



**SMALL CLAIMS TRIBUNAL
(EUROPEAN SMALL CLAIMS PROCEDURE)**

ADJUDICATOR ADV. DR. KEVIN CAMILLERI XUEREB

Sitting of Thursday, 14th of September, 2017

Claim Number: **5/2016**

GEORGE PACE

VERSUS

JOSCHKO KARL-HEINZ

The Tribunal,

Having seen the Claim Form (Form A) filed by the claimant on the 16th August, 2016 whereby the same, in line with EC Regulation no. 861/2007, requested the Tribunal to condemn defendant to pay him the sum of eight hundred, ninety six euros (€896.00c) for the reasons explained under Section 8 of the Claim Form.

Having seen that the defendant was not duly notified with the relative acts of the proceedings and, as a corollary, the same did not file any response (Form C) in terms of Article 5(3) and/or 5(6) of EC Regulation no. 861/2007.

Having taken cognizance of claimant's email to the Deputy Registrar dated 15th February, 2017 whereby the same informed that *"My bank account has since yesterday been credited with the amount of EUR 970. Beside the purchase cost of the Microsoft Surface Pro 3 tablet (€896) this also includes the refund of return postage (€27.65) and packaging (€1.33) and ESCP (€44.40) expenses. The seller has today been informed that the full amount has been received and that I shall be closing the case."*

Took cognizance of all the acts and documents relating to the case and having noted that the claimant required no oral hearing (*vide* section 8.3 of the Claim Form).

The Tribunal considers:

That the parties have settled the dispute between them and from claimant's email of 15th February, 2017 all monetary claims demanded by the claimant from the defendant have been duly paid by the latter to the former.

However, notwithstanding this, the claimant failed to file the required judicial act or to take all appropriate measures to formally renounce to this case and withdraw the present proceedings.

The lack of such a formality on the part of the claimant induces this Tribunal to set the record straight and deliver judgment in line with the compromise reached by the parties, so that there is registered a formal declaration that the matter has been either compromised by the parties and/or that any obligation in connection therewith was completely extinguished as declared by the claimant in the email cited here-above.

Article 1718 of the Maltese Civil Code (Chapter 16 of the Laws of Malta) provides that “A compromise is a contract whereby the parties, by means of a thing given, promised or retained, put an end to a lawsuit which has commenced or prevent a lawsuit which is about to commence.” The effects thereof are described under Article 1729(1), namely that “A compromise shall have as between the parties the effect of a *res judicata*.” As to the form of the compromise, Maltese Law only sets specific requirements when the subject-matter of the *negotium* between the parties is an immovable property (*vide* Article 1719).

However, technically speaking, in the present case the Tribunal is solely faced with the claimant’s unilateral declaration that his claim was settled by the defendant who effected payment on the 14th of February, 2017. Thus, strictly speaking, there is no contract of compromise between the parties since such an agreement, implicitly, requires the reciprocal consent and approval of two or more parties. The consent or approval of the defendant in these proceedings is not present.

However, the Tribunal cannot ignore the claimant’s own voluntary declaration (i.e., in his email of the 15th February, 2017) that his debtor (the defendant) had effected payment. As known, payment is a form of extinction of an obligation under domestic law.

Therefore the Tribunal declares that defendant has paid claimant all dues demanded by the claimant in line with claimant’s request contained in the relative Claim Form (Form A) and that such payment extinguished claimant’s claim in terms of Article 1145(a) of the Maltese Civil Code (Chapter 16 of the Laws of Malta).

Finally, the Tribunal orders that a copy of this judgment is served upon the parties in terms of Article 13 of EC Regulation no. 861/2007.

ft. ADV. DR. KEVIN CAMILLERI XUEREB
Adjudicator

ft. ADRIAN PACE
Deputy Registrar