



MALTA

CCT/153/17/S

James Formosa
vs
Sunday Johnson

Today, the 5th of July, 2018.

The Tribunal:

Took cognizance of the Notice of Claim filed by James Formosa on 6th September 2017 as well as the Reply filed by Sunday Johnson on 11th December 2017;

Examined all the documents filed, heard the parties and witnesses as well as the oral submissions made during the sitting of the 4th of May, 2018.

Considered:

That in the Notice of Claim, the Claimant claimed the amount of one thousand, seven hundred and four Euros (€1,704.00) and stated the following in support of his claim:

- That he had engaged the Respondent's services as a tiler and plasterer;
- That although he was generally happy with Respondent's workmanship, there were instances of sub-standard workmanship on Respondent's part;
- That Claimant engaged the services of an architect who drew up a report which confirmed that the work was of poor quality;
- That Claimant tried to reach an amicable agreement with Respondent, to no avail.

That in the Reply, Respondent submitted the following pleas:

- That it was untrue that Respondent's work was defective;
- That without prejudice to the above, the amount claimed was over-inflated;
- That Claimant paid Respondent the sum of nine thousand Euros (€9,000.00) and still owed one thousand and one hundred and fifty-five Euros (€1,555.00);

- That Claimant was bringing up the matter in order to avoid paying the Respondent; and
- That this balance should be subtracted from any amount which this Tribunal may award to the Claimant.

That in tendering evidence during the sitting held on 23rd November 2017, architect Ian Turban testified that he observed that some of the work was not done as it should have been done. In particular, Turban pointed out the tile-laying in the bathroom in preparation for the laying of parquet floorboards.

That in respect to some of the tiles laid on the bathroom walls, these were also not smooth in the way there were laid. However, the architect testified that he could not ascertain whether this was due to bad workmanship or tiles of inferior quality.

That Claimant testified that Respondent carried out work for another architect and that in the latter's view, Respondent's work was normally good and well-priced. However, it turned out that whenever Claimant complained to Respondent, the latter would not accept Claimant's complaints unless these were confirmed by the architect himself. In fact, Claimant had to bring over this architect at least three times in order for him to point out defects to the Respondent who would only then agree to fix such defects.

That the Tribunal observes that in his testimony during the sitting held on 4th May 2018, Respondent himself testified that he had been instructed by Plott Armatis to remedy particular shortcomings. In the Tribunal's view, the Respondent's admission that he had been instructed to remedy his own work by an architect for whom he had allegedly worked for a long time, confirms part of claimant's allegations. On the other hand it is apt to note that this architect did not testify in front of this Tribunal.

That when Respondent was cross-examined, he testified that in relation to Turban's report, he was not invited when Turban inspected the premises and therefore, could not act upon Turban's recommendations. Respondent simply stated that whenever Claimant or Plott Armatis pointed out any defect, he remedied this.

That in the Tribunal's view, the report drawn up by architect Ian Turban is quite clear in that it states in no uncertain terms that Respondent's workmanship would result in an uneven surface when parquet floorboards were eventually placed. However, the Tribunal observes that Turban could not determine whether the defects related to the bathroom tiles were due to bad workmanship or due to tiles which were not of good quality.

That the Tribunal observes that the Respondent issued a fiscal receipt showing that he was paid nine thousand Euros (€9,000.00) for his services. In addition, although in his Reply he stated that he was owed one thousand and one hundred and fifty-five Euros (€1,555.00), in his testimony he claimed that he was owed three thousand Euros (€3,000.00). The Tribunal notes that Respondent failed to explain what any of those amounts which he was allegedly owed covered.



That in view of the testimony and the evidence tendered, the Tribunal is convinced that Respondent's workmanship was faulty in some particular instances.

That with particular regard to Respondent's counter-claim, the Tribunal observes first of all the inconsistency between the amount claimed on the relative form and the amount mentioned by the Respondent in his own testimony. Second of all, the Tribunal reiterates that in its view, the Respondent failed to explain either amount.

That the Tribunal also saw Claimant's submission in respect of the late submission of Respondent's Reply. Claimant stated that according to Maltese jurisprudence, the Respondent should be considered in contumacy. In this regard, the Tribunal refers to Rule 4.1 of the Consumer Claims Tribunal Rules (S.L. 378.01) which clearly states that if the defendant fails to file a reply within eighteen (18) days, the claimant may apply to the Tribunal for a default order against the defendant.

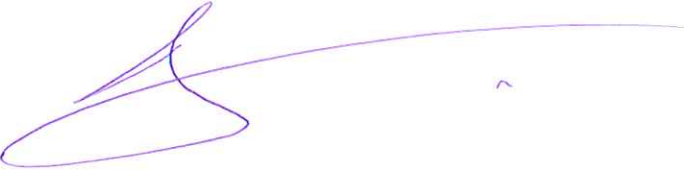
That the Tribunal saw that the interval between the service of the Notice of Claim and the Reply reveals an interval of just under three months and therefore, the Reply was filed well outside the time limit stipulated by S.L. 378.01.

Decision

Therefore, for the reasons explained hereinabove, after having seen Chapter 378 of the Laws of Malta as well as the applicable subsidiary legislation and in the circumstances of the case, the Tribunal decides to:

- i. Uphold Claimant's claim for a default order against Respondent in terms of Rule 4.1 of S.L. 378.01 and in view of such order:
 - a. Orders Respondent to pay to Claimant the amount of six hundred Euros (€600) established *ex aequo et bono*; and
 - b. Declines to take cognizance of Respondent's Reply in view of late submission.

The Tribunal orders that the costs of the case be borne by Respondent.



Richard Sladden Av.
Arbiter