# Fit-Tribunal tal-Konsumatur

**Michele Dagnello**

**vs**

**Nicolas Deloos**

**CCT 92/26/MM**

**Today,** 3rd November 2026

**The Tribunal,**

Having examined the notice of claim in case CCT 92/26/MM, brought by Michele Dagnello against Nicolas Deloos, whereby the claimant requests that the respondent be ordered to pay him the sum of three hundred and nineteen euro and seventy-eight cents (€319.78), representing the cost of a travertine windowsill which, according to the claimant, could not be used owing to incorrect measurements and damage sustained in connection with the works entrusted to the respondent;

Having examined the correspondence exhibited as Doc. MD1, the documents relating to the invoice and payment exhibited as Doc. MD2 and Doc. MD3, and the photographs and measurement details exhibited as Doc. MD4;

Having examined the record of the sitting of 6 October 2026, from which it emerges that the respondent, although duly served, failed to appear despite being called several times, and did not file a reply;

Having heard the sworn testimony of the claimant, Michele Dagnello, who explained that the measurements had been taken by the respondent and that the windowsill proved to be incorrectly sized and damaged;

Having heard the sworn testimony of Federica Guerimi, who corroborated the claimant's testimony and the documents exhibited by him;

Having examined all the acts of the proceedings;

**Having considered:**

The Tribunal notes that the respondent is in default. On the legal principles governing default, the Court of Appeal (Superior Jurisdiction), in **Noel Calleja et v. Middlesea Valletta Life Assurance Co. Limited**, decided on **28 January 2005**, stated:

> "L-istitut tal-kontumacja huwa msejjes fuq il-presuppost li l-imħarrek, bin-nuqqas tiegħu li jwieġeb għax-xilja u t-talba da parti tal-attriċi, ikun wera dispett lejn is-sejħa għall-Qorti biex jidher quddiemha, liema dispett il-liġi tħares lejh bħala għemil li jistħoqqlu piena – dik li ma jkunx jista' jindahal fit-tressiq ta' provi billi dan jammonta għal forma ta' diżordni soċjali. Maż-żmien il-qrati Maltin iddeċidew li r-rigorozita` tal-proċedura għandha tiġi mitigata fis-sens li fejn il-Qorti tkun sodisfatta li ma kien hemm ebda nuqqas volut min naħa tal-persuna mħarrka li jista' jammonta għall-ħtija, m'għandu jkun hemm l-ebda diffikulta` li l-kontumaċja titqies bħala waħda ġustifikata. Di fatti l-ġurisprudenza interpretattiva stabbiliet ċertu fatturi li jirrendu l-kontumaċja mhux ġustifikabbli. Dawn huma fil-każ li l-kontumacja: kienet volontarja jew kolpuża; jew priva minn kawża ġusta; jew mankanza ta' impediment leġittimu da parti tal-imħarrek li kien poġġa lill-istess fl-impossibilita` jew f'diffikulta` gravi li jippreżenta n-nota tal-eċċezzjonijiet tiegħu; jew ma kienx każ ta' żball invinċibbli."

In **Market Handle Limited (C-49546) vs. Fahrenheit Freight Forwarders Co. Limited (C-17421); Elaine Sant Galea u Alfa Company Limited**, decided by the First Hall of the Civil Court on 12 January 2012, the Court stated:

> "Illi l-prinċipji li jirregolaw jekk il-kontumaċja hijiex bi ħtija jew le, ġew għadd ta' drabi mfissra u elenkati. Il-prinċipji huma li: (a) il-kontumaċja mhix ġustifikata jekk kienet volontarja; (b) jew jekk kienet kolpuża; (ċ) li jeħtieġ li biex tkun ġustifikata tiġi murija raġuni ġusta għas-sudisfazzjon tal-Qorti; (d) liema raġuni ġusta trid tissarraf f'impediment leġittimu; (e) li tali impediment irid ikun indipendenti mir-rieda tal-persuna kontumaċi; minbarra dan, (f) sabiex żball ikun meqjus bħala impediment leġittimu, irid ikun żball invinċibbli b'mod li (ġ) l-impediment leġittimu li jżomm lill-parti milli tressaq id-difiża tagħha jrid ikun dak li bnadi oħra ssejjaħ bħala una necessita' impellente di chiamata ad altri doveri imprescindibili; u (ħ) li l-impossibilita' li l-imħarrek jikkontesta t-talba jew li jidher għas-subizzjoni trid tkun gravi u fiżika jew, f'ċirkostanzi eċċezzjonali biss, waħda morali".

See also the judgment of the Court of Appeal of 12 December 1975 in **Paul Grixti vs Direttur tax-Xogħlijiet Pubbliċi**, and **Joseph Naudi Montaldo noe vs Emmanuel Xuereb**, decided by the First Hall of the Civil Court on 27 February 1995.

In **Beacom vs Spiteri Staines**, decided by the First Hall of the Civil Court on 9 December 1993 (Kollez. Vol: LXXVII.iii.195), the Court stated:

> "Illi sa minn dejjem, il-Qrati tagħna qiesu li jagħmlu differenza bejn il-kontumaċja b'tort u dik ġustifikabbli. Huma ssoktaw b'din il-linja wkoll sa dawn l-aħħar żminijiet

u għarfu u fissru bejn dik il-parti mħarrka li turi disinteress assolut u l-oħra li turi kull fehma li tikkontesta l-kawża u li ma laħqitx għamlet dan jew ma laħqitx użat il-mezzi li tagħtiha l-liġi għal raġuni li ma kinitx taħti għaliha."

See also **Francis Cutajar et vs Mariano Farruġia et**, decided by the First Hall of the Civil Court on 5 May 2011.

**Having considered:**

The issue to be determined by this Tribunal is specific and limited. The claimant seeks reimbursement of €319.78, which he states he paid for material rendered unusable by shortcomings in the respondent's performance of the works. The other complaints concerning the renovation works provide factual background but do not constitute separate claims requiring assessment in these proceedings.

A distinction must be drawn between the liability of the supplier of the material, on the one hand, and the obligations of the person entrusted with taking measurements and carrying out or coordinating the works for which that material is required, on the other. The present claim is not based on an inherent defect in the windowsill attributable to Giorgi Project Point Ltd, but on the allegation that the respondent failed properly to discharge his duties concerning the measurement and handling of that material.

Accordingly, insofar as the evidence establishes a contract for works, regard must be had to the provisions of the Civil Code, Chapter 16 of the Laws of Malta, including Article 1633, and to the principles governing contractual non-performance and damages under Articles 1125, 1135 and 1137 of the same Code. A person who undertakes to carry out work must perform it diligently and in accordance with the standards of the relevant trade, and is answerable for the duly proven direct consequences of defective performance.

In this regard, the Court of Appeal (Inferior Jurisdiction), in **Pierre Darmanin vs Moira u Christopher konjuġi Agius**, decided on 6 October 2004 (Civil Appeal 323/2002/1), emphasised the contractor's obligation to perform the work entrusted to him properly and his liability for damage resulting from defective performance. The fact that the material was purchased by the client from another supplier does not, in itself, absolve the person responsible for taking the measurements or carrying out work on that material.

The Tribunal further considers that the respondent's failure to appear or file a reply does not mean that the claim has been admitted. As explained, inter alia, in **George Busuttil et vs Anthony Vassallo et**, decided by the Court of Appeal on 6 October 2020, default is not equivalent to an admission of the plaintiff's claims. Accordingly, the claimant remains obliged, in these proceedings, to produce evidence substantiating his claim.

The standard of proof required in civil proceedings is the balance of probabilities. In **Maria Stella Borg vs Joseph Cassar et**, decided on 25 April 2002, the First Hall of the Civil Court explained that the moral certainty required of the adjudicator must rest on a preponderance of probabilities rather than mere conjecture. These principles must also be applied in the light of Article 21 of the Consumer Affairs Act, Chapter 378.

**Having considered:**

The contemporaneous correspondence shows that, during January 2026, the parties concerned were checking the measurements of the windowsill before placing the order. In particular, the messages of 16 January 2026 show that confirmation of the measurements depended on Nicolas's involvement. This circumstance is relevant to determining who was responsible for the dimensions specified.

The invoice issued by Giorgi Project Point Ltd on 27 January 2026 in the claimant's name records travertine material for a total price of €319.78. The bank document exhibited corroborates that this amount was actually paid. The monetary value of the material in question is therefore supported by documentary evidence and is not merely an unsubstantiated assertion.

The subsequent correspondence, exchanged during February 2026, referred both to the discrepancy in the measurements and to the damage sustained by the windowsill. The photographs exhibited are consistent with the complaint concerning the condition of the material. However, taken alone, the photographs do not establish who caused the damage or precisely when it occurred; nor do the supplier's messages, in themselves, constitute an admission of fault by the respondent.

The evidential value of these documents must therefore be assessed together with the sworn testimony. The claimant testified about the work entrusted to the respondent, the person who took or confirmed the measurements, and the circumstances in which the material could not be used for its intended purpose. His account was corroborated by Federica Guerimi, while the contemporaneous messages demonstrate the respondent's involvement at the stage when the dimensions were being established.

Having assessed the evidence as a whole, the Tribunal is satisfied, on a balance of probabilities, that responsibility for the incorrect measurements and the resulting financial loss is attributable to the respondent in the performance of the work entrusted to him. No evidence was produced pointing with sufficient cogency to an alternative cause capable of displacing that conclusion.

The sum of €319.78 corresponds to the price of the material which, owing to the proven failure, could no longer serve its intended purpose. The fact that payment was made directly to Giorgi Project Point Ltd does not prevent the claimant from recovering the loss from the person whose contractual conduct caused it. At the same time, the Tribunal is not awarding additional compensation in respect of other allegations concerning the works or for damage that was neither separately claimed nor proved.

The claimant's claim has therefore been sufficiently proved, both as to the respondent's responsibility for the failure and as to the amount claimed.

**Decision**

For these reasons, the Tribunal upholds the claim brought by Michele Dagnello and orders the respondent, Nicolas Deloos, to pay the claimant the sum of three hundred and nineteen euro and seventy-eight cents (€319.78), together with legal interest from the date of this judgment until the date of actual payment.

Costs shall be borne by the respondent.

**Dr Martha Mifsud**

**Arbiter**