

Kopja Informali ta' Sentenza



## **TRIBUNAL GHAL TALBIET ZGHAR**

**GUDIKATUR DR.  
PETER BORG COSTANZI**

Seduta tal-15 ta' Jannar, 2008

Talba Numru. 430/2006

**Notice: 430/06PBC**

**Branko Radojevic (KI Nru 0026635A) u  
BSL Lifestyles Limited ghal kull interest  
li jista' jkollha**

**Vs**

**Link Projects Limited**

### **The Tribunal**

Having seen the Notice whereby plaintiffs requested that the defendant pays the sum of one thousand, two hundred and seventy five Maltese Lira and sixty one cents (Lm1,275.61c) representing the price for work and materials supplied by them to the defendant company in

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February and March 2005 which works and materials were supplied on the instructions of the defendant company.

The defendant company failed to pay the amount without any valid reason at law, despite being repeatedly requested to pay. With costs, including those of an official letter of the 14<sup>th</sup> of March, 2006 and with legal interest till the date of the effective payment.

Having seen the reply by the defendant company whereby it stated that it does not owe the amount being requested in the Notice and is therefore rejecting the request for payment therein indicated as being unfounded in fact and at law because the work in question was not carried out according to art and trade.

Having heard the evidence of Branko Radojevic, Christopher Gatt, Alfred Calascione, Jeremy Holland and Monica Theuma.

Having seen all the documents exhibited in the case and heard the submissions by Dr Josette Grech on behalf of plaintiff and Dr Vanessa Millo on behalf of defendant.

Having seen the transcripts of the sitting of the 13<sup>th</sup> of June 2006, whereby the Tribunal ordered that the proceedings be heard in the English language.

### **Considers**

That Link Projects Limited was contracted by Arcadia Marketing Limited to carry out works in a shop named Things in Bugibba Square, St Paul's Bay. The works comprised the re-painting of the floor in the said shop. To this effect the defendant company sub-contracted plaintiffs in order to paint the floor. When plaintiffs were asked to give a quotation, they initially quoted both for labour as well as for materials though the defendant company stated that it could not accept the materials initially offered by plaintiffs because the colour did not match perfectly with the walls in the shop.

Consequently, it was agreed that plaintiffs would do the labour involved in painting the floor using materials, which were to be supplied by the defendant company. The agreed price was at three Maltese Lira and ten cents (Lm3.10c) per square metre. During the course of these first works two patches came out indicating that there was a humidity problem. Plaintiffs treated these two patches without charging for the extra work and continued with the job

Subsequently a problem arose in that there was humidity coming out from the floor and this was causing the paint to bubble up. A further discussion ensued between the parties and this is where the disagreements started to arise.

Plaintiff states that there was an agreement that he would redo the job using materials to be supplied by him, and, Branko Radojevic affirms that the defendant company accepted the terms stipulated by him as indicated in the e-mail which is exhibited on page thirty-seven (37) of the Court records, that is, that he would charge:

Sica Epocem 82	-	Lm323
Labour	-	Lm 3 + VAT per square metre
Self-Levelling Resin	-	Lm11.45c + VAT per square metre

The floor area measures 46 square metres.

On the other hand, the defendant company states that the agreement was in the sense that plaintiff would redo the job and he would be paid five Maltese Lira (Lm5) and not the initial three Maltese Lira and ten cents (Lm3.10c) with the additional two Maltese Lira (Lm2) represented the cost for anti-humidity materials to be supplied by plaintiff. Plaintiff contests this affirmation by the defendant.

In actual fact plaintiff carried out the works a second time using the materials indicated in the e-mail on page twenty seven (27) of the Court records. Much later, Arcadia Marketing complained that there was a slight problem with

the work in that there were two mosquitoes stuck to the paint and there were two small patches about the size of a two cent coin which indicated some slight humidity and furthermore, the colour of the paint was matt and not glossy.

It seems that there was a general agreement that plaintiff would do a final painting job on this floor about six months later but in effect plaintiff did not do the work because he had not been paid for the earlier jobs.

