



MALTA

CIVIL COURT

FIRST HALL

**THE HON. MR. JUSTICE
JOSEPH ZAMMIT MC KEON**

Sitting of the 30 th September, 2014

Citation Number. 112/2011

Adrian Micallef – ID742979M

vs

Margareta Wass

THE COURT :

I. The matter

Having seen the **sworn application** which plaintiff filed in Maltese on the **8 February 2011** which states as follows :-

1. *Illi l-intimata nkarigat lir-rikorrenti, li jiggstixxi n-negozju tieghu bl-isem “am 1 design” sabiex jaghtiha s-servizzi tieghu ta` disenjatur, inkluz fl-istess inkarigu, li jixtri dak kollu li kien hemm bzonn u jinstalla l-istess fil-penthouse li tinsab fil-blokka li ggib l-isem “Shanti Nivas” fi Triq l-Imghazel, Swieqi, liema inkarigu r-rikorrenti esegwixxa.*

2. *Illi l-intimata ghad ghandha thallas lir-rikorrenti s-somma bilancjali ta` €15,453.98 u dan stante li mis-somma globali ta` €19,716.55 ghandu jitnaqqas dak li l-intimata hallset akkont u cioe` s-somma ta` €4,262.57 – kollox skont ma jidher dettaljatament fil-prospett hawn anness u market Dokument “AM”.*

3. *Illi avolja l-intimata giet mitluba thallas il-bilanc hawn fuq imsemmi din irrifjutat li thallas minghajr ebda raguni gusta.*

4. *Illi dan id-debitu huwa cert likwidu u dovut u l-intimata ma ghandhiex eccezzjonijiet x`taghti u ghalhekk il-kawza tista` tinqata` ai termini tal-artiklu 167 tal-Kapitolu 12 tal-Ligijiet ta` Malta.*

5. *Tghid ghalhekk l-intimata ghaliex dina l-Qorti ma ghandhiex (1) taqta` u tiddeciedi l-kawza ai termini tal-Artiklu 167 tal-Kodici tal-Procedura Civili u cioe` bid-dispensa tas-smigh tal-kawza u (2) tikkundannaha thallas lir-rikorrenti l-ammont ta` €15,453.98 rapprezentanti l-bilanc minn somma akbar ghas-servizzi resi mir-rikorrenti fl-interess u fuq struzzjonijiet tal-istess intimate kif ukoll rifuzjoni ta` ammonti ta` flus li huwa nefaq fl-interess taghha fil-fornitura tal-istess oggetti minnu mixtrija u nstallati fil-proprjeta` tal-intimata – kollox skont kif intqal fuq u ghar-ragunijiet fuq premissi.*

6. *Bl-imghax legali mid-data tal-prezenti att sal-gurnata tal-effettiv pagament u bl-ispejjez kontra l-intimata li minn issa tibqa` ngunta ghas-subizzjoni taghha.*

Having seen plaintiff's list of witnesses and list of documents.

Having noted that at the hearing of the 28 April 2011 defendant appeared, and requested that proceedings be conducted in English as she could neither speak nor understand Maltese. As plaintiff did not oppose the request, the Court acceded.

Having noted that at that same hearing counsel to defendant explained to the Court the grounds for defendant's contestation of plaintiff's claim. As the Court found that defendant had a *prima facie* basis to enter a defence, the Court gave defendant a time-limit of twenty days to file a sworn reply.

Having noted that at that same hearing the Court ordered that the burden of proof be shifted on defendant and that defendant had to produce her evidence first.

Having seen the **sworn reply** which defendant filed in Maltese on the 29 April 2011 and which states as follows :-

1. *Preliminarjament illi l-esponenti mhijiex il-legittimu kontradittur u ghalhekk mhiex hi li ghandha tirrispondi ghal kwalunkwe talba ta` hlas li qed iissir mir-rikorrenti kif jigi spjegat dettaljatament waqt it-trattazzjoni tal-kawza.*

2. *Illi minghajr pregudizzju ghall-ewwel eccezzjoni illi m`hu xejn dak allegat fir-rikors guramentat li hemm xi ammont dovut lir-rikorrenti kif lanqas m`hu minnmu xejn illi huwa rcieva minghand il-propjetarju tal-penthouse li fiha saru l-allegati servizzi da parti tar-rikorrenti s-somma biss ta` Euro 4262.57 izda l-propjetarju tal-imsemmi penthouse hallas is-somma ta` circa Euro 33,000 sabiex mhux talli ma hemm xejn dovut lir-rikorrenti kif minnu pretiz izda huwa r-rikorrenti li ghandu jaghti lill-propjetarju tal-penthouse flus imhallsa zejda u per konsegwenza l-istess propjetarju ser jinizja proceduri gudizzjarji kontra r-rikorrenti ghall-hlas maghmul indebitament.*

3. *Salv kull eccezzjoni ulterjuri.*

Having seen defendant`s list of witnesses.

Having seen the evidence by affidavit of Bengt Olof Lindgren, and of defendant, together with the attached documents.

Having heard the evidence given by defendant at the hearing of the 31 October 2011.

Having heard the cross-examination of defendant at the hearing of the 2 April 2012, and seen the note with documents presented by plaintiff at the same hearing.

Having seen the evidence by affidavit of plaintiff.

Having heard the evidence of Steve Schembri and the cross-examination of defendant at the hearing of the 4 June 2012.

Having seen the document filed by plaintiff at the hearing of the 9 October 2012, together with the evidence by affidavit of Alex Sghendo and Peter Bellia, with attached document.

Having seen the evidence by affidavit of Nicholas Micallef, of Roger Micallef and of Clayton Bonnici, and seen a document that was attached.

