IN THE SMALL CLAIMS TRIBUNAL

ADJUDICATOR: DR PHYLLIS AQUILINA LL.D.

Sitting of Tuesday 30th May, 2017.

Claim Number: 23/2015PA

McCusker Maria Victoria

vs

Hover Peter

The Tribunal,

Having seen the Notice of Claim filed on 20th January 2016 in virtue of which plaintiff premised that defendant, as owner of flat (4), in the block of apartments called 'Julian's Place', Triq Ivo Muscat Azzopardi, St Julians, owes her the sum of four hundred and twenty nine Euro and eighty three cents (€429.83c) representing the outstanding balance of his yearly contributions for his share of the expenses incurred for the upkeep of the common parts of this block between January 2012 and April 2015, as stipulated in article 7.2 of his deed of purchase published in the records of Notary Michela Sammut of 9th February 2011; and that defandant failed to effect payment notwithstanding plaintiff's requests. Plaintiff thus requested this Tribunal to condemn defendant to pay her the sum of four hundred and twenty nine Euro and eighty three centes (€429.83c), due as set out in the annexed statement 'Doc.A', reserving her right to payment of any other sum becoming due after May 2015, and with costs, including VAT on professional fees, as

well as the legal costs of the letter dated 3rd August 2015, and with legal interest until the date of payment.

Having seen the schedule of expenses, and payments effected, and oustanding payments, which plaintiff prepared, showing an outstanding balance as at April 2015 of €429.83c ('Doc.A').

Having seen defendant's Reply filed on 8th February 2016 in virtue of which he pleaded that (i) plaintiff's demands are unfounded in law and in fact on account of the lack of competence of this Tribunal to hear and determine disputes concerning condominia in terms of Act XXIX of 1997, which directs that all such disputes should be referred to arbitration proceedings in terms of Part IV of the Arbitration Act; (ii) in this case, the condominium comprises two (2) villas and four (4) maisonettes, and another condominium of thirteen (13) garages, and therefore all owners of all such separate units should have been cited in this judgment as decided in the case *MTMW vs Panor Limited et*, Court of Appeal (Inferior Jurisdiction), of the 27th February 2009; (iii) the deed of acquisition published on 9th February 2011 in the records of Notary Michela Sammut stipulates that the four maisonettes and the two villas constitute a condominium, which is separate and distinct from the condominium of garages; (iv) in terms of art. 7.2 of said deed, defendant *'undertakes to pay his pro rata share of the maintenance and upkeep of the said condominia'* in proportion to the value of each separate unit in the condominium; (v) in terms of the Condominium Act, the condominium should have been registered with the Land Registrar, as set out in art. 24 of the Act, but said registration was not effected; (vi) as there are more than three condomini, the meeting of condomini shall appoint an administrator as provided in art. 15 of the Condominium Act. To this date, plaintiff has not been appointed an administrator, and failed to register the condominium in terms of law; (vii) as plaintiff is not the administrator of the condomium, she could not request the condomini to contribute for the expenses of the common parts; (viii) on the merits, the expenses necessary for the preservation, maintenance, ordinary and extraordinary repairs, and the enjoyment of the common parts, shall be shared between the condomini in proportion to the value of each unit in the condominium, in the absence of an agreement

to the contrary, as ruled in the *MTMW vs Panor Limited et* ruling; (viii) in terms of art. 3 of the Condominium Act, art. 11(2), 15, 24 and 26 are rules of public policy and the condomini cannot contract out of them; (ix) defendant is willing to pay his share of the expenses, but refuses to pay more than his proper share, calculated on the basis of the different values of the two villas, and the four maisonettes, in the condominium. Plaintiff is not entitled to the payment requested because there are missing interested parties in this judgment, and her apportionment of the costs for defendant's share is erroneous.

