



SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Zammit B.A. LL.D. M. Jur (Eu. Law)

Sitting of Monday, 18th December 2017

Claim No: 29/16 CZ

DK Haircare Limited

vs.

Emanuela Davey

The Tribunal

Considered plaintiff's company's claim filed on the 26th January 2016, by means of which the same company declared:

Illi l-intimata ghandha tigi kkundannata thallas is-somma ta' Eur 1196.15 (elf mija u sitta u disghin Ewro u hmistax-il ewro centezmu) rapprezentanti bilanc ta' tlett

invoices li ghad ma thallsux Invoice 11934 u 10885 qed jigu hawn annessi u mmarkati Dok. A u B rispettivament kif ukoll il-bilanc dovut lis-socjeta' rikorrenti akkont tal-4 week notice period li ma hadmitx bejn it-23 (tlieta u ghoxrin) ta' Novembru 2015 (tas-sena elfejn u hmistax) u 23 (tlieta u ghoxrin) ta' Dicembru 2015 (tas-sena elfejn u hmistax) liema notice period gie kkwantifikat fis-somma ta' Eur 466.15 (erba' mija u sitta u sittin Ewro u hmistax-il ewro centezmu).

Bl-ispejjez u bl-imghax legali mid-data tal-prezentata ta' dan l-avviz kontra l-intimata li minn issa ngunta ghas-subizzjoni.

By means of a reply filed on the 23rd February 2016, defendant replied:

1. It-talba attrici hija nfondata fil-fatt u fidr-dritt u ghalhekk ghandha tigi michuda u dan peress illi:
 - a) L-ebda hlas ma hu dovut mill-konvenuta bhala notice period, u adan in kwantu illi ghalkemm il-konvenuta kient ma tiflahx, xorta hadmet mid-dar ghas-socjeta' attrici, u hadet diversi ordnija ta' klijenti, li gew accettati mill-istess socjeta' attrici. Fil-fatt hija l-konenuta li hi dovuta hlas mis-socjeta' attrici ghall-perjodu tan-notice, u f'dan is-sens qed tigi wkoll intavolata kontro-talba ma' din ir-risposta.
 - b) L-invoices prezentati mis-socjeta' attricibhala Dok. ~A u Dok. B ma' l-aviz promotur u s-omom hemm indikati ta' €369.58 u €260.42 rispettivament qed jigu kontestati, apparti dan kien sar pagaemnt mill-istess konvenuta li ma giex mehud in konsiderazzjoni mis-socjeta' attrici, u dan kollu kif ser jirrizuulta ahjar tul it-trattazzjoni tal-kawza;
2. Minghajr pregudizzju ghal dak suespost, it-talba ta' Euro 1196.15 ma tirrizultax mill-fatti dikjarati u d-dokmenti allegati mat-talba;
3. Salvi eccezzjonijiet ulterjuri permessibbli mil-ligi;
Bl-ispejjez kontra s-socjeta' attrici li hija minn issa ingunta in subizzjoni.

In her counter-claim, defendant declared:

Illi s-socjeta' attrici ghandha tigi kkundannata thallas lill-konvenuta s-somma ta' Euro 1160.05 rapprezentanti l-paga tal-konvenuta mis-16 ta' Novembru 2015 sa l-20 ta' Novembru 2015, kif ukoll il-flus tan-notice minnha mahduma, bonuses, allowances, u vacation leave mhux imhallsa, u commssion ta' 2% fuq l-ordnijiet kollha maghmula bejn is-16 ta' Novembru 2015 sat-18 ta' Dicembru 2015, kif ser jirrizulta waqt il-kawza, bl-ispejjez u bl-imghax kontra s-socjeta' attrici.

By means of a decree of 16th March 2016, the amount claimed in the counter-claim was increased to one thousand six hundred and fifty-three Euro and fourteen cents (€1,653.14).