Plaintiff is therefore requesting payment for both the first and second jobs, whereas the defendant company is stating that it does not owe anything because the work has not been completed.

There is no doubt that in this particular case the plaintiff was subcontracted to do the painting of the floor in the shop at Bugibba. It is disputed whether the initial agreement comprised plaintiff using anti-humidity materials. The Tribunal is not satisfied that defendant company's contention in this regard has been sufficiently proved.

However, once plaintiff agreed to do the job, he should have made sure that the materials which were being supplied to him were suitable for the work which he was entrusted to do. He expressly stated that he was not familiar with the materials, which were supplied, and he used this to exculpate himself from the problem which then arose. In the opinion of the Tribunal, the reason adduced by plaintiff is not a sufficient justification. Once a contractor accepts to do a job, he is in duty bound to ensure that, if his client provides him with materials, the materials are suitable. It is not a valid excuse for plaintiff to state that he was not familiar with the materials and consequently, in this respect the Tribunal is of the opinion and therefore concludes that the defendant company is justified in refusing to pay for the first job. The defendant company is consequently entitled to a refund for the expenses it incurred in supplying the materials which were used by plaintiff for this first job. No evidence has been

produced by the defendant company about the value of these materials and therefore the Tribunal has to use its own discretion on an equitable basis and establishes a figure of two hundred and eighty Maltese Lira (Lm280).

In so far as the second job is concerned, the Tribunal is satisfied that plaintiff carried out the works satisfactorily and that the issues which arose at a later stage were, in the opinion of the Tribunal, minor and insignificant problems for which plaintiff does not have any fault and certainly not of an extent to justify a refusal of payment. Of his own motion plaintiff indicated a willingness to address these issue free of charge but, once he was not paid he was within his rights not to follow up his offer. The fact that these were raised only months after the works had been completed speaks for itself. Had there been a real problem, the issue would have been raised immediately.

The Tribunal is also satisfied that plaintiff used the materials in the quantities indicated in the e-mail on page thirty-seven (37) of the Court records and as stated by him in his evidence and in the note filed on the 22<sup>nd</sup> of November, 2007.

In this respect therefore, plaintiff is entitled to charge two hundred and seventy three Maltese Lira and seventy two cents (Lm273.72c) for the Sika Epocem 82 and four hundred and six Maltese Lira and seventy cents (Lm406.70c) for the Epoxy Resin. To these two sums one must add 18% VAT and this represents the costs of material.

Plaintiff is also requesting a further two hundred and fifty eight Maltese Lira (Lm258) for labour for the installation of the Epocem and the Epoxy resin. The Tribunal is of the opinion that this amount claimed is exaggerated and hereby liquidates the sum at two hundred and thirty Maltese Lira (Lm230) namely at a flat rate of five Maltese Lira (Lm5) per square metre.

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Consequently, on the basis of the above the Tribunal hereby concludes that the amount being liquidated is as due to plaintiff is as follows:

1.	Cost of Sika Epocem 82	Lm273.72c
2.	Cost of Epoxy resin in blue	Lm406.70c
3.	VAT	Lm122.48c
4.	Labour	Lm230.00c
	<b>Total</b>	
	<b>Lm1,032.90c</b>	

Less refund due by plaintiff for materials used  
by the defendant company on the first job  
(Lm280.00c)

**Balance due** **Lm752.90c**

Since the amount due is of a commercial nature, interests start running from the date when the amount became due namely from March 2005. Since the amount claimed by plaintiff is superior to the amount liquidated by this Tribunal, this should reflect on the costs of this case.

Consequently, the Tribunal hereby concludes by ordering the defendant company to pay plaintiff the sum of one thousand, seven hundred and fifty-three Euros and seventy-nine Euro cents (€1,753.79) - (Lm752.90c) together with legal interests from the 1<sup>st</sup> of April, 2005. Costs are to be borne as to two-thirds (2/3) by the defendant company and one-third (1/3) by plaintiff.

**< Sentenza Finali >**

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