Having seen the document annexed to the Reply, namely a copy of a deed of sale published in the records of Notary Doctor Michela Sammut of the 9th February 2011 in virtue of which Maria Victoria Bartolo (plaintiff, still unmarried) and her mother Josephine Bartolo sold to defendant the first floor maisonette, internally marked number 4, and the basement garage internally marked number 5, both forming part of the complex known as 'Julian's Place', in Triq Ivo Muscat Azzopardi, Saint Julians, including a *pro rata* undivided share in ownership together with the owners of the other maisonettes and villas forming part of the Complex of the common pathways of the Complex, and the other areas, parts and services in the Complex, including the garage complex, intended for the owners' common use (fol. 10-14). In terms of art. 7.2 of this deed, the parties had stipulated that *'The Purchaser undertakes to pay his pro rata share of the maintenance and upkeep of the said condominia'* (fol. 12).

Having seen Plaintiff's testimony heard before this Tribunal, as previously composed (fol. 25-26), in which she explained that her maiden surname was Bartolo, and that she is now married to John McCusker, who incidentally had purchased dwelling number two (2) in this complex from plaintiff prior to their getting married. Plaintiff explained that her husband works abroad, and comes only occasionally to Malta. Dwelling number five (5) belongs to David Bunn, who takes care of the accounts of the upkeep of the units. She further declared that, after revising her calculations, she is owed the sum of four hundred and nineteen Euro and eighty three cents (€419.83c) from defendant, and not the sum claimed in the Notice of Claim. In her cross-examination, plaintiff clarified that the complex comprises two villas and four maisonettes, which do

not have the same value, and that all owners of the six dwellings use the common parts. She also declared that she is not registered as the administrator of this complex. In re-examination, plaintiff explained that she gets the bills for all the expenses, and then the other owners contribute by paying her their share, as stipulated in the contract.

In her sworn declaration (fol. 27 *et seq*.), plaintiff **Maria Victoria McCusker** declares that she had inherited the land on which she developed the complex 'Julian's Place' from her father, and that on this site, she built two (2) villas, four (4) maisonettes and thirteen (13) underlying garages. She is the owner of dwellings one (1) and six (6), her husband John McCusker owns dwelling number two (2)[1], defendant owns dwelling number four (4); whilst dwellings numbers three (3) and five (5) are respectively owned by Maryanne Pye and David Bunn.

Plaintiff further explains that the common walkways of the complex include a front garden, a reservoir for the irrigation of planters and pots, and a private skip hire for rubbish collection. The walkways and the garage complex have external lighting and electric gates. She declared that there are ongoing costs for landscaping, filling the common reservoir with water, hiring a skip, and electricity costs, which she divides periodically between the residents, and the garage owners. The expense for the upkeep of her private garden annexed to dwelling number six (6), and her private reservoir, is exclusively at the charge of plaintiff.

Plaintiff declares to have been facing opposition and hostility from defendant in so far as collecting his share of the expenses of the common upkeep is concerned. No other owner has ever objected. Mr Bunn sees to the apportionments.

Plaintiff recounts how an estate agent had accompanied defendant to visit maisonette number four (4) for the first time, when the complex was not yet finished and dwelling number five (5) was the only unit sold. At their first meeting, defendant had

[1] This declaration does not tally with the deed of acquisition of John Michael McCusker, showing that he purchased maisonette number six (6), fol. 58 *et seq*.

asked about the upkeep costs, and plaintiff declares to have responded that, at that time, the only cost incurred was for the sweeping of the walkways, which was amounting to €23 per month per unit, whilst clarifying to him that the complex was not yet complete, and the condominium not yet formed.

Plaintiff recounts how her first dispute with defendant concerned her request that he compensates her for the electricity consumption which he used on her account, for his own exclusive benefit, in the course of finishing his dwelling. He had refused to pay his *pro rata* share of the electricity rental charge. He also threatened her that, on account of this request, he would have problems with her in the future. On that occasion, she did not insist on his paying a *pro rata* share of the rental charge. Plaintiff explains that henceforth, defendant started questioning each and every item of the common expense. She had no problem giving him the requested explanations, and he paid his share for upkeep expenses and for the electricity consumption in his garage.