By means of a reply to the counter-claim filed on the 29th April 2016, the reconventioned plaintiff company replied:

It-talbiet rikorrenti huma nfondati fil-fatt u fid-dritt u ghalhekk ghandhom jigu michuda bl-ispejjez. Di piu', l-paga tar-rikorrenti ghall-perjodu 16 ta' Novembru 2015 sal-20 ta' Novembru 2015 gie mhallas permezz ta' BOV cekk datat it-30 ta' Dicembru 2015. Inoltre, t-talba relatata mal-hlas tan-notice period li allegatament gie mahdum bejn it-23 ta' Novembru 2015 sat-18 ta' Dicembru 2015 hija wkoll infondata u dan ghaliex l-attrici tterminat l-impjieg taghha fl-20 ta' Novembru 2015 minghajr ma hadmet l-4 gimghat notice period li legalment kienet obbligata li taghmel. Ghaldaqstant, u gialdarba hija ma hadmitx l-4 gimghat notice period, lanqas it-2% commission ma huma dovuti.

Salv eccezzjonijiet ulterjuri li huma permissibbli skond il-ligi.

The Tribunal;

Viewed the acts of the case;

Viewed the decree of 23rd June 2016 by means of which the Tribunal ordered proceedings to be held in English;

Viewed the note with documents at fol. 12 of the file, the testimony of Dorian Flores (fol. 26), the note with documents at fol. 28 (amongst which the affidavit of Stephanie James at fol. 44), and the note with documents at fol. 48.

The Tribunal also considered that by a decree of 11th July 2016 the words ‘tliet invoices’ were substituted by the words ‘zewg invoices’, and the amount claimed by plaintiff company was reduced to **nine hundred and nine one Euro and twenty-one cents (€991.21)**. The Tribunal further considered that plaintiff company on that same date requested the withdrawal of Dok. B found in page 3 of the file and the Tribunal did not accede to that request.

The Tribunal also considered the testimony of Sharon Gauci (fol. 99), of defendant (fol. 101), Paul Costa (fol. 104 and fol. 113), a note with documents (fol. 118), amongst which there was the affidavit of Marjoe Muscat (fol. 132), Dr. Robert Vincent Gauci (fol. 137), Dr. Kirill Micallef Stafrace (fol. 139), Stephanie James (fol. 144), defendant (fol. 147), Guy Davey (fol. 153), defendant under cross-examination (fol. 155), note with documents (fol. 159), Marjoe Muscat under cross-examination (fol. 163), Dorian Flores under cross-examination (fol. 167), and defendant (fol. 170).

The Tribunal also considered the written submissions filed by plaintiff company (on 8th June 2017) and defendant (on 10th August 2017), and that the case had been adjourned for today for the Tribunal to deliver judgment;

Considered:

It has resulted that defendant was employed as a sales representative with plaintiff company, introducing, describing and selling hair products to prospective and existent clients around Malta.

On 20th November 2015 defendant's husband sent an sms to Dorian Flores, representative of plaintiff company to inform him that defendant would not be part of his company any more. The day after, defendant gave due notice of termination of her employment to plaintiff company, and therefore the notice period began on Monday, 23rd November 2015.

Throughout her employment, apart from her regular wage, used to receive a 2% commission on the sales of products.

Plaintiff company, in its claim is claiming two separate amounts – the first part of its claim relates to two invoices, that is invoice number 11934 and 10885, and the second part relating to half of the wages due to defendant during her notice period.

As regards the claim about invoices, it has been sufficiently proven that invoice number 10885 has been partially settled and this as results from a copy of the invoice at fol. 150 of the file. The Tribunal will consider the invoice as found at page 150 as the correct invoice, given that the representative of plaintiff company has not given a credible explanation as to the difference between the copy of the invoice found at fol. 150 and the copy of the invoice found at fol. 3 of the proceedings. Thus, regarding this invoice, the defendant owes plaintiff company the balance of one hundred Euro (€100). As regards invoice number 11934, amounting to three hundred and sixty nine Euro and fifty-eight cents (€369.58) it results that the amount therein mentioned is still due and defendant has produced no proof to the contrary, or contested this invoice. Therefore, for the claim regarding the invoices, the sum of four hundred and sixty-nine Euro and fifty-eight cents (€469.58) is still due to plaintiff company.

