

Claim Number 4/20 PM

IN THE SMALL CLAIMS TRIBUNAL

(European Small Claims Procedure)

Adjudicator: Dr. Philip M. Magri

Sitting of Monday, 30th August, 2021

Claim Number: 4/2020PM

Express Logigroup Limited (C58205)

vs.

Asso Trasporti e Logistica SRL

The Tribunal,

Having seen the Notice of Claim filed by claimant company whereby it submitted that defendant company is its debtor in the sum of five thousand euros (€5000) apart from interest, legal fees and costs, representing transport fees and expenses for merchandise delivered from Sicily to Malta. In support of the said claim, claimant company attached a statement of account which refers to the total amount of five thousand and ninety euros (€5,090) due in connection with the invoices listed therein.

The Tribunal also notes that defendant company was duly served with the acts of the case on 12th August, 2020 and although no formal reply via the standard Form C was filed, the same respondent company chose to revert via ordinary undated letter addressed to the Ministry of Justice, Culture and Local Government – Courts of Justice Department by which it confirmed receipt of this procedure and stated as follows:

“We checked the statement attached to your Procedure and realized that the Express Logigroup accounting had not recorded any of our invoices.

In particular, the following invoices are not registered:

Invoice n.8 dated 18/01/2018 of €100

Invoice n.35 dated 12/02/2018 of €1000

Invoice n.94 dated 31/03/2018 of €1000

Invoice n.95 dated 31/03/2018 of €800

Invoice n.128 of 30/04/2018 of €2,500

For a total of €5,400.

There would be a difference of €310 in our favour compared to your statement.

Knowing the failing state in which the ‘Express Logigroup Limited’ is located, we have long since waived our credit.

We enclose herewith the ‘Conform to the Original’ copies of the aforementioned invoices, but we ask you to update your statement.”

The Registrar of Civil Courts and Tribunals duly filed the said letter via a note in the acts of these proceedings dated 12th October, 2020.

The Tribunal:

Having seen the Notice of claim and the relative supporting statement of account attached to the same (marked Dok. X).

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, however, that via its undated letter the defendant company did not contest the amount being claimed as not due but, on the other hand, alleged that such amount should be set off against a higher amount allegedly due to it by the claimant company.

Having therefore considered the respective legal positions of both parties;

Having also considered that, on the basis of the above, 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, claimant company is suing defendant for price due representing transport fees and expenses for merchandise from Sicily to Malta and that, from its side, defendant company is claiming set off of such sum against a higher sum which it claims was due by the claimant company to it as per the invoices as listed in their letter as cited above.

Having considered that in terms of Maltese law, the claim of set-off is deemed tantamount to an admission that the amount claimed is due (as decided amongst others, on the 22nd November, 2001 by the Court of Appeal (Civil, Inferior) via judgment in the names of **VELLA RAYMOND vs MOBY RENTALS LTD**).

Having also considered that the only claim rendered to the cognisance of this Tribunal for due decision is that pertaining to the claimant company which claim is, as per the above case-law, to be deemed admitted by the defendant company. From its side, defendant company did not formally raise a claim or a counter-claim to claimant company's original claim. However, with regards to the defence of set-off, Regulation (EC) No 861/2007 expressly provides as follows:

In cases where the defendant invokes a right of set-off during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. Therefore, the defendant should not be obliged to use standard

Form A, as set out in Annex I, for invoking such a right. (emphasis added -
Para 17 of the Preambles)

In addition to the above, it is amply clear that whoever carries out work is entitled to be compensated for it and, as stated above, defendant company has not denied the existence of its debt in favour of the claimant company. However, the evidence produced by the defendant company, namely the invoices issued by the latter against claimant indicate a debt by claimant which in actual fact surpasses that due by the defendant to the claimant. As noted by defendant company, none of its invoices appear to have been considered by claimant in submitting its claim.

Moreover, in terms of Maltese law, namely art. 1196 of the **Civil Code**:

(1) Where two persons are mutual debtors, a set-off takes place between them.

(2) Set-off operates ipso jure, and even without the knowledge of the debtors. The moment two debts exist simultaneously, they are mutually extinguished to the extent of their corresponding amounts.

In view of the above principles, the Tribunal believes that the claim should be deemed set off and therefore extinguished by the amounts due by claimant to defendant.

Thus, for the aforementioned reasons, the Tribunal rejects the claim with all costs and fees to be borne by the claimant company.

Dr. Philip M. Magri
Adjudicator