Plaintiff then explains how defendant started showing reluctance to pay his periodical dues, citing in his defence her statement that the dwellings were paying €23 per month. Plaintiff clarifies that, when she had mentioned that figure to defendant, the utilities were not yet functioning in the common parts, which were not yet complete. Since then, defendant refused to pay more than €23 per month for the common parts' expenses.

Plaintiff refers to an email communication which all owners received from defendant (fol.45-46), in which he insisted on plaintiff keeping to 'the verbal agreement' she had with him that he pays *'10 pounds maintenance per month'*, and nothing more, even if his *pro rata* shares totals to less than that contribution. Plaintiff declares that defendant has further failed to pay for electricity consumption in his own private garage, which is supplied with electricity through a submeter to the common parts' meter, and has also refused to pay his *pro rata* share of the electricity consumption of the common walkways and ramp, saving for the payment of €49.42c which he made on 25th April 2012 and €10 on 19th December 2014. This notwithstanding, plaintiff declares to have

continued paying his share herself, on his behalf, to ensure continuation of service in his favour.

Plaintiff declares that, on account of defendant's confrontational attitude against her, and his allegedly false accusations that she was making a financial gain to her advantage out of this administration, they never managed to form an Owners' Association, in the absence whereof she continues to look after the complex as stipulated in the sale agreements, for the well-being of all condomini.

Plaintiff claims that she has carried out additional works, in the common interest of all owners of dwellings in the complex, for which she is not claiming a *pro rata* payment from defendant, including new landscaping works, renewing of light fittings in the garage and walkway areas, christmas decorations, changing of cracked tiles in the common walkways and maintenance of plastering in the garage areas.

In her cross-examination, plaintiff Maria Victoria McCusker explained that she is requesting payment from defendant in her capacity as original owner of the block, who developed it, and as owner of half of the dwellings. The other three dwellings belong to defendant, Mr Bunn and Mrs Pye. Each of said owners owns a garage in the complex. The remaining garages belong to third parties.

Plaintiff confirmed that she had set up various meetings in an attempt to organise the condominium, and finalise a condominium agreement, but this never happened because defendant was never in agreement. She declared that she never filed arbitration proceedings in that regard, because she wanted to come to an amicable settlement.

In so far as the common parts of the complex are concerned, defendant explained that it enjoys various common benefits, including lit up walkways, skip hire, remote controlled garage gates, individual electricity in each garage, watering of plants, and gardening. Defendant is taking full advantage of all these common services, without

paying for them. Plaintiff said that she had kept the same services, and suppliers, she had at the outset, after obtaining quotations from different suppliers.

With regard to defendant's allegation that she had promised him that his common parts' contribution would amount to €23 per month, plaintiff explained that she had spent three hours at his flat explaining to him the expenses for the services in the common parts, and showing him the bills for them. She had explained to him that, at that time, there were no residents, and that for example the expense for the cleaning amounted to €23 per month, although all the services currently used were already operative then.

Plaintiff confirmed that the complex consists of two villas and four maisonettes, and that the villas are different in size and quality from the maisonettes, only that the common parts and services are used and shared in the same manner among all the owners of the different units, even if the villas were sold for a higher value.

Plaintiff further explained that she paid for all common services herself, and then requested the contribution from the condomini. Mr Bunn would send an email with the expenses incurred, and the bill.

With regard to the garage which has no meter, and is marked as a store, plaintiff declared that a Carmine di Ciccio owns this store. It takes its electricity supply from the common electrical meter. As it has only one bulb, plaintiff and Mr Bunn estimate more or less the expense of the use of electricity in that bulb and deduct the sum.

Having seen the bank account statement, extracted from plaintiff's account at HSBC Bank (fol.31-32) showing that between February 2012 and December 2014, defendant has deposited the sum of one thousand and ninety three Euro and seventy seven cents (€1,093.77c) in settlement of his share of the expenses in this condominium.

