

MALTA

Liability for the Fault of Others

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The facts (I)

- The first defendant, a landowner, embarked on a project to demolish some old houses to construct an apartment block on the site;
- The second defendant, an experienced contractor, was engaged to carry out the demolition works;
- The third defendant, a qualified architect and civil engineer, was engaged to oversee the works.

The facts (II)

- The architect gave instructions on how the works were to be carried out but did not visit the site regularly;
- The contractor did not follow the instructions;
- Considerable damage was caused to plaintiff's property;
- Plaintiff sued all three defendants.

First Instance Judgment (I)

- The contractor is liable: he had not followed instructions and he had not carried out the task with the necessary skill and care;
- The architect is not liable: he was not informed when the works were to be carried out and he was not obliged to be present on site all the time:

First Instance Judgment (II)

"The fees specified in this paragraph (*i.e.* for construction works) shall not cover constant supervision of the work but only such supervision as may be required for the purpose of the professional responsibility of the *perit* (architect) under any relevant law at any time in force and as may be necessary to ensure that the works are being executed in general accordance with the contract."

(Tariff K: Fees payable to *Periti*, para. 10, note 1)

First Instance Judgment (III)

- The landowner is not liable: he had engaged an experienced contractor and a qualified architect to carry out and supervise the works:
 "1037 C.C. Where a person for any work or service whatsoever employs another person who is incompetent, or whom he has not reasonable grounds to consider competent, he shall be liable for any damage which such other person may, through incompetence in the performance of such work or service, cause to others."

Appeal Judgment (I) – Liability of Architect

- Although the architect had no duty of constant supervision, the fact that his attendance on site was sporadic amounted to negligence;
- The architect is therefore liable.

Appeal Judgment (II) – Liability of Landowner

- Liability under art. 1037 C.C. arises when one employs:
 1. a person who is objectively incompetent; or
 2. a person whom one has no reasonable grounds to consider competent.
- A reasonably held belief that the person one employs is competent is no defence if that person turns out not to be competent.
- The employer enjoys the benefit and carries the risk.

Comments

- Is a person to be considered incompetent merely because he carries out a particular task in an incompetent manner?
- Is the employer really at fault (*culpa in eligendo*) if he employs a person with a proven track record?
- Does art. 1037 C.C. impose a strict liability on the employer: he enjoys the benefits so he carries the risks?

Benefit and Risk

Cf. art. 1041 C.C.

“1041. The owner of a building shall be liable for any damage which may be caused by its fall, if such fall is due to want of repairs, or to a defect in its construction, provided the owner was aware of such defect or had reasonable grounds to believe that it existed.”