



IN THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR: DR. MAROUSKA DEBONO LL.D., M.A. IN LAW

Sitting of Thursday, 3rd April, 2025

Claim Number: 76/2021

Susan Firth Bernard Kavanagh

Vs

Josephine Ann Brincat

The Tribunal

Having seen the Notice of Claim dated 1st March 2021¹ filed by the Claimant wherein she is claiming the sum of two thousand, five hundred, seventy six Euro and sixty five cents (€2,576.65), representing the cost of remedial works, including the material and professional fees relating to reports prepared by architects engaged by her, together with legal costs, including those incurred in connection with the judicial letter dated 12th February, 2019 and legal interest from date of notification of the said judicial letter.

Having seen the reply filed by the Defendant dated 26th March, 2021² by virtue of which she raised the following pleas:

1. *That, by way of a preliminary plea, the Defendant submits that she is non-suited in this claim;*
2. *That, the Claimant's demands are vague and fail to provide sufficient details about the facts leading to the present case, as required by law;*
3. *That, without prejudice to the above, the Defendant categorically denies the allegations brought against her, as they are entirely unfounded both in fact and at law, as will result during the hearing and through the submissions made in the course of the proceedings;*

¹ A fol 1 et seq of the acts

² A fol 20 et seq of the acts

4. *That the Claimant's claims are unfounded, as no compensation is due, and the Defendant is not responsible for the alleged damages;*
5. *That, without prejudice to the above, the amount being claimed is excessive and the quotations submitted are exaggerated;*
6. *The Defendant saves the right to raise additional and ulterior pleas according to law;*

With costs.

Having seen the affidavits submitted;

Having seen the documentary evidence presented;

Having heard the oral submissions of the parties;

Having seen the acts and proceedings of the case;

Having seen that the case was adjourned for judgment.

Facts of the case

The Claimant submits that she had to carry out remedial works, including but not limited to plastering, painting, and other related repairs, in respect of her residential property situated in St. Julian's, which damages are alleged to have arisen as a direct result of structural alterations effected by the Defendant to the property situated directly beneath that of the Claimant. The total cost incurred by the Claimant for the execution of said remedial works, including the cost of materials and professional fees for reports prepared by architects engaged by her, amounts to two thousand five hundred seventy-six euro and sixty-five cents (€2,576.65).

Evidence produced

Having seen the affidavit of **Perit Clive Borg Bonaci**³ wherein he confirmed that he had been engaged by the Claimant to compile a condition report in relation to the damages caused in her property. He accessed the premises on the 3rd of September, 2020, and accordingly drew up the said condition report, which he submitted and confirmed on oath. He further affirmed that the Claimant remunerated him in the sum of one hundred seventy-seven Euro (€177) for his professional services.

During cross-examination⁴ he testified that the report was compiled on the 3rd of September, 2020. He stated that he had been approached by the Claimant to inspect the property in connection with alleged damage arising concurrently with structural works being carried out on the underlying property. Upon his visit, he observed that the said works had already been completed, thus limiting his inspection to a visual assessment of the resulting damages. He

³ A fol 29 of the acts, which was again exhibited in the sitting of 2nd June, 2022, a fol 65 of the acts

⁴ A fol 88 et seq of the acts, cross-examination on the 28th February, 2023

observed and corroborated the presence of cracks, as indicated by the Claimant. While he acknowledged that it is not possible to state with absolute certainty that the cracks were caused directly by the said works, he confirmed that such damage is consistent with works involving the removal of walls and installation of beams, works typically associated with a weakening of structural support, of which the appearance of cracks is common. When asked whether he was aware of any other structural works having been carried out in nearby apartments during the period in question, he responded that he had conducted the necessary inquiries and recalled no recent works that could have caused such damage.

