him by Lydon Laudi from the cash register itself.

In his subsequent testimony, again under cross-examination, defendant states that the business plan was drawn up my himself based on the experience of other outlets and the numbers were adjusted following discussions with Akon Technologies, Frank Grisar, Kevin Schembri and Thomas Pantzar. He confirms that by the end of July 2017, he was selling off both the St. Julian's and Birkirara outlets.

In his affidavit, **Thomas Pantzar** states that he was a Director of Dolittle & Fishmore Limited alongside his brother Jan Pantzar. He explains that at the time he was not living in Malta and therefore was being informed of the company's affairs through correspondence with Jan Pantzar and the other shareholders.

He confirms the content of Jan Pantzar's affidavit and states that it reflects the activities of the company as he experienced them.

Further considers:

That from the **submissions** made by the parties, the Court highlights the following:

The **plaintiff** submits that through the facts of the case it is amply clear that the defendant betrayed the plaintiff's trust after luring him into investing into a company and entering into an agreement with him for the role of project manager of the catering outlet Dolittle and Fishmore as well as other services rendered, which amounted to the sum due of fifty two thousand and forty five Euros and seventy nine cents (€52,045.79). He explains that all the services delivered and rendered by the plaintiff were carried out on the directions and instructions of the defendant.

With reference to the cases decided by the Court of Appeal **Jean Pierre sive Jean Borg vs Nicole Borg** decided on the 30th November 2012 and **MCH Concorde Developments Limited vs. B. Grima and Sons Limited** decided on 27th January 2017, the plaintiff argues that when a party enters into a contract, one is bound by that contract as if it were law (pacta sunt servanda). He claims that there is no doubt that the proposal floated by the defendant to the plaintiff and its subsequent acceptance signalled the defendant's intent to enter into a contractual relationship in terms of Article 960 of Chapter 16 of the Laws of Malta. Moreover, he states that the elements as per article 966 of Chapter 16 of the Laws of Malta subsisted. He further argues that in this case the law does not provide for a specific form for the contract to take place and hence a verbal agreement is sufficient. He states that it is amply shown through the plaintiff's testimony that the essential elements of the contract existed and thus the defendant is bound to the plaintiff for the above-mentioned sum of money.

From their end, the **defendants** argue that Jan Erik Pantzar never contracted personally with the plaintiff and thus should be declared non suited in these proceedings - in fact the invoices in question are addressed to the defendant company. In this regard they refer to the judgement of the First Hall, Civil Court **Carmel Brand Limited vs Michael Debono** dated 21st March 2002. They claim that the plaintiff was well aware that the work was being carried out for the defendant company, as he was one of the shareholders of the same, and that any agreements were made by Jan Pantzar as director of the said company.

The allegation that there was a verbal agreement for any works between the plaintiff and the defendants is being completely refuted by the defendants. The defendants argue that it was agreed from the start that in return for his work efforts in the refurbishment of the premises and the running of operation, the plaintiff would be paid in shares in the defendant company. The defendants submit that what results from the evidence is that the plaintiff's role was that of helping in the co-ordination of refurbishment works and not that of project management. Nor did he carry out the designs of the restaurant as he claims. The defendants claim that there was never a warning from the plaintiff that the defendants were moving too fast, they claim that the reality is that the plaintiff saw the project as an opportunity and wanted to be part of it.

The defendants submit that they have consistently negated any agreement or contract with the plaintiff or discussions as to the rate of payment. With reference to the decisions of the Court of Appeal **Maria Xuereb et vs Clement Gauci et** decided on the 24th March 2004 and **Charles Grech vs NMJ Co Limited et** decided on 14th January 2004, they state that the plaintiff's version is not sustained by evidence. Moreover, they question the credibility of the plaintiff who goes as far as alleging that he invested a further thirty thousand Euros (€30,000) into the company but has produced nothing to substantiate this whereas for other investors agreements were produced. They submit that later on plaintiff changes his version that the said sum was a loan. Furthermore, they point out to the fact that whereas he claims that the thirty-five thousand Euros were due to him for project management, he then goes on to list items in the invoice which he would not have needed to do if the sum was truly agreed to from the start.

With regard to the payments made by the defendants to the plaintiff, the defendants made it clear that this was purely an *ex gratia* payment to encourage him to work more. The defendants argue that these payments

can never be equivalent to the recognition of debt as this needs to be clear and explicit.