Having seen the statement of defendant's account for his share of the expenses (fol. 47-49), showing that he had to pay two hundred and seventy eight Euro and forty

seven cents (€278.47c) for garage/common parts electricity expenses, for the period between March 2012 and November 2014; he had to pay the sum of sixty one Euro and sixty six cents (€61.66c) for intercom repairs effected in January 2014, and one thousand one hundred and seventy three Euro and forty seven cents (€1,173.47c) for the upkeep of the common parts between September 2012 and April 2015.

Having seen **John McCusker**'s sworn declaration (fol. 55 *et seq.*) wherein he corroborated his wife's sworn declaration about defendant's conduct both before, and after, his apartment was completed. He declared that, at one point, his wife felt threatened because of the way defendant was addressing her in his emails, and he stepped in to receive defendant's complaints instead of plaintiff.

John McCusker related how his wife made various attempts at setting up a condominium agreement, convening all condomini at a hotel, at her expense, to help create a familial atmosphere. However, accordong to Mr McCusker's account, defendant stormed out of the first meeting when the other condomini did not support his claims. The same happened when his wife attempted to establish the *pro rata* costs of the upkeep of the common parts. These costs are shared equally among the six owners and include front gardens landscaping, private skip hire for rubbish, water bowser to fill common reservoir, cleaning of pathways and maintenance of intercom and main gates. The private gardens forming part of plaintiff and Mr McCusker's residence are treated separately.

Mr McCusker then listed the expenses which he and his wife paid for, in their entirety, and which have benefited all condomini, including the purchase of cleaning equipment for common walkways, using their own water to wash the said walkways, replacing bulbs in the common areas, carrying out new landscaping in the front garden, replacing tiles in these walkways and decorating the front gates during the Christmas season.

Having seen **David Victor Bunn**'s sworn declaration (fol. 69 *et seq.*) wherein he declared that, together with his wife, he acquired the villa named 'The Orchids', in Julian's Place, Ivo Mucat Azzopardi Street, St Julian's, on 18th December 2009. He declared that he is now retired, but used to work as Chief Financial Officer for multi-national corporations.

In so far as the procedure for the apportionment of common expenses among the condomini of residential units, and garages, is concerned, David Bunn explained that plaintiff, as developer of the property, arranges and pays in advance for all required common services. She then passes on the costs to him, and he apportions them equally among all owners, irrespective of the size of their unit. Plaintiff sends the resulting spreadsheet to the condomini, requesting them to pay their share. Where costs serve both garages and dwellings (namely electricity bill), David Bunn apportions them between garage owners and dwelling owners in a 40:60 ratio. Where the cost is incurred for the exclusive benefit of a particular garage or dwelling owner (namely a garage who draws electricity from the common meter), said owner is requested to pay the entire cost.

David Bunn declared that, on various occasions, he discussed with defendant this issue of cost allocation, and defendant always insisted on paying only GBP10 per month for common expenses, as he was promised during his purchase negotiations with plaintiff.

In his cross-examination, David Victor Bunn confirmed that plaintiff was never appointed an administrator of the block, although she attends to its general administration. Whenever a new procurement contract is required, she presents it in a general meeting, but there has never been a formal agreement about these expenses. He declared that the condomini have not met in a meeting for two or three years because agreement was impossible. He denied ever paying a fixed monthly fee for the common services and parts. He said that he always paid a *pro rata* share of the total expenses, apportioned on the basis of the number of units, and not their size.