Having seen the affidavit of **Susan Firth-Bernard Kavanagh**⁵ wherein she declared that she resides in Flat 10, Neptune Court, No. 43 Triq Censu Tabone, St Julians and that her apartment is overlying Flat 8 which is owned by the defendant. She explained that following extensive works at Flat no. 8 Neptune Court, no. 43 Triq Censu Tabone, St. Julians over a two-year period, her property overlying Flat no. 8 Neptune Court sustained damages as acknowledged by the appointed architect Philip Farrugia on behalf of the defendant who is the owner/co-owner of Flat no. 8 Neptune Court⁶. Although a condition report was drawn up on the condition of her property by Perit Farrugia before the works in Flat no. 8 commenced, it took substantial correspondence before any action for repairs was taken on behalf of the defendant. Her own architect Andrew Sapienza was very instrumental in coordinating on site visits to her property together with Perit Farrugia. Perit Farrugia assured her that their own workmen would carry out works identified as damages due to their construction in Flat no 8. Nevertheless, this did not materialize in its entirety. The only damage that was repaired was in the two hallways where Perit Farrugia organized for a workman to plaster and paint the damaged areas. The workman never concluded the work despite many attempts by her to have the works completed. She was left with no option but to appoint another person to finish the works which costs are not included in this claim. Subsequently, she requested her lawyer at the time Avv. Errol Cutajar to forward a legal letter to the defendant⁷. This was followed by a reply from the the defendant's brother⁸. She continued that she fails to understand that although they had amicably agreed to the respective works to be carried Perit Farrugia who never fulfilled their agreement even though he did take workmen to her home in order to organize the appointed works. Consequently, she had no option but to privately engage her own architect to issue a Property Condition Report based on the damages that had been identified by Perit Farrugia. Her appointed architect Clive Borg Bonaci was given specific instructions to base his report ONLY on the damages identified by Perit Farrugia⁹. As no further attempts were made by Perit Farrugia to complete works in her home she engaged her own workmen to carry out the necessary repairs. To date, not all the repairs have been carried out. This proved to be exceptionally difficult to find the right people causing further inconvenience to her and further delay. Her claim does in no way represent the full extent of time and effort spent trying to rectify the damages caused by the refurbishment of the defendant's property. She mentioned that during the many on site visits by both Perit Farrugia and Perit Sapienza she tried to suggest easy solutions to the repairs quite simply as she just wanted to have her home returned to its original good condition. Due to the nature of the damage in her kitchen which consists of dislodged tiles on two walls, this specific room has and will never be returned to its original state as the tiles continued to fall off the walls including the heavy curtain pelmet. In fact, she not only lost tiles but everything that was underneath the pelmet when it fell off. She also had

⁵ A fol 40 et seq of the acts

⁶ A fol 42 et seq of the acts

⁷ A fol 50 of the acts

⁸ A fol 51 et seq of the acts

⁹ A fol 53 et seq of the acts

to remove the fitted kitchen cupboard that contained the fridge/freezer, this has since been discarded¹⁰. Due to the sheer amount of correspondence between Perit Sapienza, Perit Farrugia and herself, she presented the last two emails that pertain the matter in hand¹¹. Finally, she said that she is very disappointed that what could have been resolved in a prompt and amicable way was not, due to the negligence on the part of the defendant and her appointed representatives. She concluded that on the report of Architect Clive Borg Bonaci, it transpires that the reparatory works necessary as per the quotation amounts to one thousand, five hundred, eighty one euro and twenty cents (€1,581.20), and that she also disbursed the amount of one hundred and seventy seven euro (€177) to Architect Clive Borg Bonaci.

Having seen the affidavit of **Perit Andrew Sapienza**¹² wherein he confirmed that he had been engaged by the Claimant in his capacity as an architect to carry out an inspection of her property and to compile a report. He accessed the property on the 27th June, 2018, conducted the necessary inspection, and subsequently prepared the said report, which he exhibited and confirmed on oath¹³.

During cross-examination¹⁴ he confirmed that discussions had taken place between himself and Perit Farrugia concerning remedial works to be undertaken within the Claimant's apartment. He stated that he had been in contact with Perit Farrugia for the said remedial works to be done. Perit Sapienza further affirmed that he had drawn up a post-condition report reflecting the state of the property as observed during his inspection. He visited the premises on more than one occasion while the structural works were ongoing. In his report, he stated the damages that were clearly attributable to the structural works being carried out in the underlying property. The external works, according to him, had nothing to do with the works at that moment. He stated that an agreement had been reached with Perit Farrugia acknowledging that certain damages to the Claimant's apartment, specifically, cracked tiles in the bathroom and kitchen, as well as settlement cracks in the corridor, had been caused by the said underlying works. However, he clarified that he had no further involvement or knowledge as to whether Perit Farrugia and his client ultimately arranged for the remedial works to be executed themselves, or whether the Claimant took it upon herself to do so. When referred to the document *a fol 58* of the acts, he clarified that the said document was not the condition report he had prepared. Rather, it referred only to the removal of steel windows, which, in his opinion, could have been executed in a more appropriate and careful manner. He emphasized that the actual condition report he had prepared contained a list of damages and reflected the general condition of the apartment as observed during his inspection. Perit Sapienza stated that he had not conducted any research nor had knowledge of any recent structural works being conducted in other apartments within the same building. However, he categorically stated that the damages he observed within the Claimant's apartment could not be attributed to any such other works, as no construction activity was occurring above the Claimant's apartment. He further stated that he was physically present during the execution of works in the underlying property, including when they were jiggling out works. He recounted being in the kitchen during such activity, noting that the vibrations were significant enough for him to intervene and even stopped the works, and so he knows exactly that the damages in question, namely the cracked tiles and settlement cracks, were directly caused by the said activity, and not only did he personally observe them, but he also verified them with the Defendant's architect.