Having heard the cross-examination of Peter Bellia and Alex Sghendo at the hearing of the 6 December 2012, and seen the document that was exhibited during the hearing.

Having seen the evidence by affidavit of Charles Cauchi.

Having seen the note with documents presented by plaintiff on the 20 December 2012.

Having heard the cross-examination of Charles Cauchi, of Nicholas Micallef, of Roger Camilleri and of Clayton Bonnici at the hearing of the 9 May 2013, and seen the documents that were exhibited during the hearing.

Having seen the note with documents presented by plaintiff on the 1 July 2013.

Having heard the cross-examination of Charles Cauchi and of Roger Camilleri at the hearing of the 11 July 2013.

Having seen its decree of the 9 October 2013 whereby the Court ordered the removal from the court file of the documents inserted at folio 132 to 136, and fol 162.

Having heard the evidence of plaintiff at the hearing of the 4 November 2013.

Having seen the note with attachments which was filed by defendant on the 24 January 2014.

Having seen the note of submissions which plaintiff presented on the 3 February 2014 and that filed by defendant on the 6 May 2014.

Having seen its decree of the 19 May 2014 where the Court adjourned the cause for judgement for today.

Having seen the other acts of the proceedings.

II. The Evidence

Bengt Olof Lindgren testified that he is the sole owner of the penthouse “Shanti Nivas”, Triq l-Imghazel, Swieqi, that he purchased by virtue of a contract of the 23 March 2011 in the Acts of Notary Andre` Farrugia (Doc BOL1). The property was acquired semi-finished. So he had to purchase and fit the bathrooms, the internal doors, the fitted wardrobes and other items necessary to make the place habitable. The property negotiator, Stephen Schembri, employed with Dhalia, had suggested that he should engage the services of plaintiff as a carpenter. When plaintiff visited the penthouse at his request, he offered his services not only for the supply of the wardrobes, but also for the alterations that were required in one of the bathrooms. He was also prepared to assist with the gypsum ceilings that had already been ordered from Roger Camilleri.

Witness states that the defendant is his companion. She used to be present with him when he was negotiating with plaintiff. At a later stage, she continued with the negotiations, and looked after his interests to finish the penthouse. Plaintiff knew from day one that the penthouse did not belong to defendant but belonged to him. All amounts that were invoiced by plaintiff were invoiced to him and only he paid the invoices directly to plaintiff. To witness it was strange indeed why plaintiff instituted legal proceedings against defendant. He contested as untrue what was alleged by plaintiff that only a payment of € 4,262.57, has been effected in favour of plaintiff for services rendered. In fact from the invoices and statements, which witness produced as evidence, it resulted that he had plaintiff an amount of € 32,600.

Witness further affirmed that apart from what was stated above, there were still pending with plaintiff issues regarding bad workmanship and incomplete works. Witness also alleged that plaintiff had forged a number of invoices and VAT receipts on purpose in order to increase his invoices regarding work allegedly done in his premises.

Defendant testified that Bengt Olof Lindgren is her companion. They had been living together in Sweden in a common law relationship since May 2010. As Lindgren was approaching retirement, he decided to settle in Malta, and to do so he purchased the penthouse in Swieqi. The place was acquired through Dhalia ; Stephen Schembri was the contact person. As the penthouse was unfinished, and a number of items needed completion, Lindgren asked Stephen Schembri to suggest a carpenter who could take care of the construction and fitting of the wardrobes. Schembri suggested plaintiff. They made contact, and subsequently she met plaintiff at the penthouse. Plaintiff offered his services for alterations that were needed in the bathrooms and in the soffit ceilings.

Informal Copy of Judgement

Defendant stated that as time passed, plaintiff offered other services to complete the penthouse. Lindgren agreed. She dealt with plaintiff in Lindgren's absence. Plaintiff knew from the start that Lindgren had contracted his services. A written contract was never signed between plaintiff and Lindgren. The latter never agreed to any rates or to lump sum payments. What they agreed was that Lindgren expected works to be performed properly and at normal standards.

Defendant points out that plaintiff's statements were issued to Lindgren who paid for plaintiff's services through his own bank accounts. She states that plaintiff is not correct when he states that he was paid €4,262.57 on account ; in actual fact he was paid over € 30,000.

Defendant claims that plaintiff sent his invoices to Bengt Lindgren. Due to the fact that Lindgren had to be in Sweden in connection with his business interests, she handled the works at the penthouse on his behalf. Furthermore as Lindgren had no idea on home interiors, she took care of matters here in Malta. However she still referred all matters to her companion. She did deal with plaintiff on behalf of Lindgren. Asked by the Court whether she had informed plaintiff that although she was taking care of everything she was not the client, defendant states that she had informed plaintiff that she could not take any final decision because she was not the owner of the place in question.

Defendant confirms that prior to the commencement of works, plaintiff had not provided any estimates. Questioned by the Court why she did not request estimates of works, defendant retorted that the plaintiff's book-keeper was messy, and that she had told Lindgren to take over because she could not continue dealing with plaintiff as he was lying to her, he was not giving her any information, and on one occasion, he was saying one thing and on the next, he was saying another. Asked by the Court if plaintiff had started any works, defendant replied that plaintiff started with the shower ; Lindgren had come to Malta to see how the changing of the pipes was taking place. At the time the air conditioner was also being installed ; suddenly plaintiff started taking care of

Informal Copy of Judgement

that as well, and although Lindgren had agreed with someone else for the installation of the air conditioner on the roof together with the solar panels, these were then charged by plaintiff, and they ended up paying twice for the same service.

