MALTA

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PRIM'AWLA

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Today, the 29th October, 2015.

Application Number 143/2012

Philip Agius
(I.D. No. 0461246 M)

vs.

Arriva plc
(socjeta` estera registrata fir-Renju Unit
bin-numru ta' registrazzjoni 347103)

The Court,

1.0. Having seen the sworn application dated the 9th February, 2012, through which the applicant briefly submitted the following:

1.1. That he had been informing the defendant company that the local public transport market was going to be liberalised since 2008;

1.2. That such development would be a favourable opportunity for the said company;

1.3. That said company was not represented in Malta;

1.4. That in this regard it had also suggested that he should communicate with a particular branch of the said company, namely the "New Business Devlopment Team";

1.5. That complainant communicated with the defendant company on this issue on a regular basis forwarding useful information to same from 2008 up to the date of adjudication of the relative tender in favour of the Maltese company it set up;

1.6. That this was acknowledged by the defendant company;

1.7. That on the basis of such services rendered representatives of the defendant company came to Malta even meeting with the complainant and his legal counsel;

1.8. That the complainant used to attend meetings and conferences on the subject at issue, then informing the defendant company of the relative outcome;

1.9. That the defendant company informed the complainant that it was interested, and used to inform him of its actions in this regard;

1.10. That it had even promised the complainant that it would help him set up a Transport Museum;

1.11. That the Transport Authority issued a call for tenders on the issue on the 14th August, 2009;

1.12. That Arriva Malta Limited submitted its offer on said tender;

1.13. That said company was eventually awarded said tender;

1.14. That the complainant is entitled to receive compensation for services rendered to the defendant company in this regard;

1.15. That although being called upon for the liquidation and payment of compensation, the defendant company remained in default;

1.16. That the complainant had no other alternative but to adhere to the court so that the defendant company would have an opportunity to say why this court should not:

1.16.1. Declare that the complainant rendered services to the defendant company for which he is entitled to compensation, if necessary, by appointing referees;

1.16.2. Liquidate the amount of compensation due to him from said defendant company, if necessary, by appointing referees;

1.16.3. Condemm the defendant company to pay such compensation as is declared to the complainant;

1.16.4. With costs against the defendant company;

2. Having seen the sworn declaration of the complainant attached to the above sworn application which confirms the above but which is really superfluous in terms of article 156 of Chapter 12 of the Laws of Malta as said sworn declaration is already to be found in the sworn application giving rise to the proceedings;

3.0. Having seen the sworn reply dated the 18th April, 2012, whereby the defendant company briefly submitted the following:

3.1. That the person confirming the said sworn reply is the one duly authorised by the defendant company to represent it in these proceedings, (see folio 109);

3.2. That complainant's claim should be dismissed as manifestly unfounded;

3.3. That the defendant company did not engage the complainant to carry out any services on its behalf;

3.4. That as evidenced by the documents submitted by the complainant himself, he only forwarded useless and unsolicited information to the defendant company in the hope of being appointed as representative thereof;

3.5. That therefore there is no compensation due to him;

3.6. That it reserves the right to furnish evidence by reference to the oath of the complainant in terms of law;

3.7. With costs against the complainant;

4. Having seen the decree dated the 12th July, 2012, whereby following the request submitted by the legal representative of the defendant company, and following the fact that this was not opposed by the legal representative of the complainant, it ordered that proceedings be conducted in the English language, according to law, (see folio 121);

5. Having seen the decree dated the 26th November, 2014, whereby, contending parties, authorised same to conduct final pleadings in the manner and within the time-frame therein decreed, (see folio 299), and as subsequently extended, (see folio 309 and folio 346);

6. Having seen the written submissions of the complainant dated the 3rd March, 2015, (see folio 311), and of the defendant company dated the 26th May, 2015, (see folio 347);

7. Having heard the evidence, both as directly submitted *viva voce* by the parties, and as sworn declarations by witnesses concerned;

8. Having examined the copious documents presented;

9. Having examined the concluding oral submissions of the legal representatives of the contending parties;

Considers:

10.0. That the case, as forwarded by the compainant, may be briefly drawn up as follows:

10.1. That he had heard that Malta was to re-organize its public transport, (see folio 242);

10.2. That he thus took the initiative to surf the internet to see which bus manufacturing companies there might be who may show any interest in this development, (see folio 242);

10.3. That this, he claims, took a lot of work and involved long hours contacting various companies, (see folio 242);

10.4. That he finally stumbled on the defendant company whom he contacted, (see folio 242);

10.5. That he soon realised that said company had no representative in Malta, (see folio 242);

10.6. Thus he claims to have unilaterally shown interest in the subject, attending various meetings, conferences and public consultation fora that were being held on transport reform, (see folio 242);

10.7. That on contacting the defendant company he was informed by an email dated the 22nd May, 2008, that it did not have any operations in Malta, (see folio 242);

10.8. That he kept the defendant company posted with local developments, even attending a stormy meeting organised for all concerned, and sending it the official brochure published on the local reform, (see folio 243);

10.9. That complainant upholds that even the Group Business Development Director of the defendant company called him up on his mobile to discuss the issue, (see folio 243);

10.10. That he took the liberty to draft a Memorandum and Articles of Association in case the defendant company would want to consider applying for the tender that was evidently soon to be issued, (see folio 243);

10.11. That the defendant company soon grew interested in local developments and eventually two of its highest officers came to Malta where they even met the complainant (see folio 244, 68 and 288), who was also accompanied by his legal assistant, (see folio 244,);

