

Zuzana Sulikova

vs

A.F. Ellis (Tonio Ellis) and following a decree of the 19th April 2024, the defendant's name was changed to A.F. Ellis (Home Decor) Limited (C-28050)

CCT G10/23/MS

17th September, 2026

The Tribunal,

Having seen the statement of claim filed by the plaintiff on 1 August 2023, whereby she requested this Tribunal to order the defendant company and/or the defendant to pay her the sum of €2,786.25, representing the deposit paid in respect of tiles purchased from the defendant, which tiles were never delivered, notwithstanding repeated assurances that the deposit would be refunded;

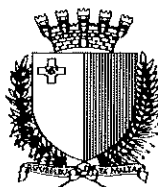
Having seen the reply filed on 29 November 2023, whereby, by way of a preliminary plea, it was contended that the action was null on the ground that it had been instituted against a non-existent person and that Tonio Ellis was not the proper defendant. On the merits, it was submitted that the plaintiff herself was responsible for the delays, as she took an inordinate amount of time to confirm the colour and pattern of the tiles and failed to attend the factory to inspect their quality. It was further alleged that, after being informed that production would commence on 12 December 2022, the plaintiff failed to respond until 9 January 2023, at which point she cancelled the order, thereby causing the defendant company to incur significant costs;

Having seen the minutes of the sitting of 19 April 2024, whereby the plaintiff requested that the records of the case be corrected to reflect the parties as Zuzana Sulikova vs A.F. Ellis (Home Decor) Limited (C 28050);

Having seen that the Tribunal upheld the plaintiff's request and ordered the correction of the records accordingly;

Having seen the additional reply filed by the defendant company on 14 May 2024, whereby it contended that the company brought into the proceedings was not the proper respondent, as no commercial relationship or transaction had taken place between it and the plaintiff, and reiterated the pleas and assertions contained in its previous statement of defence on the merits;

Having seen the evidence presented and the documents exhibited in the acts of the case;



Considers:

That the plaintiff testified by means of an affidavit and confirmed that she and Jonas Martinsson were undertaking renovation works and sought to purchase cement tiles from the company concerned.

On 13 April 2022, they visited the Company's showroom in Malta to enquire about the tiles and were provided with preliminary dates for the supply of their order. On 16 April 2022, they visited the Company's showroom in Gozo, where they finalised the first draft of their order and agreed upon the deposit and a preliminary delivery date of September 2022.

They were also provided with a proforma invoice and the necessary bank details for payment of the deposit. On 22 April 2022, the deposit was paid, and the Company confirmed receipt of the payment and issued a Deposit Invoice (Doc. C). The pattern and quantity of the tiles were also finalised.

On 16 September 2022, they requested a postponement of the manufacturing process and, on 30 September 2022, provided the final quantity of tiles required. On 11 October 2022, they requested that the tiles be delivered between 12 and 17 December 2022. This was confirmed by the Company, which also confirmed that the moulds required for production had been ordered.

On 3 November 2022, they informed the Company that they wished to approve the tile colours before production and asked whether they could do so at the Company's showroom. They received a reply stating that production of the plain tiles had already commenced.

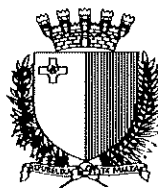
On 11 November 2022, they visited the Gozo showroom to confirm the tile colours and were dissatisfied with the quality of the tiles, which, according to their evidence, did not meet the standards they expected. They were also informed that the moulds had not yet arrived and that no date for their arrival could be provided.

Despite their concerns regarding the quality of the tiles and the delays encountered, on 12 December 2022 the Company suggested that they visit Gozo and also confirmed that production of the plain tiles could commence, notwithstanding the previous representation that such production had already started in November.

In view of the delays and their concerns regarding the quality of the tiles, the plaintiff and Jonas Martinsson requested cancellation of the order and demanded a full refund of the deposit on 24 December 2022.

Between 9 January 2023 and 12 May 2023, they had numerous communications with Tonio Ellis, who, according to the plaintiff's evidence, repeatedly assured them that their deposit would be refunded. No such refund was, however, made.

Jonas Martinsson likewise confirmed the contents of his affidavit and reiterated that throughout the process they had acted in good faith and that, despite multiple assurances from Tonio Ellis, their



order had been subject to significant delays and concerns regarding product quality, while their request for a full refund remained unresolved.

Considers further:

That, before entering into the merits of the case, the Tribunal must first determine the preliminary plea raised by the defendant company, namely that it has been improperly sued.

The Tribunal has carefully examined the documentary evidence produced in these proceedings. The email correspondence exchanged between the plaintiff and Trude Sammut Law consistently identifies Gozo Concrete Products Limited (GCPL) as the contracting entity. The company's logo appears beneath the relevant correspondence and, in the email dated 22 April 2022 requesting payment of the 50% deposit, Gozo Concrete Products Limited is expressly identified as the recipient of that payment.

Similarly, the Sales Order prominently bears the name GCPL (Gozo Concrete Products Limited) and contains no reference whatsoever to A.F. Ellis (Home Decor) Limited as the contracting party. Moreover, the deposit was transferred directly into the bank account of Gozo Concrete Products Limited, as confirmed by the APS Statement of Account exhibited in the acts of the case.

Whilst certain correspondence also bears the branding of A.F. Ellis (Home Decor) Limited, the documentary evidence, taken as a whole, clearly establishes that the contractual relationship in respect of the transaction giving rise to the present claim was entered into with Gozo Concrete Products Limited.

The Tribunal further notes that the issue concerning the identity of the proper defendant was raised at the earliest stage of the proceedings by way of a preliminary plea. Following that objection, the plaintiff requested that the records be amended to reflect A.F. Ellis (Home Decor) Limited as the defendant, and the Tribunal acceded to that request.

Notwithstanding this opportunity, the plaintiff failed to identify the correct legal entity and substituted one entity for another which, according to the documentary evidence, was likewise not the contracting party. The defendant company reiterated the same preliminary objection in its subsequent reply, expressly maintaining that no contractual or commercial relationship had existed between it and the plaintiff. Despite this, no further request was made to rectify the proceedings.

The Tribunal also notes that the plaintiff was legally represented throughout these proceedings. Furthermore, the identity of the contracting party was readily ascertainable from the documentation upon which the plaintiff herself relies, including the Sales Order, the Deposit Invoice, the email correspondence and the bank transfer records. The identity of the contracting entity was therefore not concealed or rendered ambiguous by the evidence produced.

In these circumstances, the plaintiff cannot maintain a contractual claim against a company which, on the evidence produced, was not a party to the contract giving rise to the alleged obligation.



The fact that the plaintiff was afforded an opportunity to correct the proceedings after the preliminary plea had first been raised, yet nevertheless continued the action against an entity which was again shown not to be the contracting party, reinforces the conclusion that the present action has not been instituted against the proper defendant.

Accordingly, the Tribunal finds the preliminary plea to be well founded. The documentary evidence establishes that Gozo Concrete Products Limited was the contracting party and that no contractual relationship existed between the plaintiff and A.F. Ellis (Home Decor) Limited in respect of the transaction giving rise to the present claim. The plaintiff was afforded an opportunity, following the preliminary objection, to correct the identity of the defendant, but the proceedings nevertheless continued against an entity which was not the contracting party.

In these circumstances, the plaintiff cannot maintain the present contractual claim against the defendant company. It is therefore unnecessary for the Tribunal to examine the merits of the substantive claim.

For these reasons, the Tribunal dismisses the plaintiff's claim, with costs.

Michela Spiteri LL.D
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