Defendant said that Lindgren paid plaintiff directly through his bank account ; he transferred the sum of €32,600. She never paid plaintiff anything. Asked by the Court what amount was actually due to plaintiff, defendant stated that he did not know as they did not have proper invoices, as the invoices presented were false. Lindgren had tried to speak to plaintiff in order to acquire the proper documentation to see what had been paid. When Lindgren paid the €32,000, he did so in advance without any invoice. The only matter came into the scene ; she never paid plaintiff the sum of €4,262.57.

In cross-examination, defendant was asked whether plaintiff did carry out any carpentry works in the penthouse, and she replied that he did not perform the work himself but brought in somebody else to do the work instead. Asked whether she had ever seen plaintiff's visiting card, defendant said she did not. After being shown the visiting card in open court, defendant stated that she recognised the card, and that on it were written the words "*Project Management*". Also shown an exchange of emails dated between the 2 and 4 of March 2010, she stated that did recognize the contents, and confirmed that plaintiff was corresponding with her regarding the execution of the works. Defendant pointed out that there were many more emails. She stated that she had been taking care of everything in detail, excluding the major works. When she met plaintiff, she was on her own, and on average, she had met him around twenty times ; in the majority of these instances, either Lindgren or her son were present. During these meetings, she had informed plaintiff that the property was not hers, and that he would be paid by Lindgren. In actual fact plaintiff never sent her any bills, and she never paid him anything. She did not confirm whether she ever received any bills from the suppliers. Asked whether she did recall a company by the name *240 Limited*, who supplied terraced furniture, defendant confirmed that she did receive a bill in her name, although the bill covered furniture, and not work carried out in the penthouse.

Defendant testified that a number of emails were exchanged between Mr. Lindgren and plaintiff ; it was possible that she was copied with the emails. Asked whether she was aware that there were invoices issued in her name and in Mr. Lindgren`s name jointly, defendant replied that she was not aware. When shown an invoice dated 22 December 2010, defendant confirmed that the document in question was in fact issued jointly to Mr Lindgren and herself. When shown a VAT receipt issued by a certain Jason Borg in said joint names, defendant affirmed that the document was a copy and she never viewed the original. Asked whether she or Mr Lindgren did object to such receipt, defendant replied that they did not, because they were still awaiting the rest of the documentation to support the bills. The same reply was given by defendant with regard to other VAT receipts of the same nature.

Defendant presented Doc CG 1 : this was a document issued by an official authority in Sweden which registers debts. Defendant described her relationship with plaintiff as *friendly* ; she confirmed that on one occasion, she asked plaintiff to go to her, because Mr Lindgren and herself had bought him a present ; on another occasion, plaintiff took her to his father to show her some stone works. Both she and Mr Lindgren had asked plaintiff to provide the invoices relating to the materials bought. Plaintiff always came up with an excuse not to present the receipts. Defendant confirmed that Mr Lindgren paid for all the works. When he purchased the penthouse, they were not living together ; at the time she was still in Sweden.

Plaintiff testified that he directs a company by the name “*am design*”. Defendant engaged his services as a designer and project manager ; the services included the purchase and installation of all that was required in the penthouse situate on top of a block of flats named “*Shanti Nivas*” in Triq l-Imghazel, Swieqi. Plaintiff states that he performed fully what he was commissioned to do. Despite that, defendant was in default in the payment of the balance of his dues which amounted to €15,453.98. Plaintiff specified that the total amount due for his services amounted to more than €50,000. He had received payments on account, but not the said final balance of €15,453.98.

Plaintiff affirmed that when defendant employed his services, she always gave him the impression that she was the owner of the penthouse. As he received his instructions from defendant, it never even crossed his mind that the penthouse in question was not her property. Every payment he requested was paid by defendant. Although it is true that some payments were made by Mr Lindgren, it did not matter to him who was actually making the payments ; what was relevant to him was the fact that he was paid for what was due to him. Defendant did not disclose to plaintiff her relationship with Mr Lindgren ; she however introduced him to plaintiff but that was all. It was only after some time that it was evident to plaintiff that Mr Lindgren and defendant were living together ; to him however that state of affairs did not make any difference whatsoever.

Plaintiff testified that when defendant employed his services, she had not informed him of anything. To him defendant managed everything. He did not ascertain who of the two was going to settle his dues. He was introduced to defendant as an interior designer and not as a carpenter. He never worked as a carpenter. He was not engaged by Mr. Lindgren. He does acknowledge the fact that there were a couple of occasions when Mr. Lindgren gave his views on the work however plaintiff always received his instructions from defendant only. Apart from the performance of his services, plaintiff stated that he also bought the material required for the execution of works. A part of the balance he was claiming in this cause covered the price of the materials.

Plaintiff continued to state that defendant never asked for a quotation regarding the cost of the works. He used to assist defendant in the choice of the materials. He could not give a quotation to cover all works due to the considerable volume of work that was required. Apart from the extent of the work involved, defendant used to add new works regularly, therefore had he given defendant an initial quotation, that exercise would not have comprised all the new works she kept requesting. Plaintiff used to accommodate defendant in her requirements. His costs were moderate. The larger part of things which defendant required were where ordered directly by herself. In fact the invoices were issued in her name. There were invoices that were issued in Mr. Lindgren`s

name. And others that were made in plaintiff's name. All invoices were settled by plaintiff.

