



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 30 ta` Jannar 2018

Kawza Nru. 2  
Rik. Gur. Nru. 766/10/2 JZM

CISSA Limited (C-36023)

*kontra*

Madliena Village Limited (C-2702)

Il-Qorti :

### I. Preliminari

Rat ir-rikors gumentat ipprezentat fid-29 ta` Lulju 2010 li jaqra hekk :-

*Illi fl-1 ta` Lulju, 2005, il-kontendenti kkonkludew bejniethom att ta` konvenju (Dok. A) fl-atti tan-Nutar Dottor Pierre Attard li in forza tieghu s-socjeta` intimata (ga Town Investments Limited) obligat ruhha li tbiegh u tittrasferixxi lis-socjeta` esponenti li, min-naha taghha, intrabtet li tixtri u takkwista l-garaxx (lock-up) internament immarkat bin-numru 1 fil-kumpless ta` garaxxijiet maghruf bhala "70s" tal-kumpless maghruf bhala Madliena Village (ga Busietta Gardens), Triq il-Fortizza, Madliena, limiti tal-Gharghur ; u*

*Illi l-imsemmi konvenju (Dok. A) skada fl-1 ta` Lulju, 2010 ; u*

*Illi s-socjeta` intimata, minkejja li giet interpellata sabiex tersaq u taddivjeni ghall-pubblikazzjoni tal-att finali notarili relattiv, anke permezz ta` ittra gudizzjarja datata 27 ta` Mejju, 2010, u debitament notifikata lilha, skont kif jirrizulta mill-annessa kopja legali tal-istess li qed tigi hawn esebita u mmarkata bhala Dok. B, naqset milli taghmel dan ; u*

*Illi ma tissussisti ebda raguni valida fil-ligi ghaliex is-socjeta` intimata m`ghandhiex taddivjeni ghall-kuntratt finali fuq imsemmi.*

*Tghid, ghalhekk is-socjeta` intimata ghaliex din l-Onorabbli Qorti m`ghandhiex :-*

*1. Tikkundannaha sabiex tidher u taddivjeni fuq il-pubblikazzjoni tal-att notarili relattiv ghall-bejgh ta` garaxx (lock-up) internament immarkat bin-numru 1 fil-kumpless ta` garaxxijiet maghruf bhala "70s" tal-kumpless maghruf bhala Madliena Village (ga Busietta Gardens), Triq il-Fortizza, Madliena, limiti tal-Gharghur, kif ahjar deskritt fl-istess konvenju Dok. A ; u*

*2. Konsegwentement, tinnomina nutar sabiex jippubblika l-att finali notarili relattiv ghall-imsemmi bejgh u kuraturi deputati sabiex jirraprezentaw l-eventwali kontumaci fuq l-istess att.*

*Bl-ispejjez inkluzi dawk tal-ittra gudizzjarja datata 27 ta` Mejju, 2010, kontra s-socjeta` intimata li hi minn issa ingunta in subizzjoni.*

*Rat il-lista tax-xhieda u l-elenku ta` dokumenti.*

*Rat ir-risposta guramentata pprezentata fit-22 ta` Novembru 2010 li taqra hekk :-*

*Illi t-talbiet tas-socjeta` rikorrenti Cissa Limited huma infondati fil-fatt u fid-dritt u ghandhom jigu respinti bl-ispejjez kontra l-istess socjeta` intimata, u dan ghas-segweni ragunijiet :*

1. *Illi preliminarjament, l-azzjoni giet intavolata fuori termine u dan peress li giet ipprezentata wara li skada t-terminu ta` tletin gurnata mill-prezentata tal-ittra ufficjali tas-27 ta` Mejju 2010.*

2. *Illi subordinatament u minghajr pregudizzju ghas-suespost, is-socjeta` rikorrenti ghandha ggib prova li l-konvenju mertu ta` dawn il-proceduri gie debitament registrat.*

3. *Illi subordinatament u minghajr pregudizzju ghas-suespost, it-talba tas-socjeta` rikorrenti hija intempestiva stante li ai termini tal-artiklu 8.1 tal-konvenju, is-socjeta` intimata ma tistax tigi interpellata sabiex taddivjeni ghall-pubblikazzjoni tal-kuntratt finali ta` bejgh qabel ma jigu revokati l-mandati ta` inibizzjoni elenkati fl-imsemmija klawsola, uhud mil-liema mandati ghadhom sal-lum pendenti.*

4. *Illi fil-mertu u minghajr pregudizzju ghas-suespost, il-proprjetajiet mertu tal-konvenju kellhom jigu trasferiti lis-socjeta` rikorrenti bhala parti mill-prezz ta` trasferiment ta` ishma fil-kumpannija Town Investments Limited li sar lis-socjeta` intimata permezz ta` ftehim li jgib l-istess data tal-1 ta` Lulju 2005, u l-imsemmija proprjetajiet flimkien ma proprjetajiet ohra mertu ta` zewg konvenji ohra, gew identifikati bhala "security properties" fuq il-ftehim ta` trasferiment tal-ishma tal-kumpannija Town Investments Limited, u kellhom iservu bhala garanzija ghas-socjeta` intimata ghat-twettiq tal-obbligi u l-garanziji li nghataw fl-att ta` trasferiment tal-ishma. Sal-lum il-gurnata hemm numru ta` pendenzi li ghadhom mhumix rizolti u ghaldaqstant ma jistax jigi infurzat il-konvenju mertu ta` dawn il-proceduri odjerni, kif se jigi ppruvat fis-smigh tal-kawza.*

5. *Salv eccezzjonijiet ulterjuri.*

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

**Rat li l-ewwel eccezzjoni kienet irtirata fl-20 ta` Jannar 2011 quddiem din il-Qorti diversament presjeduta.**

**Rat is-sentenza li tat din il-Qorti diversament ippreseduta fis-27 ta` Jannar 2012 fejn cahdet it-tielet eccezzjoni, bl-ispejjez kontra s-socjeta` konvenuta. Minn din id-decizjoni, sar appell.**

**Rat is-sentenza li tat il-Qorti ta` l-Appell fil-31 ta` Mejju 2013 fejn kienet ikkonfermata s-sentenza ta` din il-Qorti diversament presjeduta tas-27 ta` Jannar 2012, bl-ispejjez kontra s-socjeta` konvenuta.**

**Rat illi l-kawza kienet assenjata lil din il-Qorti kif presjeduta fl-24 ta` Jannar 2014.**

Semghet ix-xiehda u rat il-provi l-oħra li tressqu fil-kors tal-kawza.

Rat id-digriet li tat fl-udjenza tal-25 ta` Mejju 2017 fejn halliet il-kawza għas-sentenza għal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat illi s-socjeta` attrici ma pprezentatx nota ta` osservazzjonijiet.

Rat in-nota ta` osservazzjonijiet li pprezentat is-socjeta` konvenuta.

Rat l-atti l-oħra tal-kawza.

## **II. Xiehda**

### **1. Persuni li xehdu fil-kawza tal-lum**

**Nutar Dottor Marco Burlo** xehed illi huwa għamel ricerki bhala parti mis-servizzi professjonali tiegħu rizzultat ta` kuntratt ippubblikat fl-atti tiegħu fis-7 ta` Dicembru 2010. Bis-sahha ta` dan il-kuntratt, is-socjeta` konvenuta ttrasferiet proprjeta` lis-socjeta` Fair View Property Limited. Huwa għamel ricerki fuq is-socjeta` konvenuta li qabel kien jismha Town Investments Limited u fuq Busietta Gardens Madliena Limited. Kienu ricerki mhux ufficjali (*on line*). Mir-ricerki rizzulta li kien hemm xi mandati ta` inibizzjoni illi kienu għadhom ma gewx revokati meta kien ippubblikat il-kuntratt. Qal li huwa seta` jippubblika l-kuntratt peress li kienu eskluzi l-proprjetajiet milquta minn dawn il-mandati. Il-mandati ta` inibizzjoni li kienu għadhom ma gewx revokati huma : (i) Nru 2917/1999 fl-ismijiet Paul Abela et vs Busietta Gardens Madliena Limited ; (ii) Nru 3151/2000 fl-ismijiet Hamdi Abdul Al-Tulti vs Busietta Gardens Madliena Limited ; (iii) Nru 852/2004 fl-ismijiet Paul Abela et vs Busietta Gardens Madliena Limited ; u (iv) Nru 342/2010 MAC Properties Limited vs Madliena Village Limited.

**Paul Caruana** xehed illi huwa ghandu r-rappresentanza tas-socjeta` attrici bis-sahha ta` rizoluzzjoni datata 1 ta` Mejju 2010.

Xehed illi l-partijiet fil-kawza tal-lum iffirmaw konvenju fl-atti tan-Nutar Dottor Pierre Attard li permezz tieghu, il-konvenuta obligat ruhha u accettat li tbiegh u tittrasferixxi lill-attrici garaxx tat-tip *lock up* internament markat bin-numru 1 fil-kumpless ta` garaxxijiet maghruf bhala “70`s” fil-kumpless maghruf bhala Madliena Village, Triq il-Fortizza, Madliena, limiti tal-Gharghur.

Spjega li l-konvenju kien ghal zmien hames snin u ghalq fl-1 ta` Lulju 2010.

Qal illi permezz ta` ittra ufficjali tas-27 ta` Mejju 2010, il-konvenuta kienet interpellata sabiex tersaq ghall-pubblikazzjoni tal-kuntratt tal-garage in kwistjoni izda l-konvenuta rrifjutat minghajr ebda raguni. Ghalhekk kellha ssir din il-kawza.

Stqarr illi l-konvenuta m`ghandha l-ebda dritt tirrifjuta li tersaq ghall-kuntratt relattiv peress li l-allegazzjonijiet taghha mhumiex korretti. Il-konvenju huwa soggett biss ghall-kondizzjonijiet li hemm elenkati fl-istess konvenju. Fil-fatt il-kundizzjonijiet biex isir il-kuntratt kollha avveraw ruhhom u ghalhekk il-kuntratt seta` jsir.

**Fil-kontroezami**, ikkonferma li huwa kien xtara proprjetajiet minghand Town Investments Limited u kien prezenti waqt li kien qed isir il-ftehim. Il-garage de quo kien indikat bhala *security property* fuq *is-share sale and purchase agreement*. Qal li sar hekk minhabba li meta akkwista, Andrew Cross kien ghad kellu dejn mal-kuntratturi u ma` certu nies. Ghalhekk din il-proprjeta` thalliet bhala garanzija sakemm jithallsu l-kontijiet. Dawn fil-fatt thallsu qabel il-hames snin u l-konvenuta baqghet qatt ma resqitx ghall-att tal-bejgh.

Stqarr illi huwa diga` ghandu l-pussess tal-garage.

Qal illi Paul Abela kien kuntrattur u kellu jigbor xi flus. Qal li kien hemm djun fuq il-kumpless kollu. Id-dejn ma` Paul Abela ma kienx dovut minn Cissa Limited. Id-dejn thallas.

Sostna li meta saret il-kawza, il-mandat ta` inibizzjoni kien ghadu ma tnehhix.

Huwa kkonferma li l-konvenju kien debitament registrat mal-Kummissarju tat-Taxxi Interni.

**In-Nutar Pierre Attard** xehed li kien sar konvenju bejn Town Investments Limited u Guido Mizzi, li wara assenja d-drittijiet tieghu lil Madliena Village Limited. Bis-sahha ta` dan il-konvenju, kwantita ta` appartamenti u garaxxijiet kif ukoll partijiet komuni u diretti dominji fil-kumpless maghruf bhala Busietta Gardens, il-Madliena, kellhom jinbieghu minn Town Investments Limited lil Madliena Village Limited. Wara li ggedded il-konvenju, flimkien ma` negozjati ohra, sar ftehim li bis-sahha tieghu Madliena Village Limited kellha takkwista l-ishma kollha tal-kumpannija Town Investments Limited b`dana li qabel ma jigu trasferiti l-ishma tal-kumpannija, numru ta` appartamenti u garaxxijiet fil-kumpless kellhom jigu trasferiti lill-kumpannija ta` Adrian Busietta sabiex jibqghu tieghu ; ohrajn kellhom jigu trasferiti lil terzi.

Kompla jixhed illi fl-1 ta` Lulju 2005, huwa flimkien man-Nutar Marco Burlo, l-avukati tal-partijiet u l-partijiet iltaqghu fit-8.30 am ta` filghodu u baqghu sejr in sa ftit qabel nofs il-lejl sabiex ikkonkludew il-kuntratti u l-konvenji kollha sabiex jaghlqu t-transazzjoni u kif ukoll it-trasferiment ta` l-ishma.

Stqarr illi min-noti tieghu saru s-segweni : *cancellation crown advertising* ; bejgh minn Town Investments Limited lil AWB, lil Mac Properties Limited, TJC Limited, Cissa Limited, lil Dorey u lil Brincat ; u konvenji minn Town Investments Limited lil AWB, lil Mac Properties Limited, lil Cissa Limited u lil Bajada. Sar ukoll bejgh minn Tamara lil Town Investments Limited u bejgh minn Town Investments Limited lil Martinique. Sar ukoll *share transfer agreement, cancellation rainbow, cancellation baumer, cancellation Joseph Sammut Company Limited, self ta` Town Investments Limited* minghand Bank of Valletta u terminazzjoni tal-konvenju originali.

Kompla jghid li l-konvenji li saru bejn Town Investments Limited u AWB Limited, Mac Properties Limited u Cissa Limited saru peress li l-kuntratti finali ma setghux jigu pubblikati dakinhar billi kien hemm kawzi pendenti u/jew mandat li jzommu t-trasferiment tal-proprjeta`. Il-konvenji gew iffirmati bil-kundizzjoni li l-obbligu ta` Town Investments Limited li tbiegh kien soggett li jaqghu dawn l-impedimenti legali. Il-prezz tal-proprjeta` mweghda bis-sahha tal-konvenji kellu jkun pajcut kontra somom ekwivalenti dovuti minn Town Investments Limited lil AWB Limited, Mac Limited u Cissa Limited. Fil-fatt Adrian Busietta kien assenja l-krediti dovuti lil minn Town Investments Limited lil AWB Limited, Mac Limited u Cissa Limited u ghalhekk il-prezz kellu jigi pajcut kontra dak id-dejn.

Qal li l-iskop tal-konvenji kien sabiex kif jitnehhew l-impedimenti legali, il-proprjetajiet in kwistjoni jigu trasferiti lill-kumpraturi relattivi minghajr diffikulta`. Ikkonferma li l-proprjetajiet imsemmija fil-konvenji ma kellhomx ikunu fil-patrimonju tal-kumpannija li dwarha gew trasferiti l-ishma u cioe` gew eskluzi mill-proprjeta` ta` Andrew Cross jew tal-kumpanniji tieghu.

Kompla jixhed illi fl-1 ta` Lulju 2005, wara li kienu ppubblikati l-kuntratti ta` bejgh sabiex jinharu xi appartamenti u garaxxijiet minn Town Investments Limited u wara li gew iffirmati l-konvenji tal-proprjetajiet li dwarhom ma setax isir il-bejgh dakinhar, sar ukoll *share transfer agreement*, kancellamenti ta` ipoteki/privileggi u kuntratt ta` self ta` Town Investments Limited mal-Bank of Valletta. B`konsegwenza ta` l-istess, kien hemm ukoll xi terminazzjoni ta` konvenju li kien sar precedentement.

Qal illi kien hemm hafna nies involuti fil-kuntratti, apparti nutara differenti u avukati differenti. Ix-xoghol inqasam bejniethom. Huwa ma kienx involut fis-*share transfer agreement* li sar fil-5 ta` Lulju 2005 ghalkemm ighid li ra l-ftehim.

**Adrian Busietta** xehed li parti mill-ftehim ma` Andrew Cross kien li s-socjeta` rapprezentata minnu tircievi proprjeta` minn Madliena Village Limited. Huwa kkonferma li l-proprjeta` soggetta ghall-konvenju nzammu minn Madliena Village Limited sakemm l-obbligazzjoni tal-ishma jigu attwati. Huwa ma kkonfermax illi Town Investments Limited kellha ammont sostanzjali ta` dejn. Ikkonferma li l-bank kellu jiehu flus minn din il-kumpannija kif ukoll Paul Abela kellu jiehu flus minghand Town Investments Limited.

**Av. Dr. Alex Perici Calascione** xehed illi huwa kien jahdem fl-ufficcju legali Emmanuel Mallia & Associates. Ghal xi zmien Adrian Busietta kien klijent tal-ufficcju. Qal illi hu u l-kollega tieghu Av. Dr. John Cremona kellhom l-inkariku li jittrattaw mal-Bank of Valletta dwar numru ta` facilitajiet li kien nghataw matul is-snin. Waqt it-trattativi mal-bank, ipprezenta ruhu Andrew Cross li ddikjara li kien lest jaghmel offerta ghall-akkwist tal-ishma kollha tal-Madliena Village. Spjega li kienu saru diversi kuntratti u kien hemm involuti diversi professjonisti. Qal li kienu nqalghu hafna affarijiet fl-ahhar minuta bhal meta jitfaccja xi kreditur jew isseh problema bit-tifel ta` Busietta.

Ikkonferma li Cross akkwista l-ishma ta` Busietta Gardens Madliena Limited li mbaghad wara saret Madliena Village Limited. Qal li l-idea kienet li kellhom jigu estrapolati numru ta` units li kellhom jibqghu ta` Busietta. Qal li l-maggor parti kien hadhom il-bank biex gew kancellati l-ipoteki. Minhabba kunsiderazzjonijiet ta` natura fiskali, kien miftiehem li jsiru konvenji fit-tul u

mbaghad wara jsir li jkun hemm bzonn, u jkun hemm it-trasferiment favur il-familja Busietta. Qal li l-proprjetajiet partikolari kienu estrapolati minn mal-massa ta` proprjeta` li kien baqa`. Il-proprjetajiet kienu parti mill-korrispettiv tal-bejgh tat-trasferiment. Andrew Cross ma hallasx ghal dawk il-hames proprjetajiet li kien sar konvenju fuqhom.

Qal li n-nett li kellu jibqa` ghand Cross kienu l-proprjetajiet kollha neqsin dawk il-hames proprjetajiet. Ghalhekk Cross la kellu jhallas u lanqas jithallas bi proprjetajiet. Jiftakar li kien hemm Pawlu Abela li kellu jiehu ammont ta` flus. Ikkonferma li kien numru ta` *unsecured creditors* u mandati.

Fil-**kontroezami** stqarr illi kienu saru l-konvenji minhabba xi kwistjoni fiskali mhux minhabba xi garanzija ghall-obbligi assunti minn Cross. Kienet qamet kwistjoni fuq xi trejqa u jekk kinitx tappartjeni lil Busietta izda tali kwistjoni ma kellhiex x`taqsam mal-fatt li saru l-konvenji.

**Michael James Bennett** xehed li Andrew Cross akkwista l-ishma ta` Town Investments Limited f`Lulju 2005. Il-garaxx in kwistjoni kien intuza bhala garanzija li ma kienx hemm ammonti ohra dovuti mid-diretturi. Spjega li kien hemm xi mandati u kien miftiehem li t-tnehhija taghhom kellha ssir mid-diretturi ta` qabel. Qal li nghataw hames snin biex jitnehhew dawn il-mandati izda meta ghaddeu il-hames snin, il-mandati kienu ghadhom fis-sehh. Spjega li Cissa Limited kienet interpellat biex jidher fuq il-kuntratt ta` bejgh ta` dan il-garaxx, izda dan ma setax isehh minhabba l-mandati ta` inibizzjoni vigenti.

Qal li Andrew Cross issellef flus minghand kumpannija tieghu bl-isem ta` Fiscal Resources Management Incorporated sabiex jakkwista dawn l-ishma. Din il-kumpannija tinsab registrata fil-Panama. Qal li huwa wasal Malta fl-2008 u sab persuna li kienet lesta li takkwista l-kumpless ta` Madliena. Ghalhekk, setghu jithallsu l-kredituri u huwa pprova jsolvi l-problemi li kien hemm. Spjega li huma kellhom ihallsu kredituri li ma kinux thallsu mid-diretturi ta` qabel fosthom id-Dipartiment tat-Taxxi Interni. Qal li kien hemm kwistjoni ohra dwar bicca art li l-Gvern kien qed jallega li kien hemm biss *encroachment*. Qal li kien hemm diversi kredituri li ma gewx msemmija fis-*share sale*.

Ikkonferma li l-mandati ta` inibizzjoni tnehhew ghalkemm huwa ma jistax jikkonferma jekk effettivament il-kredituri gewx saldati. Qal li kellhom ihallsu ammont ta` taxxa li kienet dovut peress li fin-nuqqas ma setax isir il-bejgh tal-kumpless. Qal li l-proprjeta indikata fil-konvenji kienet proprjeta` li d-diretturi ta` qabel riedu jzommu ghalihom. Ikkonferma li l-proprjeta` ma gietx moghtija lid-diretturi ta` qabel f`Lulju 2005 propju ghaliex kien ghad hemm il-mandati ta` inibizzjoni fis-sehh.



**Fil-kontroezami**, xehed li l-azzjonisti ta` Town Investments Limited kienu Maria Carmela Caruana u Adrian Busietta. Dawn bieghu l-ishma ta` Town Investments Limited lil Andrew Cross. Qal li xi proprjeta` kellha tibqa` ghand il-familja Busietta u ma setax isir il-kuntratt ta` bejgh immedjatement minhabba xi mandati ta` inibizzjoni. Huwa sahaq li jekk isir il-kuntratt ta` bejgh, fil-konvenju ta` l-appartamenti hemm innizzel li l-prezz ghandu jkun ta` Lm 75,000. Stqarr li ma hemmx flus dovuti minn Cissa Limited.

Zied jghid li ma hemmx obbligu li jersaq ghal kuntratt finali ghaliex il-konvenju skada u qatt ma gie estiz. Ikkonferma li kien prezentat att gudizzjarju. Qal li meta tnehew il-mandati ta` inibizzjoni, il-kuntratt finali xorta ma setax isir ghaliex kien ghad hemm xi privileggi u ipoteki. Ikkonferma li diversi mill-proprjetajiet gew mibjugha lil Fairview, izda mhux il-proprjetajiet li kienu fuq konvenju mal-familja Busietta.

**Antoinette Polidano** mid-Dipartiment tat-Taxxi Interni – Capital Transfer Duty Division - xehdet li l-konvenju bejn Town Investments Limited u Cissa Limited ta` l-1 ta` Lulju 2005 gie registrat fid-19 ta` Lulju 2005. Meta skada, dan ma regax gie mgdedd. Il-konvenju skada fl-1 ta` Lulju 2010. Wara li ghaddew il-hames snin, ma rrizultax li dan gie mgdedd.

**John Micallef** mid-Dipartiment tat-Taxxi Interni xehed illi Madliena Village Limited kienet precedentement maghrufa bl-isem ta` Town Investments Limited. Il-bdil tal-isem sar f`Awissu 2005. Huwa pprezenta *taxpayers` statement* ta` Madliena Village Limited li juri li ma ghandhiex taghti taxxa. Qal li bhala taxxa fl-2005 kellha taghti EUR 5, kif ukoll EUR 111.66 bhala boll. Fl-2006 kellha taghti EUR 25 bhala taxxa u EUR 16.83 bhala boll. Qal li ma ghandhomx *records* dwar is-sitwazzjoni qabel l-2005. Wara Dicembru tal-2008, ma jidhirx li hadmet izjed nies.

**Marie Angelique Caruana** xehdet illi hija kienet direttament involuta fin-negozjati li wasslu ghat-trasferiment ta` l-ishma tal-kumpannija Town Investments Limited a favur ta` Andrew Cross.

Xehdet illi fl-1 ta` Lulju 2005, sar il-kuntratt ta` bejgh ta` parti mill-appartamenti kollha li kellhom. Hija qalet li ma ghaddewx flus ghaliex huma hadu biss il-proprjeta`. Spjegat li l-avukat tal-kontroparti insista li jinzammu xi appartamenti bhala garanzija minhabba li kien hemm zewg kawzi li kienu ghadhom pendenti. Spjegat li hija ghamlet l-almu taghha sabiex il-kawzi jinqatghu qabel ighaddu l-hames snin. Il-kawzi kienu wahda ma` Pawlu Abela u ohra ma` wiehed Gharbi. Insistiet li l-proprjetajiet inzammu bhala garanzija li jinqatghu dawn iz-zewg kawzi.

Kompliet tixhed illi l-kawza ma` Pawlu Abela kienet saret minhabba li dan ma kienx lesta l-appartamenti fil-hin. Abela kien ghamel kawza ukoll kontra l-kumpanija. Insistiet li hija ma kellhiex taghti lil Abela u li dan kien ivvinta li ghandhom jaghtuh xi flus.

Qalet illi safejn taf hi, meta sar il-ftehim ma` Cross, kollox kien imhallas.

Ikkonfermat illi hi u Busietta assumew ir-responsabbilita` ghal dak li jirrigwarda l-kawzi pendenti ma` Paul Abela.

Sostniet li bhala taxxi, kollox kien imhallas meta l-ishma gew trasferiti lil Andrew Cross. Insistiet li safejn taf hi lanqas kien hemm kredituri ohra li Cross ma kienx jaf bihom.

**2. Id-deposizzjoni ta` persuni li xehdu fil-kawza fl-ismijiet Madliena Village Limited vs Paul Caruana et (Rik. Gur. Nru. 1145/11 SM) u li hija rilevanti ghall-kawza tal-lum**

Kopja tax-xiehda li nghatat fil-kawza kienet prezentata bhala prova fil-kawza tal-lum.

**Paul Caruana** xehed illi Town Investments Limited (illum Madliena Village Limited) kellha bhala azzjonisti lil Adrian Busietta, u Southern Properties Limited kumpanija ta` ommu Mary Caruana. Fl-1 ta` Lulju 2005 l-ishma tal-kumpanija kellhom jinbieghu lil Andrew Cross u s-socjeta` tieghu Madliena International Limited. Town Investments Limited kienet responsabbli ghall-bini tal-kumpless Madliena Village li kien gestit minn Adrian Busietta u ommu Mary Caruana. Ommu kien ilha konvivalenti ma` Busietta ghal aktar minn 35 sena. Wara t-trasferiment tal-ishma, Madliena Village Limited kienet se ssir ta` Andrew Cross.

Spjega li fuq il-ftehim, huwa kien rapprezentat mill-Av. Alex Perici Calascione mentri Andrew Cross kien rapprezentat mill-Av. Henri Mizzi u minn huh l-awditur Gudio Mizzi. Kien inkarikat in-Nutar Pierre Attard sabiex jirredigi l-ftehim li kien ser iwassal ghat-trasferiment tal-ishma ta` Town Investments Limited u ghat-trasferiment ta` diversi proprjetajiet minn Madliena Village Limited qabel isir it-trasferiment tal-ishma. Parti mill-ftehim kien illi AWB Limited, socjeta` ta` Adrian Busietta, kellha tircievi xi proprjetajiet minghand Maldliena Village Limited kif l-istess ghamlet Cissa

Limited, soċjeta` tiegħu u ta` oħtu Tamara Jane Caruana permezz tas-soċjeta` TJC Limited.

Kompla spjega illi l-ftehim kien parti minn pakkett shih pero` waqt li kienu qed isiru r-ricerki ta` *due diligence* rigwardanti t-trasferiment ta` l-ishma ta` Town Investments Limited, irrizulta li Paul Abela kien ipprezenta xi mandati ta` inibizzjoni u privileggi fuq il-penthouse 709/710, Madliena Village, Madliena, u fuq proprjetajiet oħra li s-soċjeta` Mac Properties Ltd. kellha takkwista, kif ukoll fuq il-garaxx li hu kellu jakkwista permezz tas-soċjeta` Cissa Limited.

Qal li kien deciz li jsir konvenju sakemm l-azzjonisti ta` qabel ta` Town Investments Limited u cioe` ommu Mary Caruana u Adrian Busietta jaslu fi ftehim ma` Paul Abela għat-tnehhija ta` l-mandati.

Kompla jgħid illi fl-1 ta` Lulju 2005 sar konvenju li kien redatt min-Nutar Pierre Attard. Mac Properties Limited ftehmte ma` Town Investments Limited biex fost affarijiet oħra hija takkwista l-appartament 709/710 formanti parti minn Block 70 fil-kumpless fuq riferit.

Stqarr illi Mac Properties Limited diga` kellha għandha l-penthouse in kwistjoni peress li l-valur tal-prezz kellu jigi paejut fuq l-att tal-vendita pero` l-flus kienu diga` għand Town Investments Limited, u kienet Mac Properties Limited li kellha tasal fi ftehim ma` Paul Abela biex thallsu tax-xogħol li kien għamel fil-Madliena Village.

Kompla stqarr illi effettivament Mac Properties Limited kienet hallset lil Paul Abela s-somma ta` Lm 180,000. Għal din ir-raguni, il-pussess ta` l-appartament flimkien ma` l-garage li kellu jkun proprjeta` ta` Cissa Limited b`konvenju tal-1 ta` Lulju 2005 redatt min-Nutar Pierre Attard ingħata f`idejn Mac Properties Ltd waqt li l-pussess tal-garaxx ingħata lil Cissa Limited.

Fisser illi in segwitu għall-konvenju, Adrian Busietta u Mary Caruana rriżenjaw minn diretturi ta` Town Investments Limited u kienu appuntati Andrew Cross u Michael Bennett bħala diretturi, u Guido Mizzi bħala *company secretary*.

Qal illi wara li kien iffirmit il-konvenju, Andrew Cross akkwista l-ishma permezz ta` Madliena International Limited.

Stqarr illi fil-konvenju li kellu durata ta` hames snin kien miftiehem illi jekk ma jitnehhewx il-mandati ta` inibizzjoni li kienu jolqtu l-proprjetajiet in vendita ossija l-mandati numri 2917/99 fl-ismijiet Paul Abela vs Busietta Gardens Madliena Limited, 852/04 fl-ismijiet Paul Abela vs Busietta Gardens Madliena Limited u 3070/99 fl-ismijiet Paul Abela et vs Busietta Gardens Madliena Limited, il-konvenju kellu jigi estiz ghal perijodu iehor ta` hames snin b`notifika semplici bil-miktub u fil-kaz li jitnehhew il-mandati, allura Madliena Village Limited kellha tidher fuq il-kuntratt ta` komprovendita ghall-bejgh ta` l-istess proprjeta`.

Kompla stqarr illi b`ittra ufficjali tas-27 ta` Mejju 2010 Mac Properties Limited talbet lil Madliena Village Limited sabiex tersaq ghall-atti finali relattivi. Madliena Village Limited ma gietx ghall-att finali relattiv u b`rikors guramentat nru 768/10 SM fl-ismijiet Mac Properties Limited vs Madliena Village Limited talbet l-ezekuzzjoni ta` l-istess konvenju liema kawza giet deciza fis-16 ta` April 2013 pero` sar appell.

Qal li l-kundizzjonijiet ta` dawn iz-zewg konvenji sija tal-penthouse li kellha tigi akkwistata minn Mac Properties u tal-garaxx li kellu jigi akkwistat minn Cissa Limited kienu simili.. Il-Prim`Awla tal-Qorti Civili b`sentenza tas-27 ta` Jannar 2012 fil-kawza fl-ismijiet *Cissa Limited vs Madliena Village Limited* kienet qalet li l-garaxx kien ilu zmien twil u kien ghadu fil-pussess tas-socjeta` attrci peress li l-konvenju kien biss parti minn negozju iktar wiesgha li kien jirrigwarda l-izvilupp tal-kumpless Madliena Village. L-istess ragunament kien ighodd ukoll ghall-konvenju tal-penthouse 709/710 u konvenji ohra pendenti.

Kompla jghid li n-Nutar Attard irregistra l-konvenju mal-Kummissarju tat-Taxxi Interni. Baqa` sorpriz meta kif gew biex jaghlqu l-hames snin, Andrew Cross u Michael Bennett ma ridux jersqu ghall-att finali.

Qal illi l-mandati ta` inibizzjoni tnehhew tul il-kors tal-kawzi fl-ismijiet *Cissa Limited vs Madliena Village Limited* u *Mac Properties Limited vs Madliena Village Limited* pendenti quddiem il-Qorti ta` l-Appell.

**Maria Caruana** xehdet illi Busietta Gardens kienet proprjeta` ta` Town Investments Limited. L-azzjonisti kienu Southern Properties Limited rapprezentata minnha u Adrian Busietta. Town Investments Limited bidlet l-isem ghal Madliena Village Limited. Qalet illi fl-1 ta` Lulju 2005, intlahaq ftehim ma` Andrew Cross fejn parti mill-proprjeta` li kienet tappartjeni lil Town Investments Limited kellha tigi trasferita fuq socjetajiet ohra gestiti minn membri tal-familja taghha. Seta` kien hemm trasferiment lil Andrew Cross

imma gie miftiehem bejn il-konsulenti taghha li ahjar tigi trasferita l-kumpannija.

Qalet li AWB Limited akkwistat b`kuntratt tan-Nutar Pierre Attard tal-1 ta` Lulju 2005, l-appartamenti 305, 306, 307/309 u xi garages go Busietta Gardens, Triq il-Fortizza, Madliena kif ukoll ghamlet konvenju ma` Madliena Village Limited ghat-trasferiment ta` 702, 704 u 502 u xi garages go Busietta Gardens, Triq il-Fortizza, Madliena. Mac Properties akkwistat b`kuntratt fl-atti tan-Nutar Pierre Attard tal-1 ta` Lulju 2005 xi garages, Busietta Gardens, Triq il-Fortizza, Madliena u ghamlet konvenju ghat-trasferiment tal-penthouse 709/710 Busietta Gardens, Triq il-Fortizza, Madliena. Cissa Limited akkwistat b`kuntratt fl-atti tan-Nutar Pierre Attard tal-1 ta` Lulju 2005 appartamenti 501, 508 u The Cottage, Busietta Gardens, Triq il-Fortizza Madliena u lock up garage D faccata ta` 60`s blokk u garage numru 2 fil-garage complex 70`s Busietta Gardens Triq il-Fortizza, Madliena. Cissa Limited ghamlet konvenju ma` Madliena Village Limited ghat-trasferiment ta` garage fis-70`s blokk, numru tal-garaxx 7001, Busietta Gardens, Triq il-Fortizza, Madliena.

Qalet li filwaqt li saru kuntratti ta` bejgh immedjatament bla ma saru konvenji, kien hemm istanzi ohra fejn kellhom isiru konvenji minhabba mandati ta` inibizzjoni li kienu hemm vigenti fuq l-istess proprjetajiet. Kien miftiehem li l-konvenji kellhom jsiru ghal perijodu ta` hames snin li seta` jigi estiz ghal perijodu ta` hames snin ohra sat-30 ta` Gunju 2015 b`notifika semplici bil-miktub fil-kaz li jitnehhew il-mandati.

Kompliet tixhed illi fl-istess gurnata ta` l-1 ta` Lulju 2005 sar it-trasferiment ta` l-ishma li Adrian Busietta u Southern Properties Limited kellhom fis-socjeta` Town Investments Limited lil Andrew Cross u lis-socjeta` tieghu Madliena International Limited. Kien involut Michael Bennett. Kemm Andrew Cross u Michael Bennett kienu jafu bil-konvenji ffirmati u registrati mal-Kummissarju tat-Taxxi Interni u r-raguni wara li ma sarx il-kuntratt ta` bejgh mill-ewwel kien minhabba l-mandati ta` inibizzjoni vigenti.

Kompliet tghid li mal-firma tal-konvenji, hi ghal Mac Properties Limited, Adrian Busietta ghal AWB Limited u Paul Caruana ghal Cissa Limited gew moghtija immedjatament il-pussess tal-proprjeta` ghaliex il-proprjetajiet kienu gia` mhallsa minhabba l-flus li kellhom jircievu minghand Town Investments Limited u Andrew Cross ma kellux interess fihom la personalment u lanqas bhala Town Investments Limited.

Spjegat li xi snin wara li saru l-konvenji, b`ittri ufficjali, AWB Limited, Mac Properties u Cissa Limited talbu lil Madliena Village Limited sabiex tersaq ghall-ezekuzzjoni tal-konvenji. Wara saru wkoll kawzi fosthom din tal-lum.

Fix-xiehda tieghu **Adrian Busietta** jikkorrabora x-xiehda ta` Mary Caruana u ta` Paul Caruana.

Xehed illi Paul Abela kien kiseb il-hrug ta` mandati ta` inibizzjoni fir-rigward ta` xi proprjetajiet li kienu ser jigu akkwistati fosthom fuq il-garage li kellu jigi akkwistat minn Cissa Limited. Parti mill-ftehim kien li AWB Limited, Mac Properties Limited, TJC Limited u Cissa Limited jiehdu proprjetajiet in-kompensazzjoni ghal krediti ta` flus li kellhom kontra Town Investments Limited, dan bi ftehim ma` Andrew Cross qabel akkwista l-ishma ta` Town Investments Limited. Insista li l-mandati tnehhew kollha u ghalhekk ma kien hemm l-ebda raguni ghala Madliena Village Limited ma kellhiex tersaq ghall-kuntratti.

**In-Nutar Dr. Pierre Attard** xehed li huwa ppubblika diversi kuntratti fl-1 ta` Lulju 2005 kif ukoll ghamel xi konvenji. Dakinhar sar ukoll *share transfer agreement* u kancellamenti dovuti b`self mal-Bank of Valletta. B`konsegwenza ta` l-istess, kien hemm ukoll xi terminazzjoni ta` konvenji li kienu saru precedentement. Qal li kien hemm hafna nies involuti f`dawn il-kuntratti bil-proprjeta` involuta tkun Busietta Gardens. Adrian Busietta kien il-proprjetarju ta` ishma tas-socjeta` Town Investments Limited. Ix-xerrej kien Andrew Cross. Qal li kien hemm xi proprjetajiet ta` Busietta Gardens li kienu ha jkunu eskluzi minn dan il-grupp ta` kuntratti. Qal li kien hemm xi proprjetajiet li ma setax isir il-kuntratt minhabba mandati li kien hemm fuqhom. Spjega li kien sar ukoll *assignment of debt* peress li kien hemm xi ammonti dovuti lil Adrian Busietta li gew assenjati lill-kumpannija li kienet ser tixtri l-proprjeta` u ghalhekk il-prezz kellu jigi pacjut kontra dak id-dejn.

Ikkonferma li sar konvenju ma` AWB Limited, Mac Properties Limited u Cissa Limited. Huwa ma kienx jaf f`idejn min kien il-pussess attwali ta` dawn il-proprjetajiet izda sa fejn jaf hu, il-proprjetajiet involuti f`dawn il-konvenji, baqghu fil-pussess ta` Adrian Busietta. Qal li huwa ma kienx involut fis-*share transfer agreement* li sar fil-5 ta` Lulju 2006. Huwa kkonferma li l-proprjetajiet inkluzi fil-konvenji li saru, ma kellhomx ikunu fil-patrimonju tal-kumpannija li dwarha gew trasferiti l-ishma u cioe` eskluzi mill-proprjeta` ta` Andrew Cross jew il-kumpannija tieghu. Qal ukoll li huwa kien inkarikat minn Andrew Cross tramite Av. Henri Mizzi.

## II. **Xiehda**

## Ikkunsidrat:

Permezz ta` din il-kawza, is-socjeta` rikorrenti qed titlob li s-socjeta` intimata tigi ordnata tidher u taddivjeni fuq il-pubblikazzjoni ta` l-att notarili relattiv ghall-bejgh ta` garaxx (*lock-up*) internament immarkat bin-numru 1 fil-kumpless ta` garaxxijiet maghruf bhala “70s” tal-kumpless maghruf bhala Madliena Village, Triq il-Fortizza, Madliena, limiti tal-Gharghur.

Ghal din l-azzjoni, tressqu varji eccezzjonijiet fosthom eccezzjonijiet ta` natura preliminari li jinhtieg li jigu kkunsidrati, qabel ma` din il-Qorti tevalwa l-mertu ta` dan il-kaz.

### III. It-tieni eccezzjoni

Bit-tieni eccezzjoni, kien eceptit illi s-socjeta` attrici ghandha ggib prova li l-konvenju mertu ta` din il-kawza kien debitament registrat mal-Kummissarju tat-Taxxi Interni.

Biex ikun jista` jitqies bhala validu ghall-finijiet u effetti kollha tal-ligi, konvenju jrid ikun gie registrat mal-Kummissarju tat-Taxxi, kif ighid **l-Avviz Legali 7/2004 (kif emendat) mahrug skont il-Kap 364**.

Fir-**Reg 10** jinghad hekk :-

*(1) Ghall-fini tal-artikolu 3(6) ta` l-Att, il-persuna li qed tittrasferixxi u l-persuna li qed tircievi jew ir-rapprezentant awtorizzat minnhom, ghandhom jaghtu avviz, tal-konvenju relattiv tal-bejgh jew tat-trasferiment ta` proprjeta` immobbli jew ta` xi dritt reali fuqha, lill-Kummissarju :*

*Izda m`ghandu jinghata ebda avviz u ma jsir l-ebda pagament ta` taxxa provvizorja meta l-persuna li tkun qed tittrasferixxi tkun l-Awtorita` tad-Djar jew il-Gvern ta` Malta jew meta l-persuna li tkun qed takkwista tkun il-Korporazzjoni tal-Ilma jew id-Dipartiment ta` l-Artijiet jew l-Awtorita` tad-Djar.*

*(2) L-avviz ghandu jkun iffirmit mill-partijiet kollha fil-ftehim u jkun word processed jew miktub bl-*

*ittri kapitali fil-forma murija u jkun fih it-tagħrif meġtieg fit-Tielet Skeda:*

*Izda konvenju ta` bejgh jew ta` trasferiment ta` proprjetà immobbli jew ta` xi dritt reali fuqha li sar fil-31 ta` Dicembru, 2003 jew qabel, ikun validu meta l-avviz tieghu jinghata jew minn min ikun sejjer jittrasferixxi jew minn min ikun sejjer jircievi jew ir-rapprezentant awtorizzat minnhom.*

*(3) Il-Kummissarju ma jaccettax il-hlas tat-taxxa provvizorja relattiva qabel ma dak l-avviz ikun gie pprezentat.*

*(4) Il-Kummissarju ma ghandux jaccetta dak l-avviz flimkien mal-hlas relattiv jekk ma jkunx gie pprezentat fl-Ufficcju tal-Kummissarju (Dipartiment tal-Capital Transfer Duty) fi zmien wiehed u ghoxrin gurnata wara dik meta jsir il-konvenju tal-bejgh jew ta` trasferiment ta` proprjetà immobbli jew ta` xi dritt reali fuqha :*

*Izda meta l-ahhar jum li fih ikun irid jinghata dak l-avviz jahbat is-Sibt jew fi btala pubblika kif stabbilit fl-Att dwar il-Festi Nazzjonali u Btajjel Pubblici ohra, dak il-jum jitqies li jahbat fl-ewwel jum tax-xoghol, li ma jkunx is-Sibt, li jigi wara dak is-Sibt jew btala pubblika.*

*(5) Il-Kummissarju ghandu jkun avzat b`dawk il-konvenji kollha ta` bejgh jew ta` trasferiment ta` proprjetà immobbli jew ta` xi dritt reali fuqha li jkun saru fil-31 ta` Dicembru, 2003 jew qabel, sal-31 ta` Ottubru, 2004; avviz ta` dawk kollha maghmula fl-1 ta` Jannar, 2004 jew wara, ghandu jinghata b`dak il-mod imsemmi fis-subregolament (4):*

*Izda ebda avviz ma jkun mehtieg fil-kaz ta` konvenju ta` bejgh jew ta` trasferiment ta` xi proprjetà immobbli jew ta` dritt reali fuqha maghmul qabel l-1 ta` Jannar, 2004, meta l-att ghandu jkun ippubblikat qabel l-1 ta` Novembru, 2004.*

*(6) Estensjoni tal-perjodu ta` validità ta` konvenju ta` bejgh jew ta` trasferiment ta` proprjetà immobbli jew ta` dritt reali fuqu ghandha tkun notifikata lill-Kummissarju fi zmien wiehed u ghoxrin*



*jum mid-data tagħha bil-miktub flimkien ma` indikazzjoni tan-Numru tan-Notifika tal-konvenju ta` bejgh u ffirmata mill-partijiet fil-ftehim jew min xi rapprezentant awtorizzat.*

*(7) L-ircevuta tal-hlas provvizorju ta` taxxa relattiva għall-konvenju ta` bejgh jew ta` trasferiment ta` proprjeta` immobbli jew ta` xi dritt reali fuqha għandha tkun mehmuzà ma` l-att notarili sussegwenti meta din issir mill-istess nutar li jkun qed jippubblika dak l-att u dak il-hlas provvizorju għandu jitnaqqas mit-taxxa dovuta skond l-artikoli 32 u 40 ta` l-Att.*

*(8) Kopja awtentika ta` l-ircevuta msemmija fis-subregolament precedenti għandha wkoll tkun mehmuzà ma` l-Avviz ta` Trasferiment li jingħata min-Nutar li jippubblika l-att rilevanti għall-fini ta` l-artikolu 51 ta` l-Att.*

*(9) Il-Kummissarju għandu d-dritt jitlob informazzjoni addizzjonali jew li jingiebu dokumenti ta` sostenn kif jidhirlu li jista` jkun mehtieg minn zmien għal zmien.*

*(10) Talbiet għal hlas lura ta` taxxa mħallsa provvizorjament skond l-artikolu 3(6) ta` l-Att għandhom isiru bil-miktub flimkien kemm minn min ikun sejjer jittrasferixxi kemm minn min ikun sejjer jircievi u jigu ffirmati fuq wara min-Nutar jew Avukat li kien awtentika l-konvenju tal-bejgh jew ta` trasferiment ta` proprjeta` immobbli jew ta` xi dritt reali fuqha rilevanti u dawn ma jkunux ikkunsidrati mill-Kummissarju kemm-il darba ma jkunx sodisfatt li dak il-konvenju ta` bejgh jew ta` trasferiment ta` immobbli jew ta` xi dritt reali fuqha, ikun skada jew li z-zewg partijiet ikunu qablu li jxolju l-obbligazzjoni ta` bejniethom.*

**L-Art 3(6) tal-Kap 364 ighid :-**

*Minkejja d-disposizzjonijiet ta` kull ligi oħra, konvenju ta` bejgh jew ta` trasferiment ta` kull proprjeta` immobbli jew ta` kull dritt reali fuqha, ma jkunx validu jekk avviz tieghu ma jkunx ingħata lill-Kummissarju fi zmien u b`dak il-mod, u li jkun fih dawk il-partikolaritajiet, li jistghu jigu stabbiliti. Dan*

*l-avviz ghandu jinghata flimkien ma` hlas ta` taxxa provvizorja ekwivalenti ghal ghoxrin fil-mija tal-hlas ta` taxxa li jkollha tithallas skond l-artikoli 32 u 40.”*

Fil-kawza li tat din il-Qorti diversament presjeduta fis-27 ta` Jannar 2009 fil-kawza fl-ismijiet **Maria Cascun et vs Carmelo Scicluna pro et noe** kif ukoll fis-sentenza ta` dfin il-Qorti diversament presjeduta tal-11 ta` Gunju 2013 fil-kawza fl-ismijiet **Raymond Grima et vs Pio Chetcuti et** inghad illi :-

*“Din id-dispozizzjoni, li hija ta` dritt fiskali u ghalhekk ta` ordni pubbliku, hija perentorja: il-weghda ta` bejgh u xiri ma tkunx tiswa fin-nuqqas ta` avviz u hlas ta` taxxa provvizorja lill-Kummissarju tat-Taxxi Interni.”*

Din il-Qorti diversament presjeduta fis-sentenza li tat fl-14 ta` Lulju 2015 fil-kawza fl-ismijiet **Nazzareno sive Leonard Caruana et vs Martha Debono et** :-

*“Huwa tassattiv li konvenju ghandu jigi wkoll registrat mad-Dipartiment tat-Taxxi Interni u trid tithallas taxxa provvizorja. Sabiex konvenju jista` jitqies validu ghall-finijiet u effetti tal-ligi jrid ikun hemm osservanza tal-A.L. 7 tal-2004.”*

Fil-kaz tal-lum, jirrizulta li l-konvenju de quo kien registrat skont il-ligi ; dan mid-dokumenti esebiti mir-rapprezentant tal-Kummissarju tat-Taxxi a fol 424 sa 427. Kien ippruvat kemm li nghata l-avviz u kif ukoll li thallset it-taxxa.

**Il-Qorti tichad it-tieni (2) eccezzjoni.**

#### **IV. Mertu**

Sabiex ftehim b`weghda ta` komprovendita ta` mmojbli jkun validu ghall-finijiet u effetti kollha tal-ligi, irid jikkonkorru tliet elementi :-

- a) il-ftehim irid isir bil-miktub ;
- b) fil-kitba jrid ikun hemm esposizzjoni ta` fatti jew dikjarazzjoni ta` volonta`.
- c) il-ftehim ikun iffirmit mill-partijiet.

Fit-“**Teoria delle Obbligazioni**” (Vol I : Part I : Pg 373 et seq) **Giorgi**  
jghid:-

*“Il secondo requisito della scrittura privata si e` di contenere il tenore delle promesse, delle stipulazioni, delle liberazioni, che e` preordinata a consacrare. Ma questo requisito, piu` che alla materiale compilazione del documento, si riferisce alla sostanza intellettuale del medesimo. Ed e` per se evidente, che nihil agit chi non seppe in una scrittura dichiarare che cosa voleva.”*

Meta fl-iskrittura privata jkun hemm weghda ta` bejgh, il-ligi marret oltre ir-regoli generali.

**L-Art 1233 tal-Kap 16** jittellem dwar ftehim li ghandhom isiru b`att pubbliku jew b`kitba privata :-

1. *Bla hsara tal-kazijiet li fihom il-ligi, espressament taghmel mehtieg l-att pubbliku, ghandhom isiru b`att pubbliku jew b`kitba privata, taht piena ta` nullita`.*

2. *Il-ftehim li jkun fih weghda ta` trasferiment jew ta` akkwist, taht kull titolu li jkun, tal-proprjeta` ta` beni immobbli jew ta` jedd iehor fuq dawk il-beni.*

Fis-sentenza li tat fil-5 ta` Ottubru 1998 fil-kawza “**Joseph Baldacchino et noe vs Carmelo sive Charlie Camilleri et**” il-Qorti ta` l-Appell qalet :-

*“Hu car allura illi biex l-iskrittura taht is-subinciz (a) ta` l-artikolu 1233 tkun valida fil-ligi jehtieg li tkun (a) tirrispekkja l-volonta` tal-kontraenti riflessa fil-firem taghhom ; (b) tikkontjeni l-weghda ta` trasferiment li tkun tiffirma l-oggett ta` dak il-ftehim ; (c) tidentifika dan l-oggett li kellu jigi trasferit ; (d) tistipula t-titolu li bih ikun gie miftiehem li kellu jsir it-trasferiment ; u (e) jindika l-prezz jew konsiderazzjoni miftehma li jistghu jkunu determinanti jew determinabbli skond il-ftehim.”*

*(ara wkoll : PA/RCP : 24 ta` April 2001 : “**John Azzopardi vs George Zammit noe**” ; u Qorti tal-Appell : 29 ta` Ottubru 2004 : “**Dr. Carmel sive Lino Gauci Borda et vs Carmelina sive Carmela Azzopardi et**”)*

Fis-sentenza li tat din il-Qorti diversament presjeduta fl-20 ta` Marzu 2003 fil-kawza “**E. Grech Cristal Bath Ltd vs Grezzju Patiniott**”, inghad hekk :-

*“Biex weghda ta` bejgh tkun valida, jehtieg, fost affarijiet ohra, li l-ftehim jiddentifika l-oggett li kellu jigi stabbilit, u l-prezz jew konsiderazzjoni miftiehma jistghu jkunu determinati jew determinabbli skond il-ftehim. Dawn l-elementi jridu johorgu mill-kitba tal-ftehim.*

*Biex weghda ta` bejgh tkun valida, il-partijiet iridu jkunu ftehm fuq kollox, partikolarment l-oggett preciz tal-vendita`, u ma jistghux ihallu l-ftehim fuq affarijiet importanti ghal wara.”*

**L-Art 1357 tal-Kap 16** jirregola l-weghda ta` bejgh. Ighid hekk :-

1. *Il-weghda ta` bejgh ta` haga bi prezz determinat, jew bi prezz li ghandu jigi stabbilit minn persuna wahda jew izjed bhalma jinghad fl-artikoli ta` qabel dan, ma titqisiex bejgh; izda, jekk tigi accettata, iggib, f`dak li wieghed, l-obbligu li jaghmel il-bejgh, jew jekk il-bejgh ma jkunx jista` izjed isir, l-obbligu li jhallas id-danni lill-accettant.*
2. *L-effett ta` din il-weghda jispicca meta jaghlaq iz-zmien miftiehem bejn il-partijiet ghal hekk jew, jekk ma jkun hemm ebda ftehim bhal dak, meta jghaddu tliet xhur minn dak inhar li l-bejgh ikun jista` jsir, kemm-il darba l-accettant ma jsejjahx lil dak li wieghed, b`att gudizzjarju pprezentat qabel ma jghaddi z-zmien applikabbli kif intqal qabel, sabiex jaghmel il-bejgh, u kemm-il darba, fil-kaz li dak li wieghed jonqos li jaghmel hekk, it-talba b`citazzjoni sabiex titwettaq il-weghda ma tigix ipprezentata fi zmien tletin jum minn meta jaghlaq l-imsemmi zmien.”*

L-effetti ta` din id-disposizzjoni kienu trattati fis-sentenza li tat din il-Qorti diversament presjeduta fit-28 ta` Marzu 2003 fil-kawza “**Maria Bianchi Maria et vs J.M.A. Developments Ltd et**” fit-28 ta` Marzu 2003. Is-sentenza kienet sostanzjalment ikkonfermata b`sentenza tal-Qorti tal-Appell tas-26 ta` Mejju 2006. Inghad hekk :-

*“Jidher ghalhekk li una volta li jigi prezentat l-att gudizzjarju qabel ma jiskadi t-terminu tal-konvenju, dan l-att gudizzjaru jestendi l-effetti tal-konvenju ghal perijodu ta` xahar sakemm jew l-accettant jaghzel li jersaq ghall-kuntratt entro dak ix-xhar jew altrimenti sakemm tigi prezentata l-azzjoni fejn jintalab li l-accettant iwettaq il-weghda li jkun ghamel permezz tal-konvenju.”*

Huwa biss meta konvenju jiskadi minghajr ma jkunu ttiehdu mizuri gudizzjarji sabiex jigu nfurzat skont l-Art 1357(2) tal-Kap 16 illi konvenju ma jibqax jiswa.

Fis-sentenza li tat din il-Qorti diversament presjeduta fit-28 ta` April 2003 fil-kawza “**Jason Formosa et vs Carmelo Sammut**” inghad hekk :

*“Dak li hu vitali hu l-fatt tan-nuqqas ta` interpellazzjoni ufficjali mill-konvenut biex ix-xerrej promittent jersaq ghall-pubblikazzjoni ta` l-att. Ma ngiebet l-ebda prova li saret ittra ufficjali bhal din u allura meta tirrikorri cirkostanza bhal din meta jaghlaq iz-zmien u ebda wahda mill-partijiet ma tkun hadet il-passi mehtiega biex iggieghel lill-parti l-ohra tersaq ghal kuntratt, il-konvenju jitlef l-effikacija tieghu, u kollox jerga` ghall-istatus ante quo ...”*

Riferibbilment ghall-kaz tal-lum, il-konvenju *de quo* kellu validita` ta` hames snin. Ghalhekk l-att finali kellu jkun konkluz sa mhux aktar tard mill-1 ta` Lulju 2010. Jirrizulta li fis-27 ta` Mejju 2010 (fol 25), is-socjeta` attrici pprezentat ittra ufficjali sabiex il-konvenuta tersaq ghall-kuntratt finali. Imbaghad fid-29 ta` Lulju 2010, ipprezentat ir-rikors guramentat odjern. Fil-mori ta` din il-kawza, il-konvenuta rtirat l-ewwel eccezzjoni u kkoncentrat fuq il-mertu tal-istanza.

Fil-mertu, il-konvenuta eccepjet li l-proprietajiet mertu tal-konvenju kellhom jigu trasferiti lill-attrici bhala parti mill-prezz tat-trasferiment ta` ishma fil-kumpannija Town Investments Limited (li bidlet l-isem ghal dak atwali tas-socjeta` konvenuta) permezz ta` ftehim li jgib l-istess data tal-1 ta` Lulju 2005, u dawn il-proprietajiet flimkien ma` ohrajn mertu ta` zewg konvenji ohra, kienu identifikati bhala *security properties* fl-istess ftehim tat-trasferiment tal-ishma ; kellhom iservu bhala garanzija ghas-socjeta` konvenuta ghat-twettiq tal-obbligi u tal-garanziji li nghataw fl-att ta` trasferiment tal-ishma.

Is-socjeta` konvenuta nsistiet illi sal-lum kien hemm numru ta` pendenzi li kienu ghadhom irrisolti u ghalhekk ma setax jigi enforzat il-konvenju mertu ta` din il-kawza.

Skont il-konvenuta, kellha raguni valida skont il-ligi sabiex ma tersaqx ghall-pubblikazzjoni tal-kuntratt ta` kompravendita.

In vista ta` din id-difiza kontra l-azzjoni attrici, jispetta lill-konvenuta li taghmel il-prova li kellha raguni valida fil-ligi sabiex ma tersaqx ghall-kuntratt finali.

Tajjeb jinghad illi sabiex parti kontraenti jkollha raguni tajba biex ma tersaqx ghal kuntratt finali wara konvenju, irid jirrizulta xi fatt jew cirkostanza li jkun sehk wara li jkun sar il-konvenju jew illi ma kienx maghruf lil dik il-parti meta tkun saret il-weghda tal-bejgh. Barra minn dan, jekk konvenju jkun soggett ghal kundizzjoni li ma tkunx avverat ruhha, kull parti tkun intitolata illi ma tersaqx ghall-att finali.

Fis-sentenza li tat din il-Qorti diversament presjeduta fit-30 ta` Mejju 2002 fil-kawza “**Carmelo Cassar Limited vs. Bezzina et**” inghad illi “*hija raguni valida fil-ligi li persuna ma tersaqx ghall-pubblikazzjoni ta` kuntratt minhabba l-fatt li ma tkunx tista` ssehh kundizzjoni li fuqha jkunu ftehm u l-partijiet.*”(ara wkoll – “**Pleasant et vs Caruana**” – Appell Civili – 7 ta` Lulju 1998 – Kollez. Vol. LXXXII.II.223)

Fil-kaz tal-lum l-ilment tal-konvenuta huwa l-propjeta` mertu tal-konvenju in kwistjoni kienet intiza sabiex isservi bhala *security property* ghall-ftehim ta` t-trasferiment tal-ishma tal-kumpannija Town Investments Limited u billi kien hemm pendenzi li baqghu rrisolti, tghid illi ghandha raguni valida biex ma tersaqx ghall-kuntratt tal-bejgh.

Kien esebit a fol 34 sa 51 u fol 303 sa 320 il-konvenju tal-1 ta` Lulju 2005 bejn Town Investments Limited u Cissa Limited.

Il-propjeta` mertu tal-konvenju hija “*lock-up garage internally numbered one (1) situated in the Garage Complex `70s shown outlined in red on the plan annexed to this Deed marked Document P2 and consists exclusively of and includes only the area shown within the red outline on the aforesaid plan, as subject to annual and perpetual ground rent of fifty cents (Lm 0.50).*”

Il-prezz tat-trasferiment kien miftiehem hekk :-

*“In consideration of the global price of one thousand five hundred Maltese Liri (Lm 1,500) which Price shall on the notarial deed of sale be set-off against an equivalent sum due by the Vendor to the Purchaser, provided that in the event that the sums due by the Vendor to the Purchaser shall not be sufficient to set-off the entire Price any balance which shall remain outstanding shall be paid by the Purchaser to the Vendor on the notarial deed of sale.”*

Il-partijiet jirreferu ghaz-zmien tal-validita` tal-konvenju.

Dwar dan, jinghad hekk :-

*“8.1 The Purchaser declares that he is fully cognisant that there exist warrants of prohibitory injunction number 2310/2004, 852/2004 and number 2917/1999 issued against the Vendor prohibiting it from selling the Properties and of the circumstances leading to the issue of these injunctions. The parties agree that the obligation of the Vendor to appear on the notarial deed and to sell the Properties to the Purchaser is subject to the condition that any prohibitory injunction or any other legal impediment which in any way prohibit the Vendor from transferring the Properties, which now exist or which hereafter may be issued or arise because of claims existing prior to the date of this Agreement, are definitively cancelled or removed. The vendor’s inability to complete the sale of the properties for the reasons stated in this clause shall not any may not be considered a default or delay of the Vendor and in such case, save as set out in the first proviso of Clause 8.2 hereunder, the Purchaser shall have no rights or claims against the Vendor and shall not be entitled to claim specific performance or damages in accordance with law until such time when such prohibitory injunctions and/or legal impediments are cancelled or removed and thereafter only in the event that the Vendor fails to perform its obligations in terms of this Agreement.*

*8.2 This Agreement shall remain valid and effective for a period of five years from the date of this Agreement – the Termination Date -*

*Provided that in the event that the notarial deed of sale cannot be published by the Termination Date for the reasons stated in Clause 8.1 above either one of the parties may by simple notice in writing served on the other party prior to the Termination Date demand the other party to appear on a written agreement to extend this Agreement for a further period of five years reckoned from the Termination Date –the Extended Date.*

*Provided further that at any time prior to the Termination Date or the Extended Date as the case may be but after the prohibitory injunctions and/or legal impediments mentioned or referred to in Clause 8.1 above are definitely cancelled or removed either the Purchaser or the Vendor (the Notifying Party) shall be entitled to require the other to appear for the publication of the notarial deed on a date chosen by the Notifying Party and being not earlier than one (1) month from the date of service of a judicial letter to be sent by the Notifying Party and demanding that the other appears on the notarial deed of sale and not later than the Termination Date or the Extended Date as the case may be.”*

Bhala fatt fil-konvenju mertu tal-kawza tal-lum ma hemmx referenza ghaxshare sale and purchase agreement li sar fl-1 ta` Lulju 2005.

Kien sar ukoll ftehim imsejjah “Assignment of Shareholder`s Loan” (ara fol 344 sa 345) bejn Adrian Busietta bhala assignor, Cissa Limited bhala assignee u Town Investments Limited bhala the Company.

Permezz ta` dan l-att ta` assenjazzjoni, “the assignor is hereby assigning unto the Assignee who accepts for all intents and purposes of law as beneficial owner of the Shareholder`s Loan all its rights, title and interest in the said Shareholder`s Loan. Accordingly, as a consequence of this agreement, and as consideration therefor, all monies due to the Assignor by the Company in the settlement of the said shareholder`s loan shall now be due to the Assignee.”

Din is-shareholder`s loan kienet fl-ammont tal-prezz li kien miftiehem ghall-bejgh tal-garaxx in kwistjoni.



Fl-istess ftehim inghad :-

*“The Assignor is the proprietor and beneficial owner of a shareholder’s loan in the sum of one thousand five hundred Malta liri (Lm1,500) effected over the years by him from the date of incorporation of the Company to date, in his position as shareholder of the Company and currently due to him by the Company as resulting from the books of accounts and financial statements of the Company ...”*

Fl-1 ta` Lulju 2005, sar ukoll ftehim imsejjah *share sale and purchase agreement* bejn Adrian Busietta, Southern Properties Limited u Madliena Construction Limited bhala vendituri, Madliena Village Limited u Andrew Cross bhala kompraturi, u AWB Limited u TJC Properties Limited bhala *guarantors*.

Mill-ftehim (ara fol 52 sa fol 94), jidher li bhala *“security properties”* kien hemm proprju l-proprjeta` soggetta ghal weghda ta` bejgh li saret fl-1 ta` Lulju 2004 bejn Town Investments Limited u Cissa Limited.

Bis-sahha ta` dan il-ftehim, il-vendituri bieghu lill-kompraturi l-ihsma kollha tal-kumpannija Town Investments Limited :

*“Subject to the terms and conditions of this agreement the Vendors shall sell as legal and beneficial owners and the Purchaser shall purchase the Shares, free from all liens, charges and encumbrances and with all rights attaching to them, with effect from Completion.”*

Skont il-ftehim, il-vendituri u l-*guarantors* kellhom jaghtu l-garanziji indikati fit-tielet skeda annessa ma` dan l-istess ftehim. L-iskeda kienet tikkonsisti fil-garanziji relatati ma` *corporate matters* (klawsoli 1.1 sa 1.5) ; *financial matters* (klawsoli 2.1 sa 2.4) ; *taxation matters* (klawsoli 3.1 sa 3.4) ; *trading matters* (klawsoli 4.1 sa 4.8) ; *property matters* (klawsoli 5.1 sa 5.6) ; *employment matters* (klawsoli 6.1 sa 6.2) ; *asset matters* (klawsoli 7.1) u *general matters* (klawsoli 8.1 sa 8.2).

Fil-ftehim inghad x`jigri jekk ma jkunux onorati l-garanziji :-

*“5.1 The Vendors and the Guarantors jointly and severally warrant to the Purchaser that the Warranties*

*set out in Schedule 3 are true and accurate in all respects.*

*5.2 Each of the Warranties is without prejudice to any other warranty or undertaking and, except where expressly stated, no clause contained in this agreement governs or limits the extent or application of any other clause.*

*5.3 The rights and remedies of the Purchaser in respect of any breach of the Warranties shall not be affected by Completion, by any investigation made by or on behalf of the Purchaser into the affairs of the Company, by any failure to exercise or delay in exercising any right or remedy or by any other event or matter whatsoever, except a specific and duly authorised written waiver or release.*

*5.4 The Vendors and the Guarantors shall not be liable under the Warranties:*

*5.4.1 To the extent that the subject of the claim is provided for or reserved in the Management accounts, saving the Vendors` and the Guarantors liability in respect of the contingent liability;*

*5.4.2 To the extent that a claim arises:*

- (a) As a result of the passing of an enactment or other government regulation with retrospective effect;*
- (b) As a result of any increase in the rates of taxation since the Last Accounts Date.*

*5.4.3 For any liability for Taxation which arises as a result of transactions in the ordinary course of business of the Company done or omitted to be done by the Company or the Purchaser or persons deriving title therefrom after this Agreement.*

*5.5 Where a breach of any Warranty is remediable, then the Purchaser shall not pursue a warranty claim until the vendors and the guarantors have been given a reasonable period of not less than 30 days from receipt of written notice within which to remedy the same.*

*5.6 Where the Purchaser and/or the Company are at any time entitled to recover from some other person any*

*sum in respect of any matter giving rise to a claim under the Warranties, the Purchaser shall procure that the Company shall undertake all reasonable steps to enforce such recovery prior to taking any action against the Vendors or the Guarantors provided that nothing contained in this clause shall place upon the Purchaser and/or the company an obligation to commence proceedings in respect of such claim unless the Company reasonably believes there to be a reasonable prospect of them being successful in such action against any party and provided that the Guarantors and subsidiarily, the Vendors shall first have indemnified and secured each of the Purchaser and the Company (on a full indemnity basis) in a form reasonably acceptable to them from and against any and all losses, costs, damages, claims and expenses incurred by either of them as a result thereof.*

*5.7 The Purchaser is not entitled to recover more than once in respect of any one matter giving rise to a Warranty Claim.*

*5.8 If the Vendors pay at any time to the Purchaser or to the Company an amount pursuant to a claim in respect of the Warranties and the Purchaser or the Company subsequently become entitled to recover from some other person any sum in respect of any matter giving rise to such claim, the purchaser shall, and shall procure that the company shall take all reasonable steps to enforce such recovery provided that the Guarantors, and subsidiarily, the Vendors shall first have indemnified and secured each of the Purchaser and the Company (on a full indemnity basis) in a form reasonably acceptable to them from and against any and all losses, costs, damages, claims and expenses incurred by either of them as a result thereof and shall (when the Company or the Purchaser receives payment from such other person) forthwith repay to the Vendors so much of the amount paid by them to the Purchaser or the Company as does not exceed the sum recovered from such other person less all costs, charges, and expenses incurred by the Purchaser or either or both of the Companies in recovering that sum from such other person.*

*5.9 The limitations of liability of the Vendors set out in clauses 5.4 to 5.8 shall not apply in the case of a*

*claim for breach of Warranty in respect of and to the extent of a claim or claims arising out of fraud or fraudulent misrepresentation or deliberate non-disclosure or deliberate misleading disclosure, wilful concealment or wilful misconduct by the Vendors.*

*5.10 Subject to the foregoing limitations of liability, the Guarantors and subsidiarily, the Vendors shall indemnify and hold the Purchaser and the Company harmless in respect of any liability for which the Vendors have provided an indemnity under clauses 4.7 to 4.9 and of any breach of the Warranties including, without limitation, against all and any consequences, damages, claims and costs (judicial and otherwise and including all advisors` fees) arising therefrom or in connection therewith, such indemnity to be obtained, in the first instance, by set-off against amounts owed to the Vendors or the Guarantors. In particular, but without prejudice to the generality of the foregoing:*

*5.10.1 In the event that all or any of the cases in the names listed in Document 9 are finally decided against the Company (it being understood that any appeal shall be at the discretion of the Vendors provided all costs are paid in advance), then (i) the Guarantors and subsidiarily the Vendors shall, without limitation, indemnify and hold the Purchaser and the Company harmless against all costs incurred in connection with the said case, and with complying with the relative judgement (including for the avoidance of doubt, any document duty and capital gains taxes payable by the Company and any legal and notarial fees), such indemnity to be obtained by the Company first by set-off against amounts due by the Company to AWB Limited; and (ii) the Vendors shall cause the apartment 502 at Busietta Gardens to be delivered possession thereof to the Company within one (1) month from the date of final judgement;*

*5.10.2 Within three months of the determination of the contingent liability, the company and the purchaser shall be indemnified and held harmless by being permitted hereby to set off, against the Contingent Liability, an amount equivalent to the Contingent liability, first out of amounts due to AWB Limited.*

*5.10.3 If any other claim for indemnification made by the Purchaser and/or the Company in connection with any Warranty is not settled in a timely manner in accordance with this clause 5 then the Company shall be entitled (at the vendors` cost) to set-off the Vendors` and/or the Guarantors` indemnification obligation against an equivalent amount out of the amounts due by the Company to all or any of the Guarantors.”*

Premess dan kollu, u kontra dak sostnut mill-konvenuta, is-socjeta` attrici tikkontendi u tinsisti li l-kundizzjonijiet kollha tal-konvenju kienu sodisfatti u ghalhekk ma kien hemm l-ebda xkiel legali sabiex isir il-kuntratt.

Huwa minnu li fil-konvenju in ezami, ma hemmx kondizzjoni relatata *max-share sale and purchase agreement*. Madanakollu, minn qari ta` dan ta` l-ahhar, u wkoll kif ikkonferma Paul Caruana, il-garage mertu tal-konvenju kien indikat bhala *security property* fuq *ix-share sale and purchase agreement*. Skont Caruana, sar hekk ghaliex meta akkwista Andrew Cross, kien ghad baqa` dejn mal-kuntratturi u ma` terzi. Madanakollu skont l-istess Caruana, dawn il-kontijiet thallsu u cio` nonostante il-konvenuta baqghet tirrifjuta li tersaq ghall-kuntratt. Ix-xiehda ta` Caruana mhijiex kontradetta.

Tajjeb jinghad illi fix-xiehda tieghu, in-Nutar Pierre Attard li ha hsieb jabbozza l-konvenju kkonferma li fl-1 ta` Lulju 2005 sar konvenju mhux kuntratt minhabba mandati ta` inibizzjoni li kienu fis-sehh sa dak iz-zmien. Hemm qbil li l-garage de quo ma kellux ikun inkluz fil-patrimonju ta` Town Investments Limited li taghha kienu trasferiti l-ishma. Fix-xiehda tieghu, Dr Alex Perici Calascione sostna li sar il-konvenju minhabba xi kwistjoni fiskali u mhux minhabba xi garanzija ghall-obbligi assunti.

Mill-assjem tal-provi akkwiziti, jidher li l-prezz ta` dan il-garaxx kien parti mill-ftehim tat-trasferiment tal-ishma li kellu jigi pacjut kontra dejn li Town Investments Limited (illum Madliena Village Limited) kellha ma` Adrian Busietta, liema dejn kien assenjat lil Cissa Limited bl-att tat-30 ta` Gunju 2005.

Da parti taghha, is-socjeta` konvenuta permezz tax-xiehda ta` Michael James Bennett tghid illi kien hemm zewg ragunijiet validi ghalfejn il-konvenuta ma kellhiex tersaq ghall-kuntratt ladarba dak il-garaxx partikolari kien qed iservi bhala garanzija ghall-adempiment ta` l-obbligi skont *ix-share sale and purchase agreement*.

**L-ewwel raguni** hija li kien hemm kredituri li ma kinux issemmev fosthom id-Dipartiment tat-Taxxi Interni u l-Qrati tal-Gustizzja. Kienu prezentati dokumenti ufficjali mahruqa mid-Dipartiment tat-Taxxi Interni mnejn jirrizulta li kien hemm hemm bilanc dovut bhala taxxa (fol 410 sa 411 u fol 499). Irrizulta li s-socjeta` intimata hallset is-somma ta` EUR 40,000 u EUR 22,000 fis-17 ta` Dicembru 2010 (Dok MB3 a fol 412 u Dok MB4 a fol 413 liema dokumenti rega` gew ezebiti a fol 500 u 501). Is-socjeta` intimata pprezentat ukoll zewg ittri mibghuta mill-Qrati tal-Gustizzja dwar ammonti dovuti mis-socjeta` konvenuta (ara fol 502 u 503).

Skont is-socjeta` intimata, dan imur kontra l-garanziji tat-tielet skeda *fixshare sale and purchase agreement* :-

3.1 *“The Last Accounts and the Management Accounts make full provision or reserve for all Taxation (including deferred Taxation) which is liable to be or could be assessed on the Company, or for which it may be accountable, in respect of periods ended on the Last Account Date and on the date of the Mangement Accounts.*

3.2 *All returns, computations and payments which should be, or should have been, made by the Company for any Taxation purpose have been made within the requisite periods and are up-to-date, correct and on a proper basis and none of them is, or is likely to be, the subject of any dispute with the Inland Revenue or other Taxation authorities in Malta or elsewhere.*

3.3 *The Company has duly deducted and accounted for all amounts which it has been obliged to deduct in respect of Taxation.*

3.4 *The Company is not nor will become, liable to pay, or make reimbursement or indemnity in respect of, any Taxation (or amounts corresponding thereto) in consequence of the failure by any other person to discharge that Taxation within any specified period or otherwise, where such Taxation relates to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) on or prior to the date of this agreement.*

...

4.3 *The Company is not engaged in any litigation or arbitration proceedings, a plaintiff or defendant, other than the litigation referred to in the definition of ther term “Contingent Liability” in Document 9 and in clause 4.8; there are no other proceedings pending or threatened, either by or against the*

*Company; and there are no circumstances which are likely to give rise to any litigation or arbitration.*

...

*8.2 There are no material facts or circumstances, in relations to the assets, business or financial condition of the Company, which have not been fully and fairly disclosed in writing to the Purchaser, and which, if disclosed, might reasonably have been expected to affect the decision of the Purchaser to enter into this agreement.”*

**It-tieni raguni** hija li kien hemm kwistjoni ohra dwar bicca art li l-Gvern sostna li sar *encroachment* taghha. Kienet ipprezentata ittra tal-15 ta` Marzu 2006 mibghuta mit-Taqsima Proprieta` tal-Gvern (fol 406 sa 409) fejn inghad illi s-socjeta` attrici kienet zammet fil-pussess taghha bicca art b`mod illegali :

*“Following investigations, it resulted that small portions of land registered vide Land Certificate Prty. No. 60000251 (Parcel 1579) were incorrectly plotted, thus an application for the above correction was forwarded to Land Registry ... Consequently, I am directed to inform you that the investigations also resulted to a part of an existing development encroaching on Government wasteland.*

*In view of the above you may wish to inform Madliena Village Ltd to rectify this unauthorized encroachment.”*

Skont il-konvenuta, nuqqas ta` informazzjoni jammonta ghal vjolazzjoni tal-garanzija skont it-tielet skeda ta` *share sale and purchase agreement* fejn jinghad :-

*“5.1 The Company is the owner (perpetual utilista) of the land and buildings shown on the plan appended hereto as Document 10 except for such buildings as have been sold to third parties prior to today (as per list appended hereto as Document 11). The Company has settled all road and drainage contributions.”*

Fin-nota ta` sottomissjonijiet taghha, il-konvenuta tirreferi ukoll ghal *contingent liability* li kienet assunta mill-azzjonisti precedenti ta` Town Investments Limited li tinkludi testwalment : *“all judicial and other legal costs ... as finally determined in the following lawsuits ...”* Inghad illi kien ghad fadal

bilanc dovut lir-Registratur tal-Qrati fl-ammont ta` EUR 4,104.10 in konnessjoni mal-kawza fl-ismjiet *Busietta Gardens Madliena Limited vs Civil Engineering & Building Contractors*.

Skont is-socjeta` intimata, ladarba l-garage kien qed iservi bhala garanzija ghal dawk l-obbligi assunti mill-vendituri, u rrizulta li kien hemm kwistjonijiet li dwarhom il-kumpraturi ma gewx infurmati bihom, is-socjeta` konvenuta kellha raguni valida biex ma tersaqx ghal kuntratt finali.

Inghad mill-konvenuta fin-nota ta` sottomissjonijiet illi l-obbligu taghha li tersaq ghall-att finali ta` l-bejgh ma kienx sempliciment marbut biss mat-tnehhija tal-mandati ta` inibizzjoni izda wkoll mat-twettiq tal-obbligi assunti mill-azzjonisti precedenti li jissaldaw kull dejn gravanti l-kumpannija trasferita. Ghalhekk sar l-argument illi l-garanziji li l-intimata nghatat fuq il-ftehim ta` trasferiment tal-ishma ta` Town Investments Limited u li ghalihom qed jaghmlu tajjeb il-proprjetajiet li kienu soggetti ghal konvenji ghandhom jinzammu fis-sehh minhabba li l-obbligi assunti mill-azzjonisti precedenti ma gewx imwettqa. Ghalhekk tghid illi ghandha ragunijiet validi sabiex ma tersaqx ghall-att ta` trasferiment tal-proprjeta favur is-socjeta` attrici.

### **Il-linja ta` difiza tas-socjeta` konvenuta mhijiex kondiviza minn din il-Qorti.**

Fil-konvenju mertu ta` din il-kawza ma jissemma xejn illi l-fond in kwistjoni kien qed iservi bhala garanzija ghall-ftehim l-iehor dwar it-trasferiment ta` ishma li sar fl-istess gurnata tal-konvenju in kwistjoni.

Lanqas ma jinghad fil-konvenju illi fil-kaz ta` inadempjenza ta` xi obbligi inseriti fil-ftehim ta` t-trasferiment ta` ishma, il-bejgh tal-fond de quo ma kienx ser isir. Ma kien hemm l-ebda kundizzjoni fil-konvenju relatata mal-ftehim ