CASE TRANSLATION: **ITALY**

Case citation:
Tribunale sez. V, Milano, 18/10/2016, n. 11402

Name and level of the court:
Court of Milan, V Civil

Date of decision:
18 October 2016

Member of the court:
Judge Consolandi

Italy; evidence of contract; e-mail; validity of electronic signature; payment of invoices; Code of the Digital Administration decree 82/2005; Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC OJ L 257, 28.8.2014, p. 73–114

Court sez. V, - Milan, 18/10/2016, n. 11402

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

Court of Milan,

sect. V Civil,

Judgment

Judge Consolandi

Concise statement of the reasons in fact and in law

This is an objection to repeal an injunction issued for the payment of invoices for compensation for a collaboration contract in the field of graphics and information technology.

It is undisputed as well as proven by witnesses that the respondent cooperated with the applicant company and was paid through the issuance of invoices; the applicant pleads that it is up to the respondent to prove its performance and that document 10, an e-mail of the general partner of the applicant company, where the issue is dealt with by recognizing the existence of a debt and the difficulty in paying it, cannot be considered as a valid document because it is not signed. In fact, the absence of a written contract completely renders the measure of remuneration, even if it is proven that the respondent cooperated until May 2009, when he interrupted the collaboration due to the failure to pay the remuneration.

The two witnesses of the respondent were heard, which on the one hand confirmed the continuous work carried out by the respondent, on the other hand they were not in a position to clarify the terms of payment. However, the absence of specific objections to the issue and the substantial fairness of the requested service make it possible to believe that the formation of the contract is founded. It was confirmed by the witness Cu in the specification of the applicant, in points 1, 2 and 3, namely on the collaboration of the respondent as a freelancer from April 2007 and inclusion in the productive staff in the computer technology, web graphics and multimedia sector, even if on document number four, pertaining to the amount of the salary, the witness declares that he is not aware, but that he thinks that commissions were also due on certain affairs.

Important is the confirmation of circumstance number six by witnesses, co-workers of the respondent, concerning the fact that until May 2009 the respondent observed fixed working hours from 9:00 to 18:00 from Monday to Friday, in addition to other work, even outside these hours for some clients such as Im and Me. Considering that the request is between 2,000 and 2,500 euro per month, with all the costs borne by the provider of the work, this is request is in line with the market standards, for one person that is a graduate and requested; it is proved by witnesses, in fact, that another company, such as Mo, had offered the appellant to work for it.

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 4.0 International License

Moreover, the witness recalls that the respondent had found this other client and that the architect Sc, a general partner of the applicant company, in a meeting expressed his opposition to the double employment and asked that the respondent worked only for him, and for this purpose he promised the compensation that this other customer could give to Sa.

Finally, the witness confirms the unpaid salaries, the commitment by Sc to pay invoices; with the word "monthly collaboration" on the invoices of Sa, based on the specific agreement. Another witness, Br.Si, another collaborator to the opposing plaintiff, basically confirms:

1. That Sa worked continuously at the Graphic Design AD with a fixed salary plus commission.

2. That Sa received a proposal from another customer and that Sc wanted to keep it, proposing the offer of a fixed salary to him, without confirming that it was euro 20 per hour.

3. That there were delays in payments and that in January 2009 a repayment plan was formulated, in his presence, given that the witness was also waiting for payments that were due.

4. That Sa in mid-May 2009 ceased to work for the applicant, due also to unpaid debts.

The affirmation of the applicant that there would be no proof of the performance for which the professional asks for payment is therefore denied by witnesses, who well remember the respondent working alongside them, giving up another opportunity for the needs of the applicant company, advancing money for his performances and then abandoning the work since he could not give up his source of livelihood. To this it is to be added that there is a precise document of confirmation, constituted by document 10, that is an e-mail of 22 May 2009, in which the respondent asks for the payment of invoices 14, 15, 16 and 17 of 2008 and 2 and 3 of 2009, as provided for by the original repayment plan, which is the one to which the witnesses refer. A reply an e-mail by Leonardo Sc of 25 May 2009 sent from the address (...) is exhibited, in which he says that due to the insolvency of his clients, "it is unfortunately not possible to make further predictions for future financial outlays, beyond the agreements made (which however, as you know, I have always respected is compatible with the economic fate of mine)" this along with the conclusion: "I ask you therefore the courtesy of further patience" confirms that there was a debt from the applicant.

Since the applicant does not specifically dispute the amount of the claims made by the injunction, but confines itself to the fact that there is no proof whatsoever, it is impossible to identify any single invoice among those that are questioned, because that would mean to pursue ex officio the validity of one credit item, when the party does not identify specific disputes over particular invoices. In any case, it is noted that the sum of 2,000/2,500 euros per month for a full-time commitment and even beyond where necessary, such as the one resulting from the testimony, is fully fair. These are also the invoices listed in the correspondence cited above: among which for 2008 the 14 and 15, for specific projects, and the 16 and 17 of 2008 for collaborations in the months of November and December. We have seen that the witnesses refer to one monthly remuneration and one for specific project and that the insolvency occurred at that time.

As for 2009, invoices 2, 3, 4 and 5 are activated: this is the collaboration in January, February, March and April 2009 and the witnesses report that during that period the respondent provided his cooperation.

As far as the e-mail is concerned, the applicant objects because it is an unsigned document. In reality, this is e-mail sent from the address of the applicant company and therefore, according to article 46 of the eIDAS European Regulation (No. 910 of 2014), "An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form" the argument of undersigning, inherent in IT documents, cannot be considered.

As for the electronic documents it should be noted that the code of the digital administration (Italian legislative decree 82/2005) at article 21 prescribes that "The electronic document, with an electronic signature, satisfies the requirement of the written form and on the probative level and can be freely evaluated in court, taking into account its objective characteristics of quality, safety, integrity and immutability." The eIDAS regulation also contains a principle of non-discrimination of electronic signature over the physical signature in article 25 which states: "An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an

electronic form or that it does not meet the requirements for qualified electronic signatures." It is thus confirmed that the electronic document is admissible as proof even in the absence of a qualified electronic signature. The shipment from an address related to a certain company must be considered an electronic signature in accordance with the definitions contained in article 3 of the eIDAS Regulation itself, previously contained in the digital administration code that no longer contains them, precisely for the effectiveness of the European regulation across the EU. In the aforementioned article 3, paragraph 10, in fact we can read that electronic signature – even simple and unqualified – is the set of "data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign." Well, the use of a box clearly bearing the reference to the person, together with the content, indicate that the words contained in the e-mail of 25 May 2009 are referable to the author.

It is true that the applicant complains that these are easily modifiable characters, by anyone having access to the mailbox or even later, but the respondent does not concretely assume that this change may have taken place and above all in the overall context of procedural results that letter appears fully confirmed by the testimonies.

Therefore, the services referred to in the invoices must be considered subsisting, i.e. the realization of two projects and the provision of their willingness to collaborate with the company until May 2009 and therefore the proposed opposition against the injunction is to be rejected. Expenses are due as required by law.

For these reasons

The court, definitively pronouncing, every different instance being disregarded or absorbed, rejects the opposition as a proposal against the injunction n. 26756/2011 role n. 46024/2011, consequently authorizing the application of the legislation.

Orders the plaintiff to reimburse the defendant for the litigation costs which are settled at € 4,835.00 for lawyer's fees plus VAT, CPA and a 15% flat-rate reimbursement.

Milan 16 October 2016

Filed in the Chancellery on 18 October 2016.

The editors thank **Ing. Franco Ruggieri** for his help with this translation.