In cross-examination, plaintiff stated that he came to know defendant after she was introduced to him by Steve Schembri of Dhalia. Asked how he concluded that defendant had purchased the penthouse, plaintiff replied that he always discussed matters with defendant and he assumed that she was the owner. However he never specifically asked plaintiff whether the penthouse was hers or not. Asked whether he ever met Mr. Lindgren, plaintiff replied that he met him a couple of times ; on one occasion, he had shown him something on the roof ; and a second time he was in bed. He confirmed that he did receive payments from Mr. Lindgren either by bank transfer or by cheque ; he could not confirm whether all payments were made by Mr. Lindgren. Asked by the Court whether defendant had ever informed him that she was dealing on behalf of a third party, plaintiff stated that she did not. Asked by the Court whether anything changed when Mr. Lindgren started making payments, plaintiff replied that his interest was to get paid.

Plaintiff testified that the penthouse was sold tiled and with electricity, however the works had not carried out according to the best standard practices. The kitchen was half ready. Some items were missing. He completed the work. He changed the bathrooms. The tiles had been purchased from Satariano. Some tiles had to be removed because the mixers were not functioning properly. He had gone to Satariano with Steve Schembri. Plaintiff accompanied defendant to Halmann to choose the marble for the bathrooms, to choose the material for the curtains (on which she then had second thoughts). He designed the glass. He introduced her to his father for stone works to integrate lighting without any wiring showing. He did not charge any commission for work he carried out. He did not charge a fixed rate per hour. The criterion for payment was the nature of the work involved. His dues were for project management and design. He gave defendant a breakdown of the price he was requesting. When he did pay for the purchase of an object or a service, he used to forward the receipt to defendant. Defendant directed him to invoice Mr. Lindgren and that is what he did. It was only towards the end that defendant became hostile in his regard and told him that she had already paid him. Asked by the Court when was the first time that he became aware of the fact that if he wanted any payment he had to get it from

Informal Copy of Judgement

Mr. Lindgren and not from defendant, plaintiff replied that he came to know this in the course of the hearing of evidence in this cause. He sent the receipts both to defendant and to Mr. Lindgren.

Steve Schembri testified that he was the person who introduced the parties to each other. He was the estate agent who was showing some properties to defendant. He knew plaintiff as he was finishing and designing property belonging to witness. He told defendant that plaintiff would be taking care of everything with regard to the property in question. He was present for a couple of meetings that took place between the parties. During these meetings, defendant would tell plaintiff what she wanted and plaintiff would give her his views. Defendant chose the bathrooms of the penthouse ; witness himself had taken her to Satariano for this purpose. There were a few times when Mr. Lindgren was also present ; however for most of the times, defendant was alone. Witness was aware that defendant had also purchased a kitchen from Satariano. Asked who was present when the preliminary agreement of the penthouse was concluded, witness stated that both defendant and Mr Lindgren were present.

In cross-examination, when asked with whom he did he deal with the final deed of purchase of the property was concluded, Schembri stated that he had been taking both defendant and Mr Lindgren around but he was not aware who actually purchased the property. Asked whether he knew who had actually purchased the bathrooms and kitchen from Satariano, witness answered that he did not know. He did have contacts with Mr Lindgren regarding the budget, although he also had similar contacts with defendant.

Peter Bellia testified that he had been engaged by plaintiff to carry out the water and electricity works that were required in the penthouse. He saw defendant only once when they were installing the washing machine. It was defendant who told him where the washing machine had to be installed. Plaintiff engaged him to perform the works in the penthouse. He was paid by plaintiff for his services. According to plaintiff, he was acting on defendant`s instructions.

In cross-examination witness confirmed that the order for works was placed by plaintiff. He agreed with plaintiff on the price of works. He received payment from plaintiff. He never billed defendant. After receiving payment from plaintiff, he issued a receipt in his favour. He worked part-time ; he was duly registered with the VAT Department as exempt. When shown the bill at folio 29, witness testified that that bill was issued by plaintiff. No one complained about his work.

Alex Sghendo testified that has been a carpenter by trade for the past fifteen years. He has known plaintiff for the past eight years. He was introduced to defendant by plaintiff. With regard to the penthouse in question, plaintiff had engaged him to produce two wardrobes for two bedrooms, with sliding mirror doors, a built-in wall unit for the living room and a cupboard for the bathroom en suite. After he completed the works, he met defendant ; she gave the impression that she was the owner of the penthouse. He had also met defendant when he went to install the units he mentioned. When he needed to discuss the installation of the units, he discussed details with defendant. Witness recalled that while he was placing the wall-unit, for some reason they had to remove some wires and due to this the Internet cable was not working ; when this happened, defendant started to shout and to insult him implying that he was some incompetent person. She directed him to remove the wall-unit. At that point he contacted plaintiff who came on site. They managed to find a solution. It was only then that defendant calmed down and allowed him to install the wall-unit. Witness exhibited a number of emails between plaintiff and defendant regarding his work. After fifteen days, defendant called him to meet him at the workshop. As he had not yet been paid for his services, he agreed to meet defendant. When he did so, he realized that defendant wanted to meet him to get information from him regarding plaintiff's handling of her business as far as his bills were concerned. The bottom-line was that plaintiff was billing defendant as he should have.

In cross-examination, Sghendo confirmed that as far as the penthouse in question was concerned, the work was ordered by plaintiff, and that the prices

Informal Copy of Judgement

were agreed with plaintiff. After he had requested payment, Mr Lindgren called him. Witness had sent his bill to defendant who refused to pay. He was told to sort out the matter with plaintiff. He pointed out that plaintiff had originally asked him to prepare a quotation for the works ; after a period of time he confirmed the quotation. He had seen emails confirming the works as proposed. Asked whether there were any complaints with regard to his work, witness stated that defendant did not like a set of five drawers. Asked whether plaintiff had paid him in full, witness replied that plaintiff only paid him in part.