10.12. That when asked by Keith Bastow of Arriva p.l.c. what reward the complainant was seeking, the latter answered that he would rather think on that at a later stage and eventually sent an email dated the 28th March, 2009, on the subject, (see folio 244 and 29 *et sequitur*);

10.13. That in effect the above paragraph refers to clause 10 in a letter sent by complainant to defendant company bearing the said date which criptically refers to "... compensation which is left at your study in your feasibility studies .... and there are many ways of compensation such as being one of the Directors, etc..." , (see folio 30);

10.14. That complainant continued to correspond with the representatives of the defendant company throughout 2009 and 2010, (see folio 244 to 246);

10.15. That complainant's interest was duly acknowledged by Bastow, (see folio 245);

10.16. That actually the defendant company, through its locally registered company was eventually awarded the public transport contract which was officially

signed at Fort St. Angelo, in Vittoriosa (see folio 246);

10.17. That one final meeting was held between the contending parties with a view of reaching some form of amicable solution on the question of complainant's claim for compensation, but no such agreement was reached, (see folio 246);

Considers:

11.0. That the defendant company's position in the matter may be briefly summarized as follows:

11.1. That complainant had contacted defendant company's head office in the U.K. showing it his interest in the possible reform of public transport in Malta, and that the island would be of interest to said company (see folio 248 and 249);

11.2. That notwithstanding such information, Bastow was already eyeing developments taking place in Malta since 2006, and was even invited by the Malta High Commissioner in London to discuss the issue, (see folio 249);

11.3. That the original contact between the contending parties during the period 2008 and 2009 was a mere acknowledgement of complainant's contract, (see folio 249);

11.4. That Bastow and a member of his business development team came to Malta in 2009 as things were appearing to move and as the defendant company did not have any representative there as it did not need one in any way, (see foll 248 and 249);

11.5. That during this 2009 visit they met several stake-holders, including the complainant, (see folio 249, 68 and 288);

11.6. That defendant company explained in clear terms that it would come to Malta "... to take an independant view of the situation", (see folio 249);

11.7. That in a particular email Bastow also asked the complainant to "present" him "with a proposal and terms", (see folio 250);

11.8. That the "proposal" received was no such thing at all but was only a list of "thirteen" (13) points and somewhat incoherent, (see folio 250 and 29);

11.9. That given the early stage of the process it was not possible for the defendant company to conclude any commitments with anyone, (see folio 250);

11.10. That for the defendant company the issue of compensation to the complainant was never considered as it had never asked the complainant to provide it with any service, (see folio 250);

11.11. That complainant persisted in sending information to the defendant company's head-office in the U.K., which information was in any case already in the public domain, (see folio 250);

11.12. That the defendant company had decided to use the services of an industrial partner in its bid to enter the local public transport market, which implied that it "... would not pursue anything with applicant Agius", (see folio 250);

11.13. That complainant merely submitted "useless and unsolicited information" to the defendant company, (see folio 252);

11.14. That the information given was already in the public domain, (see folio 252);

11.15. That complainant was thanked for his interventions merely out of courtesy, (see folio 252);

11.16. That any reference to a transport museum was made at the parties' first meeting, (see folio 252);

11.17. That this museum development was even submitted as an official proposal at the negotiating stages with government, (see folio 252);

Considers:

12.0. That the above positions may be synthesised in the following manner:

12.1. That complainant is a keen motor vehicle enthusiast with a good eye for an opportunity;

12.2. That he unilaterally conducted research when the opportunity of a newly developing market emerged;

12.3. That he unilaterally contacted the defendant company feeding it with information which was already in the public domain;

12.4. That the defendant company never sought the complainant's services and never instructed him to act on its behalf in this issue;

12.5. That correspondence, which complainant claims to be of concern to his claim for services rendered, was deemed to be incoherent by the defendant company;

Considers:

13. That as held in the **Court of Appeal's** judgement dated the **1st December, 1958**, in **Gio Maria Zammit et vs. Avv. Dr. Joseph Vella noe, Volume XLII I 625**:

> "... fil-gurisprudenza aktar ricenti ... gie applikat il-principju li kwalunkwe servigi jigu ritenuti pprestati bi speranza ta' kumpens jekk ma jikkonkorrux cirkustanzi tali li jiggustifikaw konkludentement il-gratuwita ... Vol. XXIX – II – 851"

"... that in more recent case-law ... the principle that any services rendered are to be held as being given in the hope of compensation is being applied, unless there are circumstances that justify that they were given gratuitously", (court's translation);

Considers:

14. That on the basis of the above although in this particular regard there seems to be a presumption in favour of the granting of compensation for services rendered, however, one still has to examine the underlying circumstances of the case to determine if this may actually be so with impunity and fairness;

15.0. That in this respect it has been established that:

15.1. The complainant acted unilaterally;

15.2. That complainant's information given to the defendant company gave no added value to the said company;

15.3. That the information so given was already in the public domain;

15.4. That the defendant company's representative proved to be too courteous not to immediately dismiss such approaches as inconsequential;

15.5. That the defendant company did not expressly request the complainant to give it any such information;

15.6. That the complainant was not involved in any discussions leading to the final award actually being granted to the defendant company;

Considers:

16.0. That on the basis of the above, the court is satisfied that the complainant did not prove his case to the satisfaction of the

court and to the legal standard referred to above, and on the basis thereof:

DECIDES:

16.1. Whilst accepting the replies submitted by the dependant company;

16.2. Rejects all the requests of the complainant;

16.3. Condemms the complainant to pay all legal costs involved in these proceedings.

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Onor. Imhallef Silvio Meli

DECIZJONI FINALI