¹⁰ A fol 58 et seq of the acts

¹¹ A fol 61 et seq of the acts

¹² A fol 79 of the acts

¹³ A fol 80 et seq of the acts

¹⁴ A fol 92 et seq of the acts, cross-examination done on the 28th February, 2023

Having heard **Perit Philip Farrugia**¹⁵ who declared that he is an architect and has also companies operating in the construction and interior design sectors. He stated that he is the director of Domus, a company through which he manages interior design projects. He declared that in January 2017, he was engaged by the Defendant in his professional capacity as an architect and together with the Defendant's daughter, Sarah, who was the interior designer, went over the plans and to submitted the necessary application, which process took till October 2017 when the permit was issued. Following this, during the same month, a request was made to conduct a condition report on the overlying property, which belonged to the Claimant, and it was only by mid-November that the condition report could be carried out on the Claimant's property, which directly overlies the premises where the proposed works were to take place. He attributed the delay in carrying out the inspection to the Claimant's limited availability, namely that she insisted on being available only for one hour on Sundays. Perit Farrugia confirmed that the construction works were executed by Domus, which, in turn, subcontracted other contractors, technicians, and turnkey service providers to carry out the necessary work. The construction commenced in January 2019 and was concluded by March 2019. The works primarily consisted of internal alterations, including the removal of certain walls in order to subdivide the property. Throughout this period, they encountered a lot of resistance from the Claimant, which resulted in further delays to the progress of the works, prolonging the project by approximately one year. This included the lift being blocked, thus the contractors had to carry their tools and materials up approximately seven flights of stairs, which led to several contractors refusing to proceed with the works. The Claimant also visited the premises on multiple occasions to complain. As a precautionary measure and at the Claimant's specific request, plastic was affixed to the windows of both the Claimant's and the Defendant's properties in order to prevent dust ingress. Perit Farrugia also confirmed that a Health and Safety Officer, in accordance with applicable legal requirements, had been appointed for the project. He stated that, during the course of the works, they were notified of certain damages to the Claimant's property, including hairline cracks in the corridor and living room, cracked tiles in the bathroom, and tiles that had detached from the kitchen wall. He referred to his condition report of November 2017, in which he had already noted that the kitchen tiles were loose, hollow when tapped, and very old. Following the completion of the structural works in the Defendant's property, and in light of the Claimant's complaints, he personally visited the Claimant's apartment, accompanied by Perit Andrew Sapienza, the Claimant's architect. He recalled that the visit took place in either June or July, and stated that their respective findings matched. Subsequently, he held a meeting with Mr. Martin Farrugia, head of the Building Regulation Office (BRO), to discuss the reported damages. He confirmed that his client, the Defendant, agreed to undertake the necessary remedial works, and that he and Perit Sapienza reached an agreement as to the scope of such repairs. He explained that the remedial works commenced in May 2019, starting with plastering to address the hairline cracks in the Claimant's property. However, scheduling was problematic due to the Claimant's insistence on specific availability, and the limited access delayed the works, which ultimately took approximately one and a half weeks to complete. Furthermore, he noted that the workman was only permitted to remain on-site for one hour at a time. The plasterer engaged on behalf of the Defendant, Mr. Preselit, expressed frustration with the limitations and contacted him several times telling him that he wanted to leave. To facilitate, he personally went to the Claimant's apartment, even assisting with moving the furniture himself, as they wanted to conclude the works. Once the plastering was completed, a cleaner was sent, the furniture was repositioned, and a tiler was engaged. The tiler proceeded to remove loose tiles above the kitchen sink and

¹⁵ A fol 84A et seq of the acts, deposition given on the 22nd November, 2022

the window. However, the tiles in the bathroom and the window sill were not addressed at that time, as replacement tiles needed to be bought. Suddenly, the Claimant informed him that she would no longer allow access to her property, citing her travel plans, personal health issues, and the illness of her dog. As a result, the completion of the remedial works was halted. He claimed that, throughout the works, the Claimant was rude which was supported by written correspondence. He maintained that all reasonable efforts were made to carry out the agreed works. He said that the situation was extremely difficult from the beginning, with the condition report having to be done at 7:00 a.m. on a Sunday, and also when the works were being carried out an incident occurred where the Claimant allegedly threw water onto secured workmen operating on a shutter. He said that they tried to carry out the remedial works, but many workers refused to proceed due to the schedule of one hour on one day, followed by another hour three days later, until a patient worker was found, who completed the works over a week and a half. Finally, he estimated that, from the Defendant's side, the total cost of the remedial works amounted to four hundred and fifty Euro (€450).