Furthermore, they submit that the burden of proof in civil proceedings lie on the plaintiff to prove the allegation put forward by him, which the plaintiff failed to do as he failed to provide tangible and acceptable proof of any verbal agreement regarding the renumeration he alleges is due to him. The defendants suggest that the plaintiff created the invoices as he was foreseeing that his gamble was not going to pay off and then put a garnishee order in place which rendered the company not financially viable.

Further considers:

Having established the facts of the case and having gone through the parties' submissions, the Court shall now deal with the preliminary plea that the defendant Jan Erik Pantzar is unsuited in these proceedings, prior to delving into the merits.

In their sworn reply the defendants argue that the defendant Jan Erik Pantzar never contracted personally with the plaintiff and in fact even the invoices presented by the plaintiff himself call upon the defendant company for payment.

In their submissions the defendants submit that the plaintiff was involved in the project concerning the establishment of the restaurant Dolittle and Fishmore which, as he was well aware, did not belong to Jan Erik Pantzar personally but to the company of which he was Director, Dolittle & Fishmore Limited, a company of which the plaintiff was also a shareholder and hence certainly aware. Furthermore, they claim that he was surely aware that he was being contracted by the defendant company as the invoices presented by the plaintiff himself call upon the defendant company and not Jan Erik Pantzar.

The Court notes that the plaintiff did not bring forward any submissions with regard to this preliminary plea.

The Court considers that it is amply clear that the restaurant at Sliema Seafront belonged to and was run by the defendant company and not the defendant Jan Pantzer personally, in fact the defendant company had been created for that particular purpose and bore the same name.

Despite the fact that the demands set forward by the plaintiff in his sworn application call upon either one of the defendants to settle the payments claimed, in the eyes of this Court and following a thorough analysis of the same evidence produced as above shown, it is evident that the plaintiff feels let down with the behaviour of the defendant but nowhere does the plaintiff specify or imply that he has particular expectations vis-à-vis the defendant in his personal capacity for alleged acts done by the defendant himself and personally.

Naturally, while a limited liability company has a separate juridical personality, there is nothing to preclude the individual from filing a suit against one of the officers of the same company especially when that same officer is the Director and Juridical Representative of that same company, but naturally the demands made in that same suit would be limited to his role as officer of the company and do not extend to personal liability.

Therefore, this Court accedes the preliminary plea raised by the defendants in paragraph 3(1) of the sworn reply (fol 88) and concludes that <u>Jan Erik Pantzar is non-suited in his personal capacity</u>.

The merits

In the demands contained in the plaintiff's sworn application, the plaintiff is asking this Court to declare the defendants responsible for the payment of the sum of fifty two thousand and forty five Euros and seventy nine cents (€52,045.79) to the plaintiff, which sum results from a contractual relationship between the parties, for works carried out by the plaintiff in the restaurant Dolittle & Fishmore owned by the defendant company.

The very point of contention between the parties lies is the very existence or otherwise of the agreement between the parties. The plaintiff, on the one hand, claims that Jan Erik Pantzar had verbally agreed to pay the defendant for services rendered, whereas the defendant claims that there was never such an agreement between the two.

Article 960 of Chapter 16 of the Laws of Malta, defines a contract as follows:

> ***960.*** *A contract is an agreement or an accord between two or more persons by which an obligation is created, regulated, or dissolved.*

As this is a Civil suit, the onus of proof lies on the plaintiff to substantiate his claim by bringing forward proof that the contractual relationship and the terms thereof truly existed.

The Court is here faced with contradictory versions as to what was truly agreed to between the parties.

