



SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Zammit

Sitting of Monday, 3rd June 2019

Claim No: 60/18 CZ

John Gaglione

vs.

Dr. Anthony Abela (Notary)

The Tribunal

Considered plaintiff's claim filed on the 5th February 2018, by means of which plaintiff declared:

Illi l-attur flimkien ma' hutu Ronald Gaglione, Richard Gaglione, and [sic] Mary Boussard wirtu l-propjeta' tal-genituri taghhom f'sehem ugwali skond it-testmentd atata disgha u ghoxrin ta' Marzu elf disa' mija u sitta u sittin (29-3-1966) (kopja

hawn annessa u mmarkata Dok. JG 1); ara wkoll il-causa mortis (kopja hawn annessa u mmarkata bhala Dok. JG 2).

Illi ghal dan il-ghan, l-attur u hutu ngaggaw lill-konvenut sabiex *inter alia* jiehu hsieb il-bejgh tal-imsemmija propjeta' flimkien mat-tqassim tar-rikavat bejn l-ahwa mill-istess bejgh;

Illi l-propjeta' nbieghet lil terzi nhar il-hdax ta' Lulju, elfejn u sbatax (11-7-2017) ghall-ammont ta' erba' mija u hamsin elf Euro (€450,000); Gie mhallas id-depozitu ta' €45,000 fit-tnax ta' Jannar elfejn u sbatax (12-01-2017), id-drittijiet tal-agenti ta' €18,585 u kontijiet ohra li jamontaw ghal €2,125, hallew bilanc ta' €384,290 (kopja tal-kuntratt ta' bejgh hawn annessa u mmarkata bhala Dok. JG 3);

Illi rrizulta illi s-sehem tal-attur u tliet hutu minn dan ir-rikavat kien jammonta ghal sitta u disghin elf, tnejn u sebghin Euro u tnejn u hamsin centezmu (€96,072.52) kull wiehed;

Illi minghajr ma kkonsulta u/jew ha awtorizzazzjoni minghand l-attur, il-konvenut ikkonverta l-ammont dovut lill-attur minn Ewro ghal Sterlini qabel ma jittrasferixxi l-qliegħ lill-attur permezz ta' trasferiment bankarju f'bank esteru (kopja tal-bank statements hawn annessa u mmarkata bhala Dok. JG 4).

Illi b'konsegwenza tal-fatt illi l-konvenut ma kkonsultax mal-attur qabel ma effetwa t-trasferiment relattiv, gew imnaqqsa mill-bank l-ammont ta' erbat'elef, erba' mija u wiehed u erbghin Euro u sbatax-il centezmu (€4,441.17) rapprezentanti bank charges – liema spiza l-attur seta' facilment jevita li kieku l-konvenut talab id-debita awtorizzazzjoni minghand l-attur;

Illi ghaldaqstant l-attur ircieva biss l-ammont ta' wiehed u disghin elf, sitt mija u wiehed u tletin Euro u hamsa u tletin centezmu (€91,631.35) minghand il-konvenut;

Illi ghaldaqstant l-attur qiegħed jitlob lil din [sic] l-Onorabbli Tribunal sabiex:

Tiddikjara li l-konvenut debitur vaur l-attur fis-somma ta' erbat'elef erba' mija u wiehed u erbghin Euro u sbatax-il centezmu (€4,441.17);

Tikkundanna u tobbliga lill-konvenut ihallas lill-attur is-somma ta' erbat'elef, erba' mija u wiehed u erbghin Euro u sbatax –il centezmu (€4,441.17);

Bl-ispejjez u bl-imghax legali kontra l-konvenut li huwa minn issa ingunt in subizzjoni.

The Tribunal, saw the reply of defendant, filed on 22nd February 2018, whereby he declared:

1. Illi t-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez stante li:
 - A. L-eccipjent mhux debitur tieghu fl-ebda mod.
 - B. Ma kkaguna l-ebda dannu u/jew pregudizzju lilu.
2. Illi l-intimat esegwixxa fedelment l-istruzzjonijiet lilu mogħtija. L-assi likwidi gew trasferiti fil-pajjiz fejn jabita l-istess attur fil-munita legali ta' dak il-pajjiz.
3. Salv risposti ulterjuri.