Clayton Bonnici testified that he worked in his father`s business called “*Il-Mithna*” ; part of the business involves home decoration. They were instructed by plaintiff to prepare a quotation for curtains and venetian blinds for a penthouse in Swieqi ; later he came to know that the place was the property of defendant. He says this because plaintiff had gone to their shop with defendant. He went to the penthouse to take the necessary measurements. Defendant was only accompanied by plaintiff when she went to the shop. She was the one who chose the colour and material for the curtains and the blinds. She insisted that she wanted wooden venetian blinds and not the normal aluminium ones. He advised defendant that they did not supply wooden blinds. Defendant requested a quotation for *roman* blinds with different materials. He produced as evidence the quotation. The quotation had been forwarded to plaintiff. Some time later, plaintiff informed him that defendant had not accepted the quotation.

In cross-examination, witness stated that he described defendant as the owner of the penthouse because she was the person who made the order.

Nicholas Micallef – plaintiff`s father – testified that he is now retired but he was a self-employed stone carver and stone turner. He used to provide services to his son whenever required. With regard to the penthouse in question, he did meet defendant three times. Plaintiff had taken defendant to his workshop ; she engaged him to build shelving for the corridor of the penthouse, to provide all the door frames, and to provide a coating of Maltese stone in the bedroom and in the terrace. After completing this work, defendant settled his

Informal Copy of Judgement

dues. After that she commissioned him to build a bowl of stone to hold a wick and oils to create a fire effect during night-time. He performed the task. Defendant liked the finished product. Part of the payment requested by plaintiff from defendant was the cost of this stone bowl. The third time he met defendant was when maintenance works were being carried out in the penthouse – including minor maintenance of stone works. He carried out this latter work for which he was not paid, nor did he bill defendant for that work. On this third occasion, when he met defendant, she was not alone, but there was a man with her ; witness did not know who that person was. Witness confirmed that defendant was the sole person gave the instructions regarding the penthouse – including where his services were involved.

In cross-examination, witness stated that he carried out work for defendant according to her instructions. Asked by court who effectively ordered the works after the first meeting held with defendant and plaintiff at his workshop, witness testified that plaintiff placed the order. He forwarded his quotation to plaintiff. After his dues were settled, he issued a fiscal receipt. The cost of the stone bowl has not yet been paid ; this amounts to €350.

Roger Camilleri testified that plaintiff engaged him to install air-conditioning in the penthouse in question. For this work, plaintiff paid him in full. He had prepared a quotation for the work. He produced the invoice he had sent defendant. He was also engaged to install solar systems. He prepared a quotation for defendant ; after paying the sum of €2000, defendant cancelled the order. At the time he kept that amount by way of deposit for the installation of the air-conditioning. He assumed defendant was the owner of the penthouse because she gave the orders with regard to the premises. She told him where she wanted to put the air conditioners. It was only when defendant was abroad that he took instructions from plaintiff. He installed three air conditioners in the penthouse.

In cross-examination, witness stated that he received instructions from defendant not from Mr. Lindgren. He met the latter only on one occasion.

Informal Copy of Judgement

Defendant commissioned his work. He had invoiced defendant. When shown the document a fol. 43, witness confirmed that he had sent the quotation to Steve Schembri.

Charles Cauchi testified that he worked with Peter Bellia on the water and electricity works in the penthouse. Plaintiff engaged them and plaintiff paid for their services. Every time they encountered any difficulties they used to refer to plaintiff who used to give them instructions after making contact with defendant. He recalled that there were some problems with regard to the water connection in the bathroom ; this was repaired on plaintiff's instructions. He met defendant only once.

In cross-examination, witness stated that they had an agreement with plaintiff on the rates of payment for their services. He used to send plaintiff an email listing the price for each service requested. If plaintiff agreed, they would then proceed. He confirmed that the prices charged for the works carried out in the penthouse were the same prices he charged for similar work elsewhere. Asked to explain what were the water connection problems in the penthouse bathroom, witness stated that they adjusted the plumbing because the sink could not be attached properly ; they also arranged some water pipes. He confirmed that there was no mark-up on the prices. He also confirmed that document at folio 201 showed the works they had carried out ; it was the same document as CC1.

III. Plaintiff's submissions

Plaintiff submitted that on the strength of the evidence resulting in this cause, it has been proven that he had been engaged to execute works in the property in question. Plaintiff referred to defendant's allegations : that plaintiff was not engaged by herself but by her *common-law* partner ; that the work was

not executed up to standard ; and that he had been overpaid for his services. With regard to the latter two allegations, plaintiff noted that defendant did not enter a counter-claim. Nor did she request the appointment of a technical expert by the court to examine and assess the works. Therefore – according to plaintiff – this Court should rule out as unfounded the two allegations.

Plaintiff submits that although in her defense defendant is stating that as she was not the owner of the penthouse, she could not have instructed plaintiff to carry out the works, that allegation is also unfounded as, according to our law, in a contract of works, the employer need not be the owner. Defendant admitted that the owner of the penthouse and herself were *common-law* partners. Therefore it was perfectly legitimate for plaintiff to presume that defendant had every right to make orders regarding the property in question. In his affidavit, Bengt Lindgren does not exclude that defendant did not have any authority to engage plaintiff's services. From defendant's affidavit, it results that she (not Mr Lindgren) contacted plaintiff. On a balance of probabilities it results that at law the relationship of rights and obligations was between plaintiff and defendant to the exclusion of others. The contract was never dissolved and therefore – according to plaintiff – defendant could not refuse to settle his dues.

IV. Defendant's submissions

According to defendant, when plaintiff filed the suit, he claimed payment of the sum of €15,453.98, since from an original quantum of €19,453.98, plaintiff alleged that he had been paid €4,262.57. After she stated in sworn reply that Bengt Lindgren had already settled in favour of plaintiff well over €30,000, plaintiff filed an affidavit stating that the amount due originally amounted to around €50,000, and that following payments made, the balance in his favour rested on the figure of €15,453.98. According to defendant, when one adjusts the various figures, the claim for €15,453.98 remains contested as it is unfounded.

