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**Fit-Tribunal tal-Konsumatur**

Shelley Victoria Hook

vs

Charles Agius

CCT 33/16 MS

11th September 2017

The Tribunal

Having seen plaintiff's claim filed on the 5th February 2016 requesting the amount of €2,600 from defendant after the latter was contracted by plaintiff to carry out works in connection with laying of tiles and retiling of shower area, which works were not completed and neither were they executed to the required standard.

Having seen the reply of defendant filed on the 27th April 2016 whereby defendant contested plaintiff's claim arguing that the works were executed to the best of his abilities, while refuting the rest of plaintiff's allegations.

Having heard the note-verbal of the 12th September 2016 whereby the Tribunal nominated Abigail Scicluna Lewis as a technical expert to take cognisance of consumer's claim and defendant's pleas and report back to the Tribunal.

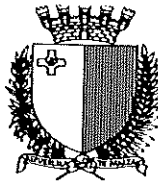
Having seen the expert's report filed on the 18th November 2016 and duly sworn on the 20th November 2016.

Having heard the evidence on oath.

Having seen the records of the case.

Considers

That in August 2015, plaintiff contacted defendant to inquire about carrying out some works on her property. These works consisted in laying of tiles in the terrace and retiling part of a bathroom. Two days after the initial meeting, plaintiff confirmed that she would be using defendant's services and that the agreed sum of €2,600 was to be paid in installments. Initial deposit of €700, a second payment of 700 on completion of terrace and the balance of €1200 when all the works were completed. Plaintiff paid the first installment of €700.00 up front and defendant started works on



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the terrace. However work was apparently not completed within the agreed timeframe. As plaintiff's parents were due to visit on the 21st September 2015, she urged defendant to complete the job. Although the latter assured plaintiff that he would complete the job he failed to show up.

On 14th September 2015, defendant sent his son to grout some of the tiles but this was not carried out satisfactorily. Still, although works were not to plaintiff's satisfaction, she paid defendant a further €1,200 as part of the balance, even though this sum was far in excess of the agreed second sum of €700. Plaintiff insists that she paid this sum as a gesture of goodwill and because she had made a mistake on the order of tiles that were required for the terrace. A complaint was also lodged regarding the level of the tiles as these were retaining water. Although defendant tried to remedy the situation the problem persisted. Plaintiff also claims that defendant damaged a toilet seat whilst carrying out some works in the bathroom and allowed third parties into her property when these were not authorised to be there.

On the other hand, defendant, whilst confirming the agreement entered into with plaintiff to carry out works on her property, denied that there was ever an agreement as to a stipulated time-frame or that he had failed to finish works as agreed or that he had carried out the works in an unprofessional manner. Defendant agrees that he did in fact allow third parties into plaintiff's property on two separate occasions but claims that he always did his best to make sure that the work was done appropriately and working with him also was his son MelCharles who had no less than seven years experience. Defendant claims that the only thing that stopped him finishing the work was the fact that plaintiff ran out of bathroom tiles because she had not ordered enough. They had agreed that plaintiff should call him when she received the tiles for works to be concluded. Instead he received a notice that he had a case before the Consumer Claims Tribunal.

Considers

That because of the technical nature of this claim, the Tribunal ordered that a report be drawn up by an expert in the field. This was carried out and the report duly filed and sworn. According to this report the architect concluded that the tile-laying *could have been improved in some areas but is acceptable in others*. The expert indicates a 'hollow-sound' as being a cause of inadequate glue being placed beneath the tiles and also maintains that the decision to lay the tiles over the existing ones on the terrace *to have played an important part as to why defects in the newly laid tiles were still present and why movement in the tiles led to the cracking of the grout*. The expert does not quantify an amount representing damages or works not done professionally, so it is up to the Tribunal to quantify damages *arbitrio bono viri*.

Considers

That Parties agree that the reason plaintiff contacted defendant is because she had several problems with the existing tiles on her terrace which had began to lift over the years. In addition, plaintiff also had issues with grouting, water seepage and water collection as a result of the tile level sinking.



