

IN THE COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
A.MICALLEF TRIGONA LL.D.,MAG.JUR (EU LAW)
THIS 27TH DAY OF JULY 2016

The Police

(Inspector Ivan Cilia)

vs

Martina Fricke

The Court,

Having seen the charges brought against the accused holder of German Identity card number 821406016, charged with having on the 17th January 2009 and the preceeding months on these Islands, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the same design:

- (a) misapplied, converting to her own benefit or to the benefit of any other person the sum of €2329.27 which has been entrusted or delivered to her by Andy Bobo Consulting and Sevices Limited and Home Solutions Limited uder a title which implies an obligation to return such sum or to make use thereof for a specific purpose which sum of money was entrusted or delivered to her by reason of her profession, trade, business, management, office or service or in consequence of a necessary deposit;
- (b) by means of any unlawful practice or by the use of anf fictitious name or the assumption of any false designation or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or any imaginary power, influence or credit, or to vreate the expectation or apprehension of any chimerical event, made gain of more than €2329.27 and to the prejudice of Andy Bobo Consulting and Services Limied

Having seen the final transmittal by the Attorney General whereby, in virtue of the articles of law therein cited, the acts of the proceedings were transmitted to this court to decide on the guilt or otherwise of the accused;

Having heard the accused declare that she had no objection that the case be decided by this Court;

Having heard and seen all the evidence;

Having seen all the acts and records of these proceedings;

Having heard final submissions;

Considers:

Defense lawyer in his final submissions made reference to discrepancies which existed between the English and Maltese text of the charge sheet. Towards eliminating any doubts on which version prevails this Court affirms that it is the version read out in the English language on the arraignment of the accused on the 22nd January 2009. The charges proffered and read out at this first hearing in which the accused was arraigned under arrest envisage the crime of misappropriation and that of obtaining money by false pretences with their respective aggravating circumstances.

From the evidence adduced it transpires that the charges relate to the period from May 2008 till the end of December of that year overlapping the first week of January 2009 during which period the accused was employed by the company "Andy Bobbo Consulting Services Limited" which later changed its name to "Home Solutions Limited". The company took orders from Maltese clients for 'Ikea' furniture products manufactured in Germany. The allegations against the accused, made by her principal, Andreas Bosch, are that accused got paid for the delivery of the furniture and kept the money for herself failing to hand it over to the company.

In the context of the allegations made by the mentioned Boschs to the police and in his evidence in open court, the Court is dismissing straightaway the charge that refers to the obtainment of money by false pretences or otherwise fraudulently under Article 308, 309 and consequently 310(a) of Chapter 9 as under no circumstances do or can such crimes subsist on failure of proof of their characteristic elements according to law.

Considers:

In so far as the crime of misappropriation is concerned the Court affirms that the crime in question requires for its existence (a) that the offender have possession of an object (which can be money) under any title (in accused's case as an employee), which does not transfer ownership, but implies a duty either to return it or make use of it in a particular manner; (b) that its possession by the offender has the consent of the owner; (c) that the offender unlawfully appropriates the thing by converting it to his own profit or to that of some other person.

That, there is nothing to suggest, even remotely so, that accused appropriated and misapplied money to her own benefit or that of some other. What transpires from questions asked by the prosecuting officer, as borne out from her statement released to the police, and complainant's evidence, including what he had reported to the police inspector which comprises the latter's, evidence, are allegations which have remained unsubstantiated by the few witnesses produced by the prosecution or left unproved.

On the strength of the above, the Court states that in the absence of clear and unequivocal evidence proving misappropriation of company's funds by accused, the charge of misappropriation fails.

Consequently, declares the accused not guilty and acquits her from all charges brought against her.

A.M.Trigona

Magistrate