Informal Copy of Judgement

Defendant contends that she is non-suited due to the fact that Bengt Lindgren was the owner of the property where the works were carried out. Furthermore Bengt Lindgren was invoiced, and he paid plaintiff, as plaintiff himself admitted in cross-examination. From documents filed, especially the emails, it results that plaintiff was constantly in contact with Bengt Lindgren and that therefore he was more than aware that Lindgren was the rightful owner of the penthouse in question. The fact that : i) plaintiff was introduced to both defendant and Lindgren ; ii) that both Lindgren and defendant stated that plaintiff was well aware that the property belonged to Lindgren and not defendant ; iii) that plaintiff invoiced Bengt Lindgren ; iv) that plaintiff communicated with Lindgren on more than one occasion ; and v) that it was Lindgren who actually paid are all evidence that the juridical relationship that existed in this contract of works was between Lindgren and plaintiff to the exclusion of any relationship between plaintiff and defendant.

According to defendant, plaintiff's evidence is contradictory ; defendant referred to a judgement of the Court of Appeal in re "**Brigitte Vella pro et noe vs Richard Vella**" decided on the 5 October 2001 in the sense that when there result two conflicting versions, the Court has to examine both versions accurately and decide on a balance of probabilities. Defendant also points out that the courts have also decided time and time again that for a juridical relationship between two parties to exist, there must result on a "prima facie" basis a nexus between the plaintiff and the defendant. Reference was made to a judgement of the Court of Appeal of the 5 October 2001 in re "**Refalo et vs Azzopardi**".

With regard to the invoices exhibited by plaintiff, defendant contends that a number of irregularities have resulted. According to defendant, the invoices exhibited at folio 34-41, 44-48, 49-55 and 66, are superfluous and cannot be considered as the best evidence in terms of Art 558 of Chap 12 due to the fact : i) that the client indicated in each invoice is AM Design, and not Lindgren or defendant, so one cannot be sure that the items/works indicated pertained to the works carried out in the penthouse in question ; ii) that the fact that plaintiff marked the invoices with the defendant's initials or name does not mean that such items purchased were infact intended for the said penthouse ; iii) that the invoices exhibited at folio 56-65 are in fact issued in the names of defendant and

Lindgren and so there is no reason why the other receipts were issued in plaintiff's name ; iv) that plaintiff also exhibited invoices in duplicate form, indicating different amounts with the same date – for example invoices 898 and 815. The cash sale at folio 56 and the receipt at folio 64 were issued despite the fact that plaintiff was specifically instructed not to order cleaning services (see email dated 5th July 2005).

V. Considerations of the Court

1) The preliminary plea

In her preliminary plea, defendant stated that she was not the proper and legitimate defendant to answer for plaintiff's claim. During the course of the suit, defendant detailed this plea by alleging that she was not the owner of the property where the works were carried out, and that all contacts which she had held with plaintiff were on behalf of Bengt Lindgren who was the owner of the penthouse in question.

Plaintiff's action for payment is based on **Art 1623 of Chap 16** which states :-

“A contract of letting of work and industry is a contract whereby one of the contracting parties binds himself to do something for the other, for a reward which the latter binds himself to pay to the former.”

The Court refers to a judgement given on the 6 October 1999 in re **“Lawrence Formosa noe et noe vs Silvio Felice”** where the Court of Appeal stated as follows :-

“Il-kuntratt ta` l-appalt ma jista` jigi bl-ebda mod relatat mal-proprjeta` tal-fond li fih ix-xogholijiet kellhom jigu, kif fil-fatt gew, esegwiti. Gustament allura l-Ewwel Qorti kkonsidrat illi salv prova kuntrarja ir-relazzjoni guridika li tinholoq bi ftehim ta` appalt, kienet wahda personali mhux relatata mal-fond u konsegwentement il-presunzjoni “iuris tantum” kellha tkun illi min jikkuntratta kien qieghed jikkuntratta f`ismu personalment. Prova kuntrarja naturalment kellha tispetta lill-persuna li kien qed jidher f`isem u ghan-nom ta` persuna ohra. Dan mhux biss kellu jipprova li hu kien qieghed jagixxi bhala mandatarju ta` haddiehor imma wkoll kellu jipprova illi tali fatt kien gie a konoxxenza tal-persuna li maghha ikun qieghed jikkontratta u dana sal-mument meta l-ftehim ikun gie finalizzat ...

“Sewwa jinghad li l-prova mehtiega biex tigi newtralizzata din il-presunzjoni “iuris tantum” tvarja sewwa minn kaz ghal iehor. Jispetta lill-gudikant li jizen ic-cirkostanzi ta` kull kaz biex jasal ghall-konvinciment jekk kellux jew le ikun apparenti illi xi parti kienet qed tidher in rappresentanza ta` haddiehor. Certi kazijiet huma ovvj, ohrajn mhux daqshekk ovvj. Fejn hemm dubbju pero`, wiehed kellu jipprezumi illi l-persuna li qed tikkontratta kienet hekk qed taghmel f`isimha proprju”.

The Court endorses these principles as they apply fully in this case.

Due to the *juris tantum* presumption i.e. that plaintiff was dealing with defendant in her own right, and not on behalf of a third party, defendant had the onus of proving the contrary. This obligation assumes more relevance in this case as the contracts of works in question was unwritten. In cross-examination, defendant confirms that she used to take care of everything and gave instructions to plaintiff, although she also states that she had informed plaintiff that she was acting on behalf of Bengt Lindgren. On the other hand plaintiff states that he always dealt with defendant and that he had received instructions

Informal Copy of Judgement

regarding the works from defendant and not from Bengt Lindgren who had intervened only a couple of times during the execution of works.