In re-examiantion, David Victor Bunn declared that the disagreements about the apportionment of the costs of the common parts were always raised by defendant only. He disputed both the *quantum* of the expenses, as well as its apportionment. The witness declared to have himself drafted an assocation agreement to settle the way to proceed. It was discussed at a meeting, but defendant objected because of the proposed allocation of costs, and the agreement was never formalised. David Bunn further declared that *'On various occasions I asked Mr Hover to provide me with the method of apportionment of costs which he was recommending but he never got back to me. He said that he will do that but he never did. At some point in time we had discussed his suggestions that the apportionment of costs be made on the basis of the area of the tenements and not the number of the tenements but actually he never came back to us saying that he would agree even with that method of apportionment ... I agree that the owners of the four dwelling houses and the two villas except for Mr Hover agree that the apportionment of the costs relative to these tenements should be apportioned among six. The basis for apportioning the costs between six is that we share and enjoy these common parts equally and among us the six owners of the six tenements'* (fol.127). In so far as the apportionment of costs between dwellings and garages in the 60:40 ratio is concerned, David Bunn declared this *ratio* to be his own best guess.

Having seen David Victor Bunn and his wife's deed of acquisition (fol. 71 *et seq.*) of their villa and lock-up garage, named 'The Orchids', forming part of the development named 'Julian's Place', in Triq Ivo Muscat Azzopardi, St Julians.

Having seen the receipts for common expenses and the statements with costs' apportionment (fol. 80-89) which David Victor Bunn exhibited with his Sworn Declaration.

Having heard defendant **Peter Hover**'s testimony during the sitting held on 23rd November 2016 (fol.95-96) in which he declared to own maisonette number 4, in this complex, consisting of four maisonettes and two villas. He said that his unit is a maisonette, which he acquired for €270,000, whilst the villa was sold for €500,000. He

said that plaintiff owns one villa and one maisonette, and that the garage complex includes thirteen (13) garages, although it is described as comprising eleven (11) garages.

Defendant declared that this condominium is not yet registered at the Land Registry, and that plaintiff was neither appointed, nor is she registered, as an administrator. He confirmed, however, that meetings are held to discuss complaints, including his complaints regarding the billing for cleaning of private terraces which was included in the condominium bills.

Defendant declared that the accounts were never approved, and that Mr Bunn simply puts in the figures which he receives from plaintiff. He claimed that condomini are never consulted about these expenses. He said that he had complained about the gardener's €90 monthly expense, when he was not doing a good job, and then that expense was halved, when the gardener was supposed to have been engaged through a contract.

Defendant further claimed that Mr Bunn had prepared two sets of accounts, the second set showing lower amounts than the first set.

Regarding the condominium's registration, defendant denied that this was never done because of his opposition. He said that he was never cited in arbitration proceedings in that regard, and that plaintiff was in confusion about the procedure to follow for that purpose. According to defendant, they had discussed his proposal of apportioning costs according to the areas and values of the different units, but had not come to an agreement.

In so far as payment contributions are concerned, Peter Hover declared to have paid the monies which plaintiff requested from him up till 2012, and that from then onwards, he only paid her €23 per month for common expenses.

Having seen defendant's detailed Affidavit (fol.105 *et seq.*), in which he gave his version of facts, in response to the testimonies given in the course of this case, particularly plaintiff's, and David Victor Bunn's, testimonies.

In his cross-examination, defendant **Peter Hover** confirmed that, in virtue of clause 7.2 of his deed of acquisition, he undertook to pay his *pro rata* share of the maintenance and upkeep of the condominium, and that plaintiff took care of the maintenance and upkeep of the common parts of the complex.

With regard to the private terraces which he alleged were being cleaned at the condomini's expense notwithstanding their belonging exclusively to particular dwellings, defendant said that these are situated at the back of the maisonettes.

With reference to his complaint about the electricity consumption of a garage at the expense of all condomini, defendant said that his complaint refers to garage number 13, which was previously without number.

Defendant confirmed that there is communal lighting which lights up the passageways to the individual garages, that there is a functioning electrical gate which serves all owners of the garages, and that he owns a garage space.

With regard to the expenses of the common parts of the garages, defendant declared that he had initially paid the requested contribution, and then decided to stop and pay only the equivalent of LM10 per month. Defendant insisted that plaintiff had so informed him at the outset.

Defendant confirmed that an association agreement was proposed, but he did not agree with it, as he objected to the proposed method of apportionment of costs – he insisted that costs should not be apportioned merely on the basis of number of units, but on their respective area. Defendant declared that plaintiff could have proceeded nevertheless with the association agreement, as she had a majority in favour.

Having heard the final oral submissions of the counsels for both parties.

Considers that:

Before examing the merits of plaintiff's claims and defendant's pleas, this Tribunal must consider and decide on the preliminary plea which defendant raised concerning the lack of competence of this Tribunal to hear and determine this dispute. Defendant argues that the law has transferred the necessary powers to hear and determine this dispute to the arbitration tribunal.

Article 11(5) of the **Condominium Act** provides that *'**Any condominus** who feels that his share in respect of such expenses **is not fair considering the value of his ownership rights in the condominium** may refer the matter to arbitration'*. In so far as arbitration proceedings are concerned, **Article 26** of this law stipulates that *'In any dispute that in accordance with this Act is to be or may be referred to arbitration, the rules contained in the Arbitration Act or made thereunder relating to mandatory arbitration shall apply'*. **Article 30** then provides that *'in matters which in accordance with this Act may be or are to be referred to arbitration, no court shall intervene or have jurisdiction except where so provided by the said Arbitration Act'*.

In this case, defendant has been claiming for years that the contribution which plaintiff is requesting from him for the common parts' upkeep is excessive, and not fair, on the basis of **article 11** of the **Condominium Act**. This notwithstanding, there is no evidence that he proceeded to arbitration to have this contestation determined, as the law empowers him to do in terms of **article 11(5)** of the **Condominium Act**. Nor is there proof that he proceeded in Court in that regard, as he may have done, considering that **article 11(5)** of the **Condomium Act** allows the condominius the benefit of choosing the forum for determining such dispute (*'may refer the matter to arbitration'*).

In the circumstances, this Tribunal must therefore consider whether, in defendant's failure to proceed to arbitration for the determination of this dispute, the

arbitration tribunal is nevertheless still vested with exclusive competence to hear and determine plaintiff's demand for payment.

Mandatory arbitration is exceptional to the general competence vested in the ordinary courts over all disputes of civil and commercial nature. The ordinary courts are the superior and inferior courts listed respectively in **articles 3** and **4** of the **Code of Organisation and Civil Procedure** (Chapter 12 of the Laws of Malta). This Tribunal is also a special tribunal, the competence whereof is exceptional to the general residual competence of the ordinary courts, as stipulated in the Small Claims Tribunal Act (Chapter 380 of the Laws of Malta). In so far as the competence of mandatory arbitration and this Tribunal is special, and so exceptional to the general competence of the ordinary courts, its scope emanates from the relevant special law, and is to be interpreted strictly.

In the judgment **Joseph Bonello et vs Edgar Ellul et**[2], this Tribunal (as differently composed) considered at length whether a condominus' claim for payment against other condomini, in respect of works carried out in their common interest, fell within the scope of competence of this Tribunal, or whether its determination falls within the exclusive competence of the Arbitration Tribunal.

This Tribunal is wholly in agreement with the legal interpretation which this Tribunal (as differently composed) gave to the relevant provisions in said judgment **Bonello et vs Ellul et**. In this case, the Tribunal considers plaintiff's claim to be a money claim, falling within its exclusive competence. The law allows defendant the right to to file mandatory arbitration proceedings for determining whether the share which plaintiff has been requesting him to pay for the past years, in settlement of his contribution for the expenses of the maintenance and services in the common parts, is fair and correct, or excessive, in terms of the applicable law. Defendant has opted not to avail himself of that right. The determination of said dispute is however not reserved exclusively to mandatory

[2] 24.10.2006 (*res judicata*)

arbitration, so this Tribunal may[3] also consider the corresponding defence which defendant raised against plaintiff's claim in this particular case.

Defendant's preliminary plea of the lack of competence of this Tribunal to determine plaintiff's claim is therefore unfounded in law, and is being rejected.