Regarding plaintiff company's claim for a half of the defendant's wages during the notice period, the Tribunal makes reference to Section 36 (10) of Chapter 452 of the Laws of Malta, which clearly states that the employee would be liable to pay to the employer half the wages if he fails¹ to give notice, whereas in this case notice was given, and this was acknowledged by Dorian Flores from plaintiff company. Rather, plaintiff company seems to base its claim on the fact that during the four-week notice period, defendant should have been working, whereas she did not work for plaintiff company, given that she was on sick leave. The Tribunal considered that defendant provided robust evidence about her sickness in that period, as confirmed by the medical consultants she produced as witnesses. Plaintiff company did not satisfactorily challenge defendant's sickness claim, and the Tribunal sees no reason as to why defendant should not be believed regarding her sickness claim. Rather, plaintiff company had every right to check the veracity of defendant's sickness claim there and then, which it did not. Plaintiff company's claim regarding half the wages therefore cannot succeed, and will be rejected.

¹ Underlining by the Tribunal.

Regarding the counter-claim by defendant, this is a claim which is also based on two types of claims – the first is for wages during the time in which defendant was still actively working for plaintiff company, and other wages (during the notice period), bonuses and commissions, and the second is for commissions due to defendant for products sold.

Regarding the first part of the claim, it has resulted that for the period for which defendant was still actively working for the company, plaintiff company had issued a cheque which was not encashed by defendant. In fact plaintiff company proved in no way that such cheque was encashed. Regarding the amounts due by way of wages, vacation leave, statutory bonus and weekly allowance, the Tribunal makes reference to the document exhibited by witness Paul Costa from the Department of Employment and Industrial Relation at page 106 and 107 of the file, which clearly lays down the amounts due to defendant. This document was contested by plaintiff company, principally through the testimony of Marjoe Muscat, who stated that the wage was decreased between August and September 2015. The witness did not explain why this was done, except for the fact that the director of plaintiff company had told him to do so. Neither did the witness explain why there were two pay slips referring to the same period of work, and one of them had the vacation leave included, and the other one did not. The reason given by the witness i.e. that the director had told him to make an offsetting of sick leave with vacation leave is not valid. Defendant had a right to vacation leave and sick leave, not one or the other. The reasons brought forward by plaintiff company to contest the calculations in the document exhibited by Mr. Costa are not valid at law. The Tribunal considers therefore that the amount as indicated in witness Paul Costa's document are correct and this part of the counter-claim can be acceded to.

Regarding the second part of the counter-claim, that is the commission, plaintiff company's main defence is not that such commission is not due in itself, but that the commission is being claimed for products sold when defendant was on sick leave (and therefore she should not have been carrying out any work whatsoever), and secondly that commission due is on net sales rather than on gross sales. Regarding the latter point, plaintiff company has in no manner proven that the commission paid regularly to defendant was on net sales. The Tribunal was shown no document which indicated that previously payments were effected in this manner, and this allegation by plaintiff company was not proven. As regards the payment of commission itself, the director of plaintiff company himself admitted that he owed defendant a sum of money and he accepted to give her that sum of money. Defendant bases this part of her counter-claim on the document exhibited at fol 52-54 of the file, which shows sales of products totalling nine thousand four hundred and fifteen Euro and seventy-five cents (€9,415.75). 2% on this total would amount to one hundred and eighty-eight Euro and thirty-one cents (€181.31), and therefore it should be this amount which is to be paid by plaintiff company to defendant, together with the sum of eight hundred and eighty-four Euro and twenty-nine cents (€884.29) for wages, bonuses, and leave as above described. This would total to one thousand and sixty-five Euro and sixty cents (€1065.60).

The Tribunal is for the above reasons deciding this case as following:

With regard to the original claim, the Tribunal is partially accepting defendant's defence pleas and therefore partially acceding to plaintiff company's claim, and this limitedly to the amount of four hundred and sixty-nine Euro and fifty-eight cents (€469.58) which defendant is being ordered to pay to plaintiff company, with interest as claimed.

With regard to the counter-claim, the Tribunal is partially accepting reconventioned plaintiff company's defence pleas and therefore partially acceding to counter-claimant's claim, and this limitedly to the amount of one thousand and sixty-five Euro and sixty

cents (€1,065.60) which reconventioned plaintiff company is being ordered to pay to counter-claimant, with interest as claimed. The costs of the case shall be borne as to 3/5 by plaintiff company/reconventioned plaintiff company and 2/5 by defendant/counter-claimant.

Dr. Claudio Zammit

Gudikatur

Mary Josette Musu'

Deputat Registratur