The Court notes that in the invoices exhibited with the affidavit of Bengt Lindgren (folio 28 to folio 66), Lindgren`s name appears always, either on its own or together with that of defendant; other invoices are in plaintiff`s name. The invoices sent by plaintiff`s firm were addressed to Bengt Lindgren and not defendant. In other invoices exhibited by parties and witnesses, the majority are issued in both Bengt Lindgren`s and defendant`s names. A number of emails were also exhibited by plaintiff.

In the email at folio 242 dated 3 August 2010, defendant informs plaintiff that –

“Bengt tells me : today the rest of the €14,000 will be transferred, comes from HSBC so it takes 2 days tomorrow € 2000 will be transferred, also 2 days ...”

Plaintiff`s answer to this was –

“ Hi Bengt, While the carpentry works are in progress, the carpenter has just asked me for a 2000 euros deposit. I`d appreciated it if you can take care of this too, as then I can push him to finish works at his earliest”

Another email dated 10 September 2010 at folio 250 also shows another transaction involving Bengt Lindgren.

The Court points out that on the basis of the evidence (oral and documentary) it is quite clear that the main contact person for plaintiff was defendant and not Bengt Lindgren. He in fact received instructions from defendant. The Court concludes that defendant did not manage to establish that plaintiff was aware that all the instructions which defendant was giving him in actual fact were being given to him by defendant however on behalf of Mr Lindgren. Defendant was the person who was consistently present during the performance of the works, and who gave out instructions for their execution. It is the considered view of the Court that defendant has not managed to discharge - according to law - the *iuris tantum* presumption that vis-à-vis plaintiff, she was contracting in her own name, and not on behalf of Bengt Lindgren.

The Court therefore dismisses the first plea.

2) The merits

The second plea enters into the merits. The Court will therefore be considering this plea within the framework of plaintiff's evidence of his claim.

Plaintiff claims that an amount of €15,453.98 is still due out of a total figure of €19,716.55 following a part-payment by defendant of €4,262.57.

The Court has noted the observation which defendant made in written submissions when she stated that plaintiff changed his version (affidavit of plaintiff of the 4 June 2012 at folio 140). There he stated that supplies and services had exceeded the amount of €50,000, and that following various payments effected by defendant, the balance still due amounted to €15,453.98. Defendant submits that plaintiff has already been paid around €33,000 and that

therefore not only there was no balance due but it was plaintiff who had to pay back defendant. In her sworn reply, defendant even reserved her position at law to claim by separate action a refund of amounts paid unduly to plaintiff. Both Bengt Lindgren and defendant state that the payments that were made could be proved through bank statements. As evidence, only one bank statement was produced ; this was done by plaintiff (not defendant) i.e. a transfer of €2000 (folio 345). As a matter of fact, defendant did not produce any bank statements.

- **Dok AM (folio 4)**

In support of his claim as stated in his sworn application, plaintiff produced Dok AM, which is a breakdown of the items that quantify the balance claimed. This document comprises an addition of claims by plaintiff himself (“works”) MF Electrix, Jason Borg, Future Habitat, Alex Schengo, Nicholas Micallef and Pitre. When questioned during cross-examination what was the work covered by that balance, plaintiff answered at folio 399 : *“Għax qaltli li diga hallsitni bizzejjed meta għad irid jithallas l-carpenter, li kkonfermat il-quotation, irid jithallas is-sink ta` Pitre li ghazlet qisu zebra, irid jithallas missieri tal-firepole li għamilha u li vera ghogobha u għadha tuzah sa llum.”*

- **Alex Sghendo**

Doc AM shows that the total costs of carpentry carried out by Alex Sghendo amounted to €7917.08. A payment on account of €2000 against that bill was effected. Therefore on the basis of Doc AM, a balance of **€5917.08** appears to be due. There is an invoice to this effect at folio 57. With his sworn statement, Alex Sghendo exhibited the emails that were exchanged between the parties. The figure of €5,917.08 results even there. During cross-examination, when witness was asked by the Court whether he had been paid, his reply was simple and straight-forward (folio 212) –

“Qorti : Kollox hadt int li kellek tiehu ?

Xhud : Le jien ma hadt xejn milli kelli niehu hadt xi haga zghira pero bhala flus baqghali niehu.”

The Court considers as proven the amount due to Alex Sghendo.

- **Nicholas Micallef**

A payment of €350 is being claimed as the cost of a fire bowl. The work was carried out by Nicholas Micallef – plaintiff’s father – as confirmed by defendant. In his evidence, Nicholas Micallef testified that he had not been paid for that work. He states at folio 309 :- *“Tal-bowl, u l-ahhar xoghol tal-manutenzjoni dak lanqas ukoll. Irrid nippreciza li tax-xoghol ta` manutenzjoni u x-xoghol tal-bowl jien bqajt ma thallastx, x-xoghol l-iehor jien thallast”*. The Court is satisfied that the amount of **€350** is due to Nicholas Micallef.

- **MF Electrix**

Invoices relating to the work carried out by MF Electrix were exhibited during the suit. In Doc AM two amounts are claimed for a total of €42.91. The amounts are corroborated by bills sent by plaintiff to Lindgren (folio 30). That the sum total of **€42.91** is due has been adequately proven.