The Tribunal;

Viewed the acts of the case;

Viewed the decree of 29th October 2018 by means of which the Tribunal acceded to plaintiff's request for the proceedings to be held in English;

The Tribunal also considered the testimony of plaintiff (fol. 81), Mark Gaglione (fol. 87), Albert Dimech (fol. 90), Dr. Maria Cristina Calleja Tufigno (fol. 181), and defendant (sitting of 6th March 2019).

Considered:

This case regards the sale of a property owned by the Gaglione family, which plaintiff and his brothers and sister sold to third parties. Notary Maria Cristina Calleja Tufigno, from defendant's office published the deed of sale¹. Plaintiff had entrusted his nephew Mark Stephen Gaglione through a special power of attorney², to appear in his name and on his behalf, to:

- a) Sign the final deed of sale and collect the proceeds thereof;
- b) Guarantee the peaceful possession of the property sold;

¹ Fol. 18

² Fol. 112

- c) Sign all documents necessary for the change over water and electricity meters and any other existing utilities and paying all relative balances thereof; and
- d) Do all that is necessary in connection with the said sale.

What is essential to this case is point (a) and (d) of this particular power of attorney.

Plaintiff claims that defendant, in distributing the money received from the sale of the property to the vendors, did not consult him or his attorney. This resulted in the loss claimed in this case, due to the fact that the money was converted from Euro to Sterling without plaintiff's or his Malta attorney's consent. Plaintiff also produced a witness, Albert Dimech, to show that when money are received from abroad, they are received in the currency chosen by the sender, and that could be both the currency from where they are sent, or the currency where they are received. Plaintiff claims that defendant should not have converted the money out of his will, but should have sent the money in the same currency with which the price of the property was paid in Malta.

Mark Gaglione, plaintiff's attorney stated that after the deed of sale was published, defendant suggested that he would himself do the transaction whereby the money was distributed. He asked the attorney to obtain the bank accounts of plaintiff and his siblings, and Mark Gaglione gave the four account numbers to defendant. Mark Gaglione himself had requested that the proceeds should be paid by bank transfer to each of the four siblings, but did not give any particular instruction on the currency in which the proceeds would be sent. Mark Gaglione, when testifying, said that the accounts provided to defendant were Euro accounts, and plaintiff states, in his correspondence with Notary Tufigno from defendant's office, that he and his siblings had opened a Euro account in anticipation of this sale. However, upon seeing Dok. TA2 at fol. 191 *et seq.* of the file, the Tribunal notes that Mark Gaglione gave to Notary Tufigno the details about plaintiff's bank account but did not indicate that this

was a Euro account. Neither did Mark Gaglione or plaintiff give specific instructions to defendant to transfer the money in Euro.

The Tribunal notes therefore that defendant could not presume himself that the account in the UK was in Euro, and not in Sterling. As much as plaintiff had given specific instructions to his nephew Mark Gaglione regarding what he should sign and what he should do, through the power of attorney, it was equally important for plaintiff to instruct his attorney to give clear and precise instructions about the currency in which the proceeds were to be transferred. This is even more so when considering that plaintiff had directly stated that he had opened a Euro account at Barclays specifically for the proceeds of this sale. The lack of clear and precise instructions to the notary by plaintiff cannot now be remedied by instituting these proceedings. In such case, with plaintiff being abroad and residing in a place where Euro is not the currency of the land, plaintiff had to be specific in his instructions to the Notary for the latter to send the proceeds in Euro, a currency which has never been the official currency of the UK.

Moreover, if plaintiff was expecting that the proceeds should be distributed in the same manner that the proceeds from the promise of sale were distributed, he had to give specific instructions to his attorney in Malta to accept such funds in this manner. It is inexplicable how plaintiff's attorney accepted to act differently at the deed of sale, regarding the proceeds, when he knew that at the point of the promise of sale the situation had run smoothly.

The Tribunal does not therefore find that defendant's decision to convert funds was arbitrary and such that warrants the finding of responsibility from his side. Plaintiff knew that the deed of sale was going to be published, so much so that he knew that there had been a promise of sale, and he had specifically made a power of attorney to his nephew.

The Tribunal is therefore deciding this case by rejecting plaintiff's claim. The costs of the case shall be born entirely by plaintiff.

Dr. Claudio Zammit

Gudikatur

Mary Josette Musu'

Deputat Registratur