In this regard the Court observes the Court observes the decision of the Court of Appeal in the names **Maria Xuereb et vs Clement Gauci et** decided on the 24th March 2004 where the Court said:

> *Huwa pacifiku f'materja ta' konflitt ta' versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni tal provi quddiemha:*
>
> *1. Li taghraf tislet minn dawn il-provi korroborazzjoni li tista' tikkonforta xi wahda miz-zewg verzjonijiet bhala li tkun aktar kredibbli u attendibbli minn ohra; u*
>
> *2. Fin-nuqqas, li tigi applikata l-massima "actore non probante reus absolvitur".*

As well as the decision of the Court of Appeal in the names **Charles Grech vs NMJ Co. Limited et** decided on the 14th January 2004, where the Court decided:

> *Jidher li l-vertenza vera u proprja f'dan l-appell hi wahda essenzjalment ta' kredibilita`, aktar milli ta' haga ohra. F'sitwazzjoni konsimili, ta' kredibilita` u apprezzament ta' provi l-kriterju distintiv ma huwiex jekk il-gudikant assolutament jemminx l-ispjegazzjoni izda jekk dik l ispjegazzjoni hijiex verosimili. Huwa imbaghad pacifikament akkolt illi f'kaz ta' kuntrast bejn zewg versjonijiet "mhux kwalunkwe tip ta' konflitt ghandu jhalli lill-Qorti f'dak l-istat ta' perplessita` li minhabba fih ma tkunx tista' tiddeciedi b'kuxjenza kwieta u jkollha taqa' fuq ir-regola ta' 'in dubio pro reo'" – "Carmelo Farrugia –vs- Rokku Farrugia", Prim'Awla, Qorti Civili, 24 ta' Novembru 1966.*

Furthermore, in the decision of this Court as otherwise presided in the case **Chef Choice Limited vs Raymond Galea et** (Ċit Nru 2590/1999 JRM) - 26 ta' Settembru 2013 – it was said:

> *Illi l-Qorti tqis li, għalkemm il-grad ta' prova fil-proċediment ċivili m'huwiex wieħed tassattiv daqs dak mistenni fil-proċediment kriminali, b'daqshekk ma jfissirx li l-provi mressqa jridu jkunu anqas b'saħħithom. Il-prova mistennija fil-qasam tal-proċediment ċivili ma tistax tkun sempliċi supposizzjoni, suspett jew konġettura, imma prova li tikkonvinċi lil min irid jagħmel ġudizzju [Ara P.A. DS 13.2.2001 fil-kawża fl-ismijiet Nancy Caruana vs Odette Camilleri (mhix pubblikata, imma f'dan ir-rigward, konfermata mill-Qorti tal-Appell fis-27.2.2004)].*
>
> *……*
>
> *Illi minbarra dan, il-parti attriċi għandha l-obbligu li tipprova kif imiss il-premessi għat-talbiet tagħha b'mod li, jekk tonqos li tagħmel dan, iwassal għall-ħelsien tal-parti mħarrka [App. Inf. JSP 12.1.2001 fil-kawża flismijiet Hans J. Link et vs Raymond Merċieca]. Il-fatt li l-parti mħarrka tkun ressqet verżjoni li ma taqbilx ma' dik imressqa mill-parti attriċi ma jfissirx li l-parti attriċi tkun naqset minn dan l-obbligu, għaliex jekk kemm il darba l-provi ċirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attriċi, l-Qorti tista' tagħżel li toqgħod fuqha u twarrab il-verżjoni tal-parti mħarrka.*

Also, in the case **Joseph Tonna vs. Philip Azzopardi** (App. Ċiv. Nru 503/2002 PS), decided by the Court of Appeal in its Inferior Jurisdiction on the 12th April 2007:

> *"[...] in materja ta' provi r-regoli l-aktar prevalenti fl-ordinament guridiku taghna jidhru li huma dawn:-*
>
> *(1) Ibda biex ir-regola tradizzjonali tal-piz tal-provi timponi a kariku talparti li tallega fatt l-oneru li ggib il-prova ta' l-ezistenza tieghu. Tali oneru hu ugwalment spartit bejn il-kontendenti, sija fuq l-attur li jsostni l-fatti favorevoli li jikkostitwixxu l-bazi tad-dritt azzjonat minnu (actori incumbit probatio), sija fuq il-konvenut ghas-sostenn tal-fatt migjub*

minnu biex jikkontrasta il-pretiza ta' l-attur (reus in excipiendo fit actor). Ara Kollez. Vol. XLVI P I p 5;

(2) Fil-kors tal-kawza dan il-piz jista' joxxilla minn parti ghall-ohra, ghax, kif jinghad, "jista' jkun gie stabbilit fatt li juri prima facie li t-tezi ta' l-attur hija sostenuta" (Kollez. Vol. XXXVII P I p 577);

