

Claim Number 12/19 PM

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 2nd March, 2020

Claim Number: 2/2018PM

Davina Borg and Daniel Borg exercising their trade in the name of ‘Blacksalmon’

vs.

Martinez Branding

The Tribunal,

Having seen the Notice of Claim filed by claimants whereby they submit that defendant engaged claimant to create and develop computer animation. This was developed and delivered to the defendant and the respective invoice (2017-018) in the amount of €944 (representing the sum of €800 as fees and the sum of €144 as VAT) was issued and forwarded to defendant on the 15th December, 2017. Defendant does not want to honour such payment although he confirmed via email of the 15th September, 2017 (Dok. BS2 attached to the claim) they they will pay the amount shortly after the date of the email. To date no amount has been paid notwithstanding the numerous reminders sent.

The Tribunal also notes that defendant company was duly served with the acts of the case on 24th July, 2018 via registered mail RC101255129MT which results delivered to recipient on the 3rd August, 2018 and no reply was filed.

The Tribunal:

Having seen the documents filed with the Notice of Claim, namely affidavit by Davinia Borg and attached documents (marked respectively DB1 and DB2).

Having also considered that the lack of reply by defendant company does not in itself mean that claimant's claim is automatically proven;

Having seen the application dated 18th March, 2019 filed by claimant requesting the Tribunal to deliver judgment in terms of Regulation 861/2007 of the European parliament and the Council of the 11th July, 2007.

Having acceded to such request by means of decree dated 19th February, 2019.

Having therefore considered all evidence brought forward by claimant;

Having also considered that the Tribunal can adjudicate this case on the basis of the evidence produced and that therefore no oral hearing needs to be fixed;

Considers that:

In this action, claimants are suing defendant for price due in view of services rendered by the former to the latter consisting in the creation and development of an animation for defendant's clients called 'Paper Plane'. As per her affidavit Davinia Borg explains that such service was rendered and accepted by defendant to the extent that the animation was not only made available on the website of defendant's client but defendant itself was paid for it. Claimant Borg explains that although she provided all the requested details for

payment and although defendant itself promised payment no payment has been forthcoming even after several chasers.

It transpires from the claim that the sum being requested is that of nine hundred and forty-four euros (€944 inclusive of VAT). Via email dated 21st July, 2017 also attached to her affidavit Davinia Borg had confirmed that the total sum claimed was that of eight hundred euros (€800). A representative of defendant company queried whether this would be the final amount and Borg confirmed that no VAT would be applicable provided an ES number is provided. Via emails dated 10th July, 2017 and 19th July, 2017 Davinia Borg asked for the EU VAT number for intra-EU transactions for exemption purposes. Through subsequent correspondence filed in the acts it transpires that such VAT number had expired and therefore defendant offered to settle through regular invoicing and credit to the claimant's account. Although payment was so promised it was never effected.

It is amply clear that whoever carries out work is entitled to be compensated for it. In addition art. 992 of the **Civil Code** also provides for the legal principle of *pacta sunt servanda* by providing that “*contracts legally entered into shall have the force of law for the contracting parties.*”. Art 993 of the **Civil Code** also provides that “*contracts must be carried out in good faith*”. These principles are equally applicable to the contract of works or *location operiis*.

It results clearly from the acts that although defendant accepted the services rendered by plaintiffs and was willing to pay for them in the amount being claimed via payment to be received in Malta no payment was effected. In view of the above principles the Tribunal believes that the claim for payment is reasonable, taking into due account the fact that services have been rendered to and accepted by defendant and that defendant itself was willing to pay the requested amount. For all the above reasons, the Tribunal will proceed

to accede to the request with interest as claimed and costs to be borne by defendant company.

Thus, for the aforementioned reasons, the Tribunal upholds claimants' claim and thus orders defendant to pay to claimant the sum of nine hundred and forty-four euros (€944), with interest as claimed. All costs are to be borne by the defendant company.

Dr. Philip M. Magri

Adjudicator