



MALTA

TRIBUNAL GHAL TALBIET ZGHAR
GUDIKATUR DR.
VINCENT GALEA

Seduta tas-17 ta' Marzu, 2014
Talba Numru. 635/2012

Nina **MILFORD PAVLOVNI**

Vs

Zhanna TKNAMOKOVA

The Tribunal,

Having seen the Notice of Claim put forward by the applicant on the 12th September, 2012 by means of which she requested the Respondant to pay her the sum of one thousand one hundred and sixty euros and fifty seven euro cents [€1,160.57] and this after stating:

“Int ghandek thallas is-somma ta’ elf mija u sittin euro u sebgha u hamsin ċenteżmu (€1160.57) rappreżentanti flus li harget ir-rikorrenti a baneficcju tieghek u fuq struzzjonijiet tieghek u dana bl-imghax bl-ghola rata permessa mill-ligi li jibda jiddekorru mill-jum tal-ewwel interpellanza legali (10/7/2012).

Bl-ispejjez kontra tieghek¹".

During the sitting of the 21st June, 2013, respondent declared that she was contesting the claim on the basis that *"No amount is due by her since she did not authorise the applicant to make the changes and maintenance in her apartment"*.

The Tribunal ordered that the proceedings be conducted in the English language.

Having seen the note of the 8th January, 2014 whereby the case was adjourned for judgement for today.

Having seen the Acts;

Considers:-

1. The Claimant stated that she got to know the respondent when the latter went to visit the former's neighbour. She also stated that respondent *"... has a property in Malta and before she left for Russia she gave me the key to her apartment. "* (fol. 19). After the respondent had left Malta, claimant called her *"... and told her that there was someone who was interested in renting the property"* (fol. 19). According to the claimant,

¹ According to the translation found in page two (2) of the acts of the proceedings, the following is the translation of the Maltese text. The defendant should be condemned by this Tribunal to pay to the plaintiff the sum of one thousand one hundred sixty Euro and fifty seven cents (Eur 1160.57) representing money paid out by the plaintiff to the defendant's sole benefit and upon the defendant's instructions, together with the highest interest rate permissible by law, which interest should be calculated from the 10th July 2012, that is, from the day the plaintiff demanded payment from the defendant by means of a legal letter (attached). With costs

the respondent found no objection in this. Claimant also stated that she informed respondent that “... *there were some items which needed to be replaced such as the air conditioner, bulbs and the shower*” (fol. 19). Again, claimant states that the respondent “... *told me that I could go ahead with the necessary changes which I did*” (fol. 19). The claimant then went on to state that she made the following expenses on behalf of the respondent:

- i. €2,292 – for the air conditioners;
- ii. €142 spent at Marco Camilleri Ironmongery
- iii. €540 spent at Emanuel Borg of Birkirkara
- iv. €409.57 – spent at Homemate
- v. €38.78c spent at Park Towers Supermarkets
- vi. €11.60 spent at the hardware centre in Sliema
- vii. €1,005 in arrears with regards to Water & Electricity bills.

The sum total of the monies spent by claimant was of €4,370.57c².

Claimant also stated that she leased respondents property on two occasions. Once on the 2nd of December, 2011 for twelve (12) months at a rate of €700 per month (exc. VAT). The second time was on the 30th of March, 2012 for 53 days for a total amount of €1,500. As can be evidenced from the second lease agreement, the first lease agreement was not completed.

Claimant states that she did not give any money to the respondent from the leasing of her property and this because respondent owed her money. After deducting the amounts which the claimant received from the rent, respondent still owed, according to the claimant, the sum claimed by these proceedings, that is the sum of €1,160.57c.

Claimant exhibited a telephone statement to show that she had called the respondent, who was residing in Russia at the time, to “... *inform her of what was happening with regards to her apartment...*” (fol. 20). According to these records (fol. 34-49) claimant called respondent

² When the Tribunal added all the receipts exhibited by the claimant, the total sum came to €4,438.95 which is €68.38c more than the amount mentioned by the claimant in her testimony.

twenty one (21) times in October 2011, forty one (41) times in November, 2011, seventeen (17) times in December, 2011, four (4) times in January, 2012, thirteen (13) times in February, 2012, eleven (11) times in March, 2012, twice (2) in April, 2012 and thirteen (13) times in May, 2012. Thus between October, 2011 and May 2012, claimant called respondent one hundred and twenty two (122) times.

In cross-examination, claimant stated that *“on the twenty second (22nd) of May two thousand and twelve (2012) at 11:05 I received a message from the number +7962 9625513, the message is written in Russian. This message states when I come I will discuss the bills with you”* (fol. 55). Respondant during the sitting of the 21st June 2013 stated under oath that the message in the English language meant *“When I come you try and explain what you sent”* (fol. 51)³.