Under cross-examination¹⁶ he confirmed that he was engaged by the Defendant in his professional capacity as an architect. He also stated that he owns a company specializing in interior design and project management. In his professional capacity he was engaged to carry out internal structural alterations within the Defendant's apartment. Following completion of these structural works, interior design and project management were handled by one of his partners. He testified that the works included the removal of internal walls, which were subsequently supported by steel columns placed where structurally necessary. No changes were made to the roofing structure, as this had already been altered prior to the commencement of the project. He stated that he visited the site at least once per week, or whenever his presence was requested by the contractors. Whilst he was not present for every incident, he received firsthand reports from colleagues, partners, and on-site workmen regarding developments during the course of the project. He referred to his pre-condition report, in which he documented the existence of cracks in the soffit of the bedroom in the Claimant's property, as well as old tiles that were hollow, indicating insufficient cement. However, he clarified that these tiles were not cracked at the time of the inspection. He stated that he did not deem it necessary to warn the Claimant that the tiles might crack, as the intended structural works were not of a major nature. He acknowledged that vibrations from works conducted below could theoretically cause tiles to dislodge and fall. However, he explained that pre-condition reports do not typically include potential future damage of this kind. He further clarified that settlement, rather than vibration, occurs when internal walls are removed and load distribution changes. Vibrations, he explained, result from jiggling or using jackhammers or heavy machinery, none of which were used in this case. Wall removals were executed using handheld saws. He specified that the walls removed were located in the corridor, opposite the kitchen area. He confirmed that permission to use the lift was granted by the building's administrator, and that tenants were not consulted directly, as this aspect was coordinated by the project manager, Mr. Nick Vassallo. He said that, during the course of the works, dust was generated, and all windows were sealed. The Claimant specifically requested that her windows also be sealed, and when re-sealing was necessary due to damage caused by wind or other factors, this was also addressed. He was aware that, at the time, the Claimant was undergoing cancer treatment. He also referred to incidents wherein the Claimant physically stopped workers, and clarified that he was not present for all such instances. On at least one occasion, he was required to attend the site personally because contractors had refused to continue working, referring to the need to carry materials up four flights of stairs after the Claimant restricted the use of the

¹⁶ A fol 141 et seq of the acts, cross-examination dated 29th February, 2024

lift. He confirmed that damage had occurred to the underside of the Claimant's balcony as a result of crane operations. He also stated that he was present on several occasions during the execution of remedial works in the Claimant's property, to observe, issue instructions, and on one occasion to assist with the moving of furniture. With regard to the bathroom tiles, he stated that although there was the intention to replace them, this could not be carried out as access was ultimately denied by the Claimant. The team was in the process of looking for matching tiles, but had not yet identified or acquired them prior to access being restricted. In relation to the kitchen, he confirmed that the Claimant had requested the removal of any loose tiles, which was carried out. The area was then plastered, and arrangements were made to select and replace the window sill.

During re-examination¹⁷ he replied that no recommendation or advice was provided in the condition report. With regard to the damage on the balcony, he stated that discussions had taken place with the client regarding the necessary repairs, and there was an intention to carry out the repairs, but he could not confirm whether the works were indeed completed.

Having seen the sworn note of Perit Philip Farrugia dated 19th December, 2022¹⁸.

Having seen the affidavit of **Josephine Anne Brincat**¹⁹, wherein she confirmed that her daughter Sara Brincat bought the apartment Flat 8, Neptune Court, No. 43, Triq Censu Tabone, St Julian's in the year 2016. When her daughter bought this apartment, she was living in the UK and passed onto her the power of attorney to purchase and to take care of said apartment to ensure that it would be refurbished and in a habitable state. When her daughter moved back to Malta, she got pregnant soon after and when the works started in her apartment she was pregnant and about to have a baby, therefore it was dangerous for her own health to be on site unnecessarily. This was when all the works were taking place. Due to this, her daughter entrusted her to hire a project manager, and she did. After she hired them, they took care of everything on her behalf. The property works were also insured²⁰. She was also kept informed of any major issues that took place with these works. The works in the apartment were entrusted to Domos and started in the year 2018. The works were completed during the first quarter of the year 2019. Domos was their architectural team and project management for all works on Flat 8. The works were carried out with all due diligence and respect for the block's tenants and this can be backed up by the insurance team as well as Domos, the Health & Safety teams appointed, and other tenants in the block. Domos made sure to carry out pre and post inspection reports, reporting on the damages that might have been caused by the structural works that was carried out in the apartment, whereby she made reference to the documents presented by Perit Farrugia, which give an exhaustive account of the situation Domos was faced with, together with the measures they took to mitigate any possible damage to the best of their ability. The pre and post condition reports pertaining to the applicant's flat are also already presented. She continued stating that the documents presented by Perit Farrugia are also testament to the extreme care and discussions as well as works which were done in the Applicant's apartment, when they were even allowed to do so. She was also told that Domos' workers had water thrown at them whilst working with electrical power tools, and verbal abuse was hurled at them. This verbal abuse continued, in her and her daughter's regard on numerous occasions. One instance of abuse her daughter was confronted with was by means of an email where she was humiliated

¹⁷ A fol 153 et seq of the acts

¹⁸ A fol 85 et seq of the acts

¹⁹ A fol 103 et seq of the acts

²⁰ A fol 108 et seq of the acts

in front of the whole condominium, and she was in copy in this correspondence. On the 20th of July, 2020²¹, her daughter sent an email to the condominium, asking for any individuals who have animals to clean up after them since the roof is a communal space. Her daughter was cordial, and wished everyone a lovely week. Her daughter and herself have absolutely no issue with any of the neighbours. The Claimant replied, with the whole condominium in copy and insulted her daughter by saying "*I assume you are the big lady with a baby that belongs to Josephine*" and "*Clearly you have no shame typical of retardiness are you clinically blind or just fat and ugly!!*" She did not reply to this email.