- **Future Habitats**

In Doc AM there are three items concerning **Future Habitats** for a total of €674.74. No representative of Future Habitats was produced as witness. There are two invoices relative to Future Habitats at folio 40 and 41 ; the same invoices were again exhibited at folio 51 and 52. The invoice at folio 41 appears to repeat the items mentioned in invoice at folio 40. They both have the same invoice number i.e. 898. The invoice at folio 40 stands ; it amounts to €149.05. Another invoice was exhibited at folio 53-55 numbered 815 ; the *printed* total is €569.83. At folio 55 there is however an *annotation* which states : *subtotal should be 633.11. Wrong sum.* That invoice includes items which were listed in the previous invoices. When added, the items borne on invoice 851 sum up to the figure of €633.11. The bill sent to Lindgren and exhibited at folio 30 appears to be the latest bill sent by plaintiff. From that bill, it results that the sum due to Future Habitats amounts to €93.23. The bill prior to this, that is, the one sent on the 7 September 2010 (folio 29) states that the amount due to Future Habitats was €629.81. In an email dated December 2010 at fol 266, it results that payment had not been effected for switches and sockets. The Court is satisfied that on a balance of probabilities the amount of **€674.74** is due.

- **Jason Borg**

In Doc AM, plaintiff claims that two amounts for a total of €320 are due to Jason Borg. Borg was not produced as a witness in these proceedings. According to the bill sent to Lindgren (folio 30) the amount claimed for Jason Borg is €100. Then on the bill exhibited at folio 31 with the same date as the bill at folio 30, the amount due is shown at €50. There are two VAT receipts exhibited at folio 63 and 65 for a total of €300. One remains perplexed why the amounts differ for no plausible reason. The Court is of the considered opinion that, in his default of not producing Borg as witness, plaintiff has not managed to prove the amount he is claiming regarding Borg on a balance of probabilities. The Court holds are true the amount stated in the bill at folio 30, i.e. **€50**.

- **Pitre**

Informal Copy of Judgement

In Doc AM, the supplier Pitre relates to two items *a zebra ensuite basin* for the amount of €515 and *a firebowl stainless handle* for the amount of €29. Here again a representative of Pitre was not produced as witness. For no justifiable reason, the price of the *handle* results only in Doc AM. Whereas the *zebra ensuite basin* results in the bill dated 20 October 2010 at folio 30 and in the bill at fol 31. It is very likely that Pitre sold the *handle* without a cash sale or an invoice. In the absence of the best evidence, the Court will be admitting as due only the amount of **€515**.

- Plaintiff s “works”

In Doc AM plaintiff is claiming for *works* a balance of €7649.43 out an *original* amount of €9912 following a payment on account of €2262.57.

It is established as evidence that not only was there no written agreement between the parties but there was not even any mention of rates.

In the course of the suit, plaintiff did not explain to the Court how he concluded the figure of €9912.

Nor did plaintiff in his bill to Lindgren dated 20 October 2010 quantify his claim in detail.

The Court notes that plaintiff had the onus of proving his claim for dues. It is the considered opinion of the Court that plaintiff did not discharge fully this burden according to law. And therefore the Court cannot allow as due the

Informal Copy of Judgement

amount as stated in Doc AM. The Court does however reaffirm the proven fact that plaintiff did provide services to defendant, which services were not rendered for free. Therefore plaintiff is entitled to receive payment from defendant. Having taken into account the evidence given, including the documents exhibited, and in particular having considered the nature of the services rendered by plaintiff – which plaintiff summarily described in the first paragraph of the sworn application - the Court is *arbitrio boni viri* liquidating the amount due to plaintiff for the services he rendered to defendant in the amount of €5000. As plaintiff himself acknowledges that he was paid the sum of €2262.57 on account, the balance due to plaintiff amounts to €2737.43.

- **Dues**

From the amount shown on Doc AM, the Court finds that the **amount claimable** is €10,287.16 (€5917.08 + €350 + €42.91 + €674.74 + €50 + €515 + €2737.43).

The real issue is whether the **amount claimable** tallies with the **actual amount** which plaintiff is entitled to receive when one considers the amounts that were paid during the course of execution of works.

With her sworn statement, defendant produced a statement issued by plaintiff dated 20 October 2010 (folio 31). In the first column, the document names the contractors and/or suppliers. In the second column, the document specifies the goods and services provided. In the third column, there is indicated the cost. The fourth column shows the amounts paid on account. In the last column, the balance.

Informal Copy of Judgement

Now on the strength of that document – which the Court repeats was exhibited by defendant - it results that the total quantum of goods and services was €50,477.45, payments on account in total were €35,026.74, and the balance was €15,450.

The bottom-line is :- a) that unfounded is defendant`s pretention that for the goods and services that were provided, plaintiff was adequately paid with the amounts he received during the course of the execution of works ; b) that the figure of €50,000 mentioned by plaintiff is quantifiable ; c) that the figure mentioned by defendant to sustain payments on account tallies with the statement ; and d) that the balance shown on the last column is close to the amount claimed by plaintiff in the sworn application.

The Court concludes in this case that the “amount claimable” is the “actual amount” due by defendant i.e. the sum of €10,287.16.

Decision

For the reasons above, the Court is hereby deciding the cause between the parties as follows –

Dismisses defendant`s pleas.

Abstains from taking further cognizance of plaintiff's demand marked one (1) in paragraph five (5) of the sworn application.

Partially accedes to plaintiff's demand marked two (2) in paragraph five (5) of the sworn application, and orders defendant to pay plaintiff the sum of ten thousand two hundred and seven Euro sixteen cents (€10,287.16) with legal interest that shall accrue from today until the date of final payment.

Orders that the total costs of the cause be borne as to one-third by plaintiff and as to two-thirds by defendant.

< Final Judgement >

-----END-----