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Defendant claims that he had emphasized the fact that the problems would never go away completely but would be improved considerably. Plaintiff denies that defendant told her that the water collection would 'remain there' as otherwise she would not have contracted him.

The Parties also agree that plaintiff decided to engage defendant after having considered other options. Plaintiff confirms that defendant gave plaintiff a week to decide whether or not to use his services. Under cross examination plaintiff admits that since she liked him, she decided to engage defendant a mere two days after the meeting, even though she admits that his services were not the cheapest. In hindsight, plaintiff laments the fact that having become aware of prices, she feels that the price quoted by defendant was inflated and that had she known that defendant had a full-time job in the Army she would not have contracted him.

The Tribunal notes that there are conflicting versions in respect to whether new tiles should be laid over the old tiles. Plaintiff insists that defendant never asked her to remove the old tiles while defendant insists that he gave the plaintiff two options and it was she who decided on the glue method.

The Parties both agree that plaintiff paid the sum of €1,900 - €500 in excess of the amount plaintiff should have forked out for the work carried out at that stage. Plaintiff claims that she did this out of embarrassment and as a gesture of goodwill, whereas defendant argues that this was done as a result of plaintiff's satisfaction with the job done. Defendant feels that plaintiff's change of heart has nothing to do with the quality (or lack of) of the works in progress but attributes it to other reasons.

Considers

The Tribunal sympathises with plaintiff's angst particularly about delays, bad workmanship and about third parties being allowed on the premises without her knowledge or consent.

Professionalism demands that deadlines are met, even when only agreed upon verbally.

Moreover insufficient/ inadequate glue type used contributed to the problem - both regarding alignment and water retention, which could easily have been avoided. The lack of documented evidence makes it difficult for the Tribunal to ascertain why the glue method was used and who was ultimately responsible for this decision - whether it was the plaintiff who requested it or the defendant who suggested it. Ultimately however, it was up to the defendant to offer the best advice and once he accepted to take on the job, he assumed responsibility for it and can't now blame the plaintiff. If he felt that laying new tiles over old tiles was risky or could lead to problems, he should have never agreed to the job in the first place, or else he should have insisted that some sort of waiver document was signed beforehand indicating that plaintiff was going against his advice.

On the other hand, the Tribunal finds it hard to reconcile plaintiff's anger and disappointment at the poor and shoddy workmanship and at the discovery that defendant was not a full-time tile-layer



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with plaintiff's unilateral decision to pay defendant even more than what was initially agreed upon. Although the plaintiff's decision may have been motivated by her embarrassment at having placed the wrong order and her reluctance to engage someone else because of the time-factor, and ultimately by her wish to try and resolve everything hoping that her goodwill would help matters, still it is clear that the work was (at least in some parts, acceptable), which corroborates the conclusions of the expert.

In the final analysis, the Tribunal agrees with the the expert's conclusions - that although workmanship was not completely up to scratch - tiles which were unaligned, water retention around the drain area, hollows sound etc, but that there were still some areas where tiling was acceptable. Although a job half done may still put the plaintiff in a disadvantageous and prejudicial position, the plaintiff herself admitted that 'Mel worked very hard when he was there and admittedly work on terrace was fully completed, and this should also be reflected (at least partially) in the quantum of damages awarded.

Considers

That as far as the quantum for damages is concerned, Tribunal calculates that plaintiff paid in total the sum of €1,900, which is €500.00 more than she was contracted to give to defendant at the stage of the works. These €500.00 should be returned to plaintiff in full together with a further 900.00 to cover the cost of partially defective workmanship as concluded by the expert. This Tribunal can't acceded to requests for remedial work that have to be carried out without any supporting documentary evidence. Although plaintiff drew up a list of remedial works that need to be carried out (costs for electrician/ new toilet seat/ purchase of additional tiles/ ) these were not supported by receipts and therefore remain hypothetical and can't be considered by this Tribunal when quantifying damages.

For these reasons the Tribunal accedes to part of plaintiff's request and condemns defendant to pay plaintiff the sum of €1,400. With costs including that of the court expert.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

**Michela Spiteri LL.D**  
**Arbiter**