On the merits, plaintiff and David Victor Bunn, who assists her in the computation and partitioning of expenses which she incurs in the interest of all units, and condomini, explained clearly how all expenses benefiting the residential units are split up in equal shares between six (6) units – two villas and four maisonettes – whilst the expenses benefiting the garages are split up in equal shares between all thirteen (13) garages. Where the expenses benefit both units and garages, they are equitably split up between them in a 60:40 ratio.

The parties are in agreement that, throughout the period in contestation, defendant has paid a monthly contribution of €23 in settlement of his share of the expenses incurred for the benefit of his maisonette and garage in the condominium.

Plaintiff contends that defendant owes her the claimed amount, in addition to said contribution, to settle his *pro rata* share (1/6 of expenses benefiting the residential units, and 1/13 of expenses benefiting the garages) of all common expenses, as he undertook to do in his deed of acquisition (clause 7.2). The defences on the merits which defendant raised to oppose this demand on the merits can be summarised as follows: (i) plaintiff has no *locus standi* to demand said payment, because the condominium is not registered, and she is not the registered administrator of the condominium as stipulated in the **Condominium Act** – consequently, her demand in this case necessitates the presence of all condomini in this suit; and (ii) plaintiff's computation of defendant's share of the expenses is erroneous, because the requested share does not reflect an apportionment on the basis of the different values of the dwellings in the condominium.

[3] Vide Art. 11(5) of the **Condominium Act** ('may')

In so far as plaintiff's position and rights vis-à-vis defendant are concerned, plaintiff accepts that she was never formally appointed as administrator of the condominium. She was however the original developer of this condominium, and continued to carry out the necessary repairs, maintenance and upkeep of the common parts, at her own expense, as she used to do when she still owned all the newly-developed separate units. Plaintiff and David Victor Bunn explained that all the other condomini (save for defendant) have always settled their respective shares of these expenses, and therefore there was no reason to join them in this suit, or to involve them in any manner in the dispute currently pending between plaintiff and defendant.

On his part, defendant does not contest in principle that plaintiff takes the trouble, and pays herself, for the upkeep and maintenance, and for the provision of the necessary services, required in the common parts of the condominium. He laments however that, in so doing, plaintiff does not consult him, or does not attend to his objections.

In regulating the apportionment of costs incurred for the upkeep and maintenance of the common parts of a condominium, **Article 11** of the **Condominium Act** does not restrict the right of claiming payment to the administrator of the condominium. Furthermore, while **article 16(1)(c)** of the **Condominium Act** lists this right to apportion common costs, and collect contributions from the condomini, as one of the functions of the administrator, the law nowhere precludes a condominus, who is not a registered administrator, from demanding reimbursement against the other condomini partaking in the benefits which such costs would have afforded to the condominium, and its enjoyment. In this latter scenario, the relationship is a normal civil law creditor-debtor relationship, and the presence in the suit of the other condomini (debtors) who have already settled their individual contributions is not necessary.

In sustenance of these pleas, defendant cites the ruling of the Court of Appeal (Inferior Jurisdiction) in the judgment **MTMW Limited vs Panor Limited et**[4]. The Tribunal is however of the view that the Court's reasoning, and ruling, in said judgment,

[4] 27.2.2009

are absolutely irrelevant for determing this demand. In that judgment, the Court considered the responsibility of the condomini to share in the extraordinary expense for the substitution of the uppermost ceiling of the block. The roof and its overlying airspace belonged to plaintiff company, who owned also the uppermost apartment, and defendants were allowed to use and enjoy the roof.

The Tribunal therefore rules that the second, fifth, sixth, seventh and eighth pleas which defendant raised in his Reply are unfounded in law and in fact.

In his remaining pleas, defendant contends that plaintiff's apportionment of costs is erroneous, and violates **article 11(1)** of the **Condominium Act** to his prejudice, because plaintiff has partitioned the costs equally among the owners of the dwelling units, notwithstanding that these comprise two villas and four maisonettes.