She continued stating that Domos made sure that they hired health and safety inspectors, so as to ensure that the works that were being carried out were being done in full conformity with the law, and to inconvenience the apartment owners in the block in the least way possible. This was why Domos was hired in the first place. They are professionals in this field, and they were the ones who knew what was needed to conform with the law and to make sure that everything moved smoothly and that was why they were paid. Domos formulated pre and post condition reports of the Claimant's apartment as well as the rest of the condominium. The post condition report states that very minimal damage (as with all works on old buildings especially those built in the 60s as per our block) occurred in the flat above (Flt 10) and below us (Flt 6). With this in mind when works were completed, Domos co-ordinated with said flat owners to repair any damages they caused. Flat 6 works were carried out by their team however for Flat 10, they had to outsource a new team as theirs was refused. Their team was not allowed to go into the Applicant's apartment after her constant verbal abuse and obstruction to works. During one isolated incident during the construction phase, a crane was used by the workers of Domos. The crane strap made contact with the upper part of their apartment (which is the base of the Applicant's balcony) and scraped off an old existing piece of plaster. It was very evident that the plaster was very loose to start with, and had started to detach as a result of spalling. In spite of old plaster subject to spalling, Domos still arranged for this to be repaired. She had absolutely no problem with this, as a gesture of good will. They wanted the least inconvenience possible. In March, after the construction phase, a complaint regarding damages in Flat 10 was made by the Claimant. She continued stating that she agreed that the repairs had to be done and made reference to Annex 6 of Perit Farrugia's sequence report dated the 18th of March, 2021 and the correspondence contained therein. Perit Farrugia as their architect and Perit Andrew Sapienza as the Applicant's architect also met with Martin Farrugia from the Building Regulations Office (BRO). Here there was an agreement on what was to be repaired directly due to their works which were hairline cracks in the wall, painting the hallway wall and removal of loose tiles above the kitchen lintel and to plaster, replacement of kitchen sill and replacing of some tiles in the bathroom and touching up of balcony. Repair works had indeed started, which took an extremely long time due to the fact that the Claimant would only allow the contractor to enter for very short periods of time. Plastering works were completed, and rooms painted with the paint selected and acquired by the Applicant. The kitchen tiles were agreed by the Claimant to be removed and replaced by plaster. Following the works, a cleaner was also organised and even to this cleaner she found an objection. After the aforementioned damages complaint, photos of said damage was taken. They submitted the said photos to their insurance who stated that hairline cracks were not covered, and it was not their obligation to replace all tiling, just the damaged ones²². Moreover, a claim would have been subject to an excess of one thousand Euro(€1,000) and the damages in Flat 10 did not exceed this amount. The damage cost agreed by both architects should not have taken more than 3 to 4 working days (including a day

²¹ A fol 113 et seq of the acts

²² A fol 116 et seq of the acts

allowed time for drying) that estimated at approximately Euro100/120 per day. Further and in despite of this, Domos tried to organise repair works on numerous occasions with no co-operation from Flat 10 for works to be carried out. She reiterated that the only damages incurred in Flat 10 were hairline cracks, a couple of tiles and a window sill as per Perit Farrugia's post condition report dated 14th of May, 2018. Perit Farrugia also assured them that repairs could and would be done by their appointed workforce. She made reference to the Domos sequence report formulated by Perit Farrugia and its annexed documents which documents show the numerous attempts, obstructions, verbal belittlement, staggering of works caused by the applicant. After most of the works were completed, to their knowledge it was agreed that another contractor had to be appointed at a suitable price arranged to finish works however once again, the Claimant refused to grant anyone access to her apartment. To their knowledge, this was relayed to Perit Andrew Sapienza who understood the situation and as a result, neither the Perit nor the Claimant made any more contact with them.

She continued that she received a legal letter from Dr Errol Cutajar, requesting a payment of €2,576. Dr. Philip Galea replied to the legal letter sent by Dr Cutajar. To their knowledge, as per condition report submitted by Perit Farrugia dated the 14th of May 2018, and agreed by architect Andrew Sapienza, they are responsible for the very miniscule aforementioned damages which most certainly do not amount to the figure the Claimant is requesting. Work in the hallway was indeed carried out and the Domos report also confirmed that the kitchen sill was plastered to the applicant's request. The only remaining damage to their knowledge are the 2 chipped tiles in the bathroom. Therefore, the amount of two thousand, five hundred and seventy-six Euro (€2,576) is an exaggeration and an inflated amount to be asked for to complete the replacement of 2 chipped tiles. They also suggested to engage an arbiter in the presence of all parties involved to avoid further unnecessary costs and to reach an amicable settlement. During the period in between Domos's last correspondence (in 2019) with Flat 10 and the period in which a new architect, Perit Mr Clive Borg Bonaci was appointed (in 2020) more works were done within the block as well as within the applicant's apartment, including the replacement of apertures. If the Claimant did not disturb, verbally abuse, allow her dog to bite the late contractor Mark Camilleri, throw water on their workmen whilst using electric drills, block access to the lift on various occasions, trespass illegally into Flat 8 without permission, and hinder works in every way possible, the works in the flat would have been completed in a much less time frame. Also, if the Claimant co-operated with their repair time and appointed contractors, as the owner of Flat 6 did, none of this would have been necessary and the tiles (final remaining work) would have been replaced. Despite their direct experience with the Applicant, her verbal/written abuse to them directly, and as per Domos's sequence of events, they continually did their best to solve and rectify the damages caused by us and please the Claimant especially as they were about to be neighbors. The items listed in the Applicant's affidavit (the heavy curtain pelmet, things which were underneath, fridge-freezer, etc) were never in dispute before her affidavit, and they were ever made aware of any other damage other than the condition report dated the 14th of May 2018, by which date all structural works were long completed. All agreements were made between Perit Farrugia and Perit Sapienza/the Applicant. They were never involved and they hired Domos to represent them. The Claimant in her affidavit also mentions that they may have caused dust to enter another apartment due to their works and not that they caused further damage to Flat 10. Once again, the correspondence mentioned in her affidavit is between Perit Farrugia, Perit Sapienza and herself, and not directly with her or her daughter.

She concluded that, they had agreed for damages caused by them and as per condition report to be carried out. She never wished for there to be any form of inconvenience to other

individuals, especially if they were to be their neighbours. She confided in Domos, and Perit Farrugia, together with the reports that were formulated by professionals, to reach a conclusion on the damages caused by works carried out in the apartment. She continued stating that she always gave the instruction for these repairs to be carried out, at her expense. The fact that Flat 6's damages as well as all the Claimant's damages (excluding the two chipped tiles because we were not let in) were fixed is testament to this fact. Had the damages being claimed now by the Claimant been brought up at the time when construction was finished/meetings with Perit Farrugia, Perit Sapienza, the BRO and the Claimant took place, these would have been covered by insurance. With regards to the two tiles that were not fixed, she can safely say that the individuals she hired were physically not allowed to finish the works.

Under cross-examination²³ she confirmed that she never went to the Claimant's apartment, but hired people to do so. She claimed with her insurance when they had originally agreed on the damages whereby the insurance told her that it was too low and not worth processing. Had the Claimant claimed two thousand Euro (€2,000) that year it would have been dealt with the insurance. To avoid dust, they put covers everywhere. She confirmed that she did structural alterations which included the removal of walls. When questioned that some walls were removed and others placed, so that the apartment be divided in 2 apartments, she replied changing it into 2 apartment did not remove walls, they just removed and had one beam put in.

Legal Considerations

That preliminary, the defendant replied that she is non-suited. Therefore, the Tribunal shall first decide the preliminary plea brought forward by the defendant.

Regulation 6 of the Subsidiary Legislation 380.01 of the Laws of Malta provides that:

(1) If a defendant thinks that someone else should pay the claim, he shall, in his reply, indicate that such other person should pay all or part of the claim.

(2) The defendant shall serve the third party through the Tribunal with:

(a) a copy of the claim; and

(b) a copy of his reply; and

(c) a notice to a third-party; and

(d) a blank reply form.

(3) In replying, a third party shall follow the procedure for replying to a claim mentioned in rules 4 and 5.

²³ A fol 158 et seq of the acts, cross-examination dated 28 ta' Mejju, 2024

With reference to the case in the names of **Alfred Falzon Sant Manduca ghan-nom u in rappreżentanza tas-soċjeta' Albert F.S. Manduca Limited Vs Domenico Gargano taht l-isem kummerċjali Tentazione Pugliese**²⁴ the following was stated:

... It-tieni eccezzjoni hija li l-intimat mhux il-legittimu kontradittur. Skond ir-Regola numru 6 ta' l-Avviz Legali 145 tas-sena 1995 kif sussegwentement emendat (Legislazzjoni Sussidjarja 380.01) "(1) Jekk il-konvenut jidhirlu li għandu jkun hadd iehor li jhallas it-talba, huwa għandu jindika fir-risposta tiegħu min hi dik il-persuna l-oħra li għandha thallas it-talba kollha jew parti minnha. (2) Il-konvenut għandu permezz tat-Tribunal jinnotifika lil terzi: (a) b'kopja tat-talba; u (b) b'kopja tar-risposta tiegħu; u (c) b'avviz lil terzi; u (d) b'formola għal risposta vojta. (3) Meta terzi jagħmlu r-risposta tagħhom, huma għandhom isegwu l-procedura li hemm biex issir risposta għal talba hekk kif inhi msemmija fir-regoli 4 u 5". L-intimat ma għamel xejn min dan. Dan ir-regolament qiegħed hemm sabiex ma joqghodx jinhela hin f'kawzi għalxejn u sabiex jigi identifikat mal-ewwel il-persuna li skond il-konvenut għandha twiegeb għat-Talba tar-rikorrenti. It-Tribunal pero qed jifhem li min-natura tal-provi mressqa mill-intimat, il-persuna li huwa qiegħed jgħid li għandu jwiegeb għat-Talba tar-rikorrenti nomine hija s-soċjeta' Tentazione Pugliese Limited.

The Tribunal further said:

Kif diga inghad, l-intimat ma għamel xejn min dan li hemm mahsub f'dan l-artikolu tal-ligi u konsegwentement, galadarba huwa baqa inert u ma hax hsieb li tigi kjamata fil-kawza is-soċjeta' Tentazione Pugliese Limited, skond ma tirrikjedi l-ligi speċjali li kkostitwit lil dan it-Tribunal (Kap. 380) allura huwa għandu jerfa r-responsabbilita għal dan in-nuqqas u b'hekk jhallas l-imsemmi ammont ta' €190.32c ukoll...

Although the Defendant, preliminarily replied that she is non-suited, however, she never identified who the person or persons whom according to her should pay the Claim is/are. It was only through her affidavit that she mentioned the involvement of her daughter, Sara Brincat, who, according to the Defendant, had purchased the apartment in question in 2016. The Defendant further stated that her daughter granted her power of attorney to oversee the purchase and the subsequent refurbishment of the apartment to render it habitable. The Defendant further explained that, upon her daughter's return to Malta, she became pregnant shortly thereafter, and due to health concerns, it was deemed unsafe for her to attend the site during the course of the works. Consequently, the Defendant claimed that her daughter entrusted her with appointing a project manager to supervise the renovation works on her behalf, which she did and that was the reason why she paid him.

However, the Tribunal finds it difficult to understand why the Defendant failed to identify the person/s who according to her ought to have been made party to these proceedings and, more importantly, why no steps were taken to serve such third party in accordance with the procedure laid down in Regulation 6 of Subsidiary Legislation 360.01 of the Laws of Malta.

For the above-mentioned reasons, the preliminary plea raised by the Defendant is being hereby rejected.

²⁴ Tribunal għal Talbiet Żgħar; Talba Nru 272/2013; deċiża 24 ta' Ġunju, 2015; Ġudikatur Dr. Vincent Galea.

The Tribunal will now address the merits of the case.

It results that the Defendant was carrying out works on the apartment underlying the Claimant's apartment which consisted mainly of internal structural works. It also results that the internal construction works, namely removal of some walls commenced on January 2018 which took around two months to be completed²⁵.

It results that on the 24th of November, 2017²⁶, thus prior to the commencing of works on the Defendant's property Perit Philip Farrugia drew up a condition report whereby he inspected the Claimant's property where he reported that "*the property was found to be in a good overall condition with minor defects to the structure and finishes*". The report further stated namely that:

The living room overlooking the street had its walls and ceiling slab in good condition. The floor tiles were old, and inspection revealed that some tiles were loose and others lifted (2 photos were attached);

The hall: the floor tiled in the hall were old but in good condition and the walls were newly painted (a photo was attached);

Sitting room: the finishes are in good condition (a photo was attached);

Dining room: the finishes in the dining room were in good condition (2 photos was attached);

Bedroom 1: the floor tiles in the bedroom were loose. The walls were in good condition but some pin mold was noted and a photo attached;

Kitchen: the wall tiles in the kitchen were old and sounded hollow to the touch, indicated loose tiles, however, the floor tiles were new and laid upon the old ones (a photo was attached);

Corridor: the walls and ceiling were in good condition, but the corridor tiles were old with some open joints;

Main bathroom: the finishes of the main bathroom were new but there were some hollow tiles over the sink, in the shower, open joints were found;

Balcony: the balcony floor had old tiles and loose paint was noted on the walls showing signs of water infiltration (a photo was attached).

Subsequent to the works carried out in the Defendant's apartment, Perit Farrugia proceeded to inspect the applicant's apartment and compiled a condition report dated 14th of May 2018²⁷ in which he observed:

²⁵ Deposition of Perit Philip Farrugia

²⁶ A fol 819 et seq of the acts

²⁷ A fol 826 et seq of the acts

Kitchen:

During inspection the window sill in the kitchen was noted to have a crack (a photo was attached);

Hall:

A small hairline crack was noted in the common end of the hall, on the bathroom wall (photos attached);

Bathroom:

Cracks were noted in two in two (2) floor tiles in the central bathroom (photos attached).

The fact that damages occurred on the Applicant's property following the internal works carried out in the Defendant's apartment which is underlying the applicant's apartment, is not disputed by the parties. However, the parties are in disagreement as to the *quantum* of the amount to be disbursed for the necessary remedial works.

The Claimant contends that the damages sustained on her property are those quoted in the report drawn up by Perit Clive Borg Bonaci dated 3rd September, 2020 which consisted of:

- *Kitchen works: Removal of detached tiles and plastering & rendering of three walls - €710 exc VAT;*
- *Toilet room: Removal and replacement of cracked floor tiles - €80 exc VAT;*
- *Living room: Removal of cracked concrete, application of Sika flex, plastering and painting of wall - €180 exc. VAT*
- *Dining room: filling of open cracks and joints, re-plastering and rendering of 2 walls - €220 exc VAT;*
- *Balcony: Patching of balcony external wall, re-plastering and rendering of the same wall - €150 exc. VAT*

All works are inclusive of materials

Total incl, VAT €1581.20

The Defendant contends that an agreement was reached between the parties through their respective architects, whereby the Defendant undertook to bear the costs of damages arising from construction works carried out in her apartment. The damages agreed on were hairline cracks in the wall, painting of the hallway hall, removal of loose tiles above the kitchen lintel and plastering, replacement of kitchen window sill, replacement of some bathroom tiles and touching up of the balcony.

From an email was sent by Perit Farrugia to Perit Sapienza dated 20th November, 2018²⁸ it results that the Defendant agreed to rectify the damages caused by the said works. The email states:

“my client, is willing to fix any damages in your clients property caused following our works. These being touching up cracked plaster and painting, replacing the window sill in kitchen and replacing broken tiles in the bathroom.

²⁸ A fol 755 of the acts

I suggest that prior to initiating works we meet on site to go over a damage snag list of the minor works.”

Furthermore, from an email dated 2nd December, 2018, sent by the Claimant to the parties’ architects²⁹, it results that the architects conducted a visit at the Claimant’s apartment.

An email dated 9th May, 2019, sent by Perit Farrugia to Perit Sapienza³⁰ confirms that the Defendant agreement to rectify the following remedial works being:

- *4 cracked tiles in bathroom (end of corridor) which tiles had to be supplied by the Claimant;*
- *Filling of settlement cracks and repainting walls with settlement cracks only, being the ones at the end of the corridor near bathroom door and cracks in living room over lintels with chosen color;*
- *Replacing of broken old tiles on sill with existing tiles over window lintels and plastering/paining exposed window lintels and wall above;*
- *Remove timber slats from facade and make good.*

No objection was raised to these works by the Claimant and therefore it is deemed to constitute the agreed extent of the Defendant’s liability for repairs.

In her claim, the Claimant submitted various documents in support of the damages allegedly occurred namely:

- A receipt issued by Benedetto Bonnici dated 25th January, 2021³¹ in the amount of €1,810.06 describing works relating to painting, demolition of balconies, plastering and tiles removal;
- A quotation dated 4th December, 2020³² amounting €115.98, inclusive of materials;
- 2 quotations dated 3rd October 2020³³ in the amount both inclusive of materials.

However, the Claimant did not explain in her affidavit where the listed material was used, or was to be used, and the Tribunal is not satisfied that these materials correspond to the agreed remedial works. When compared to the quote provided by Charles Farrugia³⁴ which included all the materials, the amounts quoted by the Claimant are higher.

With respect to the receipt issued by Benedetto Bonnici, the description suggests that these were carried out on the balconies. Whilst depositions confirm that some remedial works on the balcony were necessary, the extent of such works does not correspond to the remedial works needed to be done on the balcony.

²⁹ A fol 758 et seq of the acts

³⁰ A fol 61 of the acts

³¹ A fol 2 of the acts

³² A fol 3 of the acts

³³ A fol 6 and a fol 7 of the acts

³⁴ A fol 15 of the acts

On the other hand, although Perit Farrugia and the Defendant maintain that the cost of the remedial works should amount to €450, they failed to produce documentary evidence or supporting documentation to substantiate this assertion.

Conclusion

Therefore, for the above-mentioned reasons the Tribunal partially upholds the Claimant's request limitedly to the following amounts:

- €710 (excluding VAT) in respect of the kitchen works;
- €80 for the works in the toilet room;
- €180 (excluding VAT) for the living room;
- €150 (excluding VAT) for the balcony works;
All of which include the cost of materials³⁵;
- €177 corresponding to the invoice dated 9th September, 2020;
- €200 (excluding VAT) representing the cost of the condition report.

Therefore, the total amount is one thousand, seven hundred, thirty four Euro and sixty cents (€1734.60).

Decide

Thus, for the aforementioned reasons, the Tribunal partially upholds Claimant's request in the sum of one thousand, seven hundred, thirty four Euro and sixty cents (€1,734.60), consequently orders the Defendant to pay the Claimant the sum of one thousand, seven hundred, thirty four Euro and sixty cents (€1,743.60), whilst rejecting the Defendant's pleas, with legal interest from the 1st of March, 2021³⁶.

The costs of the case and the judicial letter dated 12th of February, 2019 shall be borne 2/3 by the Defendant and 1/3 by the Claimant.

Dr. Marouska Debono

³⁵ Vide quote of Charles Farrugia a fol 15 of the acts

³⁶ Date of presentation of claim