(3) Il-gudikant adit mill-meritu tal-kaz hu tenut jiddeciedi iuxta alligata et probata, u dan jimporta illi d-decizjoni tieghu tigi estratta unikament millallegazzjoni tal-partijiet. Jigifieri, minn dawk ic-cirkustanzi tal-fatti dedotti ghab-bazi tad-domanda jew ta' l-eccezzjoni u l-provi offerti mill-partijiet. Jikkonsegwi illi d-dixxiplina tal-piz tal-provi ssir bazi tar-regola legali talgudizzju in kwantu timponi fuq il-gudikant il-konsiderazzjoni li l-fatt allegat mhuwiex veru ghax mhux ipprovat;

(4) Il-valutazzjoni tal-provi hu fondat fuq il-principju tal-konvinciment liberu tal-gudikant. Lilu hu moghti l-poter diskrezzjonali ta' lapprezzament tar-rizultanzi probatorji u allura hu liberu li jibbaza l- konvinciment tieghu minn dawk il-provi li hu jidhirlu li huma l-aktar attendibbli u idoneji ghall-formazzjoni tal-konvinciment tieghu. [...]"

With all the above juridical notions in mind, the Court refers now to the invoice 0119, which relates to project management, plaintiff states that there was a verbal agreement between himself and Jan Erik Pantzar as to which works had to be carried out. The Court observes that this is the only evidence as to the contract brought forward by the plaintiff.

The defendants, on the other hand, state that there was in fact an agreement but the agreement was that the plaintiff would not be paid in cash but would be given a percentage of shares in the company itself.

The Court observes that the plaintiff did in fact acquire shares in the company. It is a fact acknowledged by both parties that the plaintiff is in fact a shareholder in the defendant company. However, the plaintiff did not bring any proof as to how those shares were in fact acquired.

The plaintiff testifies that he had invested thirty thousand Euros (€30,000) in the company, which the defendants outright deny, but from the testimony of the same plaintiff, it results that this amount was paid by way of a loan which the plaintiff expected to be repaid to him. Nevertheless,

nowhere does the plaintiff explain how he acquired the shares in the defendant company.

Thus, the Court deems that the explanation given by the defendants, which has indeed been consistent, in that the shares were actually payment for services rendered by the plaintiff, makes sense and constitutes the version of events which this Court accepts.

Moreover, when it come to the other two invoices, that is invoice 0112 and invoice 0111, which relate to building the website and advertising, the plaintiff claims that Jan Erik Pantzar had engaged his services in this respect. On the other hand, Jan Erik Pantzar states that this couldn't be the truth as the website was not a priority for him and he had paid Lydon Laudi for services he had rendered with regard to advertising. The defendant argues that these were invoices with the same reference numbers which were settled in full by the defendant company on the 23rd February 2017 (vide fol 516 to fol 519).

As stated above, this Court is faced with two versions of events which are contradictory. The Court is of the view that the plaintiff's testimony, although rather detailed, is not reliable enough to convince the Court that plaintiff's version of events is actually the one to drive it decide in his favour.

The Court deems that plaintiff depicts himself as an expert in too many fields, not least, interior design, project management, catering, menu design, advertising, website building, social media management and more. The evidence brought forward by the defendant shows that the plaintiff was responsible for much less work than he gives himself credit for. This is amplified by the fact that upon his resignation, the plaintiff held on to a number of signed, uncashed cheques for whichever reason, that this Court will not speculate about. The defendant, on the other hand, provides clear evidence as to all that took place in the space of a few months and his testimony is supported by documentary evidence. The only fault that this Court finds in the defendants' approach is that they did not document all communication with the plaintiff in a systematic and organised manner when they were working together.

Therefore, this Court is of the view that the plaintiff has failed to prove that a contractual relationship exists or existed between the parties whereby the defendant company contracted the plaintiff to carry out the services alleged on the conditions detailed by the plaintiff and hence finds that the amount claimed by the plaintiff is not due by the defendants.

Decision

THEREFORE, after having examined all the evidence produced, considered the submissions put forward and in view of all the considerations made above, the Court, whilst upholding the defendants' pleas, dismisses the plaintiff's requests and orders that all costs relative to these proceedings be borne by the same plaintiff.

Ian Spiteri Bailey
Hon. Judge

Amanda Cassar
Deputy Registrar