

**TRIBUNAL GHAL TALBIET ZGHAR****GUDIKATUR****Gudikatur DR. Leontine Calleja LL.D**

Wednesday, 22nd June 2022

Claim Number: 274/2021 CL

The Tribunal;

Ewelina Zyndul (0259032A)**VERSUS****John Calleja**

Having seen the notice of claim filed on the 20th of September, 2021 wherein, the plaintiff stated that she had done renovation work of two bedrooms at property of defendant situated at Flat 11, 506, Summer Flats, Triq it-Turisti, St. Paul's Bay. Agreement on the works was reached and confirmed via whatsapp, messenger as well as by telephone and when they physically met in Gzira. More works needed to be done then originally planned, as the bedrooms were in a worse state then anticipated. Defendant also requested more works than they had agreed upon and he accepted to pay for such extra works. When the works were completed, defendant contested the amount according to estimate provided and contested some of the works done. After many discussions on the amount to be paid, defendant accepted to pay the sum of four hundred and eighty eight euro and fifty eight cents (€488.58) according to documents attached. At first this amount was not acceptable to the plaintiff as she felt it was unfair however after some time she accepted this and informed defendant accordingly and provided him with her bank details so he could make a payment. However although payment was requested, defendant ignored all requests for payment.

Having seen that the the procedure applicable before this Tribunal, including Defendant's right to file a reply within eighteen (18) days from the date of service, and that in the absence of such reply, Defendant would be considered to be in a contumacious state in this proceedings, which state this Tribunal will consider as a contestation of the claim, and that in such state, he would not be entitled to produce evidence, but he would have the right to make final oral submissions before the Tribunal.

Considers that:

Article 13 of Chapter 380, the Small Claims Tribunal Act provides that:

If any of the parties fails to appear on the date appointed for the hearing of the cause, the following provisions shall apply:

- (a) if the claimant fails to appear, the adjudicator shall adjourn the cause for another date and if on such other date the claimant fails to appear, the adjudicator shall dismiss the cause and order the costs to be borne by the claimant:
Provided that the adjudicator shall not make such adjournment but shall either determine the case or dismiss the same with costs to be borne by the plaintiff if the defendant so requests;
- (b) if the defendant fails to appear, the adjudicator may determine the case in the absence of the defendant and an admission made upon a reference to the oath of the defendant may be received in evidence against the defendant, and the provisions of Sub-title VI of Title I of Book Third of the Code of Organization and Civil Procedure with respect to a reference to the oath of a defendant in the inferior courts shall, mutatis mutandis, apply.

It is an established principle of law that failure of Defendant to file a reply and contest proceedings renders him contumacious. This state of a party in judicial proceedings is generally considered to reflect Defendant's disrespect for the authority of the Court or Tribunal, as he would have turned down his right, and obligation, to explain his position regarding the claim, thus assisting the Court or Tribunal in its assessment of all relevant points of fact and law arising in the dispute under examination. This notwithstanding, and in line with Defendant's rights of defence, the contumacious state has always been interpreted as outright contestation of the claim.

Considering thus that Plaintiff Company's claim is contested, the Tribunal must now consider whether its claim for payment is founded in law and in fact.

Having seen that the defendant was served with the notice of claim on the 20th October 2021 however he failed to file a reply within the time stipulated by law. Having seen the documents attached to the said notice of claim in support of the same which were confirmed by plaintiff and having heard the plaintiff during the sitting of the 2nd February 2022, confirm under oath that she had carried out some work for the defendant and was still owed the outstanding amount of (€488.58) and no payment had been made by defendant since she presented her claim.

The Tribunal sees no reason why the plaintiff is not to be believed and thus accedes to the claim and condemns the defendant to the payment of four hundred and eighty eight euro and fifty eight cents (€488.58) with interest from the date of the claim and until final payment. All costs are to be borne by defendant.

Avukat, Leontine Calleja LL.D.

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