2. Raymond Gordon, claimant's husband stated that he sent an email to respondent on behalf of his wife, a copy of which is exhibited at page 64 of the acts of the proceedings. Together with this email, a scanned document (fol. 65) was sent to the respondent *“... so that respondent could understand what the expenses which my wife incurred on her behalf”* (fol. 52).
3. Emanuel Borg confirmed that he carried out gypsum works in Sliema. He also installed chandeliers, the shower fittings. The total amount of these works amounted to €540, which amount has not been paid to him yet.
4. Tatiana Felina stated that on the 8th of July, 2012 she went to respondent's apartment and she could see *“... that the apartment was left in a very messy state. The apartment was a little bit dirty and when she opened the wardrobe I could see a lot of stuff which were not in order”* (fol. 56). Asked by the Tribunal whether she knows anything about the issue between the parties, the witness stated that she got to know about

³ According to a translation filed by claimant on the 28th of June, 2013, the translated message dated 25th May 2012 sent at 21:36 from the Russian to the English language reads as follows: *“Sms received from the number +7 962 9625513: Dirty people are engaged in dirty gossips. Judging by conversation, you are such! Once again I explain – I will check out all checks and return your Money. If they are real. I do not want to have any business with you”* (fol. 73). Respondant also exhibited her translated version of this sms which translation was made by the Russian Centre for Science and Culture. According to this translation the following is the translated version *“I regret ever meeting you. Don't do stupid things! You will face punishment for your illegal actions! I am warning you. I will come and you will explain to me who authorized you to make these expenses”* (fol. 77).

this after respondent came to Malta on the 8th of July 2012. She added that *“I did not know anything before so I do not really know anything about this case”* (fol. 56).

5. Respondant filed an affidavit and started by saying that she got to know o the claimant whilst staying in Malta with her children. Before she left for Russia, she gave her a copy of the keys to her apartment. During her absence from Malta, respondent got to know from her friends that her apartment was being used and that claimant did not inform her of this. When she confronted the claimant that between September and December 2011 she had rented out her place, claimant denied this. Respondant also stated that claimant had asked her to install air conditioners in her apartment and that she wanted to rent it for her, but despite saying no to her, claimant still went on to install the air conditioners and rent out her apartment. Respondant vehemently states that she did not authorise claimant to do any of the works which claimant is asking to be paid for and moreover respondent states that claimant took out things from her apartment, which things claimant is still refusing to give to this very day. Respondant then goes on to say that claimant's husband sent her an email claiming €620.57 for the things she ordered for her apartment, *“... but the debt have increased when she took me to court”* (fol. 61). Respondant also stated that she was faced with bills for water and electricity when other people where renting her apartment from claimant. The last bill which claimant paid was dated 2nd April, 2012 whilst the last person to leave the apartment as per the lease agreement was the 22nd of May, 2012. In this regard, respondent states that the water and electricity bill amounts to €445.19. Moreover, with regards to the installation of the air conditioners, respondent states that she received a letter from the owner of the building asking her to remove the units from the main shaft and the outside balcony. In order to have these units removed, it will cost her money.

Asked about the telephone calls which claimant made to her whilst she was in Russia, respondent stated that *“during these conversations she would always ask me how I was and how my children where”* (fol. 70) and *“... she would ask me to send her over some things from Russia”* (fol. 71).

6. Hanna Parsonson described how she had met claimant for the first time when she went to see respondent in 2011 just before she left Malta. She remained surprised how fast claimant offered respondent to take care of her apartment during the latter's absence from Malta. She was also surprised when she saw respondent pass on her keys to the claimant. Under cross examination she stated that during the telephone conversations she held with respondent whilst the latter was abroad, she "... was very upset with what claimant was doing to her property, that is changing some things from inside the apartment like lights" (fol. 101).

Considers further;

7. On the 11th of July, 2013, respondent declared that she did not have any further evidence to produce. On the 2nd of October, 2013 respondent filed another affidavit without the Tribunal's permission. Dr. Marouska Debono on behalf of claimant asked the Tribunal to order the removal from the acts of the proceedings said affidavit. The Tribunal declared that he would provide for this request in its judgement. As rightly pointed out, this affidavit was filed nearly three (3) months after the respondent had declared that she had no more further evidence to produce. Moreover, it results, from a reading of said affidavit, that the contents of this affidavit have already been made in respondents previous affidavits and testimony and thus, the Tribunal is not going to consider the content of this affidavit for the purposes of this judgement.
8. The Tribunal finds that the claim put forward by the claimant is partly justified. It amply results that the things which the claimant had installed in the apartment are still there and are being used to the advantage of the respondent. Even though respondent vehemently denies ever having given permission to the claimant to install these items, she never proceeded to deposit these items under the Court's authority or proceeded with any court action against claimant. All in all, the Tribunal is satisfied that these items are being used by the respondent for her benefit. The Tribunal also has to decide a claim principally in accordance with equity and it is the Tribunal's belief that what the Tribunal has decided to be the best possible solution to this case.

9. With regards to the amount claimed, the Tribunal cannot see how in an email dated 26th May, 2012 the balance claimed by claimant was of €620.57 and then a few months later, when this claim was filed, the amount was of €1,160.57.

10. Moreover, it clearly results from the note dated 3rd October, 2013 that “... *claimant did not find a copy of the third lease agreement...*” (fol. 98) thus implying that there was a third agreement. Also no amount was ever mentioned by the claimant as having been received by her with regards to this third agreement. Thus, in this state of uncertainty, the Tribunal is acceding to the claimant’s request limitedly to the amount of €620.57c.

Thus the Tribunal, decides this case by not accepting the plea raised by the defendant and limitedly accedes to the request made by the claimant in the amount of six hundred and twenty euros and fifty seven centes (€620.57) and thus orders the respondent to pay to the claimant the sum of six hundred and twenty euros and fifty seven centes (€620.57) together with interests which are to start running from today according to law.

All the expenses are to be borne by the respondent.

< Sentenza Finali >

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