Plaintiff does not contest that the dwellings in this condominium are two villas, and four maisonettes, and that she sold David Victor Bunn's villa[5] for almost double the prive of defendant's maisonette[6], but contends that defendant has undertook to pay an equal contribution to all the other dwellings, irrespective of their nature and market value. This obligation is stipulated in clause 7.2 of defendant's deed of acquisition, which reads that *'The Purchaser undertakes to pay his pro rata share of the maintenance and upkeep of the said condominia* [dwellings and garages]*'*.

The Tribunal notes that defendant's deed of acquisition does not define *'pro rata share'*. Although the Tribunal does not exclude that plaintiff, in good faith, and possibly in ignorance of the law, presumed that *'pro rata'* necessarily denotes equal apportionment among all condomini, the law has opted to follow the Italian model[7] in this regard, and adopted the criterion of <u>value</u>, rather than <u>number</u>, as the relevant factor for apportioning costs for the common parts (**art. 11(1)**, **Condominium Act**) where the parties do not agree otherwise. Had the parties agreed on an equal apportionment among

[5] Fol. 74
[6] Fol. 11
[7] **Art. 1123**, Codice Civile Italiano

dwelling units, they should have expressly stipulated it in the deeds of acquisition. This is however not the case. Even if all the other condomini have come to accept this method of apportionment, there is no sufficient evidence, on a balance of probabilities, that they had effectively so agreed. Therefore, plaintiff should have apportioned the costs she incurred for the advantage of the common parts, and the benefit of condomini, according to the value of the unit of each respective condominus.

With regard to the apportionment of costs incurred for the common benefit of the condomini of garages, and the condomini of the dwellings alike, the Tribunal considers that the same method of apportionment, based on the value of the separate units, should apply, in terms of the aforecited applicable provision. In this claim, there is no clear identification of said expenses, and how they figure in the statement of apportionment on which plaintiff's demand is based.

Plaintiff declared, and defendant agrees, that she has already received the sum of €1,093.77c from defendant, in partial settlement of his share of the common parts expenses incurred between January 2012 and April 2015. In computing his share, plaintiff has included his 1/13th share of electricity expenses for the common parts serving exclusively the garages, totalling to **€337.89c**. No evidence was produced showing that the garages have different market values, and therefore this apportionment is legally correct. The remaining expenses, entitled *'Intercom repair expenses'* and *'Upkeep of Property'* relate to the common parts serving the dwelling units, which plaintiff thus divided equally among six units, two of which have twice the value of the remaining four units. In terms of **article 11(1)** of the **Condominium Act**, these costs should have been apportioned in the ration 7:1, in so far as defendant is concerned, and therefore his share of these expenses amounts to **€926.35c**. Therefore, defendant's total contribution for the period between January 2012 and April 2015 amounts to €1,264.24c, with an outstanding balance in favour of plaintiff of €170.47c.

The defendants contests also the individual expenses which plaintiff has incurred, including the gardening expenses, alleging also that she has included in the common

costs some expenses which she made in her exclusive interest, and for her personal benefit. After considering plaintiff's testimonies, and the evidence of David Victor Bunn, a third party in this dispute, and the lengthy depositions, verbal and in writing of defendant, the Tribunal is of the view that defendant has not proved, on a balance of probabilities, the veracity of said allegations. No other condominus confirmed said allegations; on the contrary, it is very clear that the administration of this condominium has not yet been formalised, in terms of law, because of defendant's persistent oppositions, and his choice not to pursue such contestations for final determination in terms of law.

For the aforementioned reasons, the Tribunal thus decides this case, rejecting all defendant's pleas except his ninth and eleventh plea, and whilst upholding said pleas, upholds only partially plaintiff's demand, and condemns defendant to pay in favour of plaintiff the sum of one hundred and seventy Euro and forty seven cents (€170.47c).

In view of the legal issues involved, either party shall bear his/her own costs.

Advocate Phyllis Aquilina LL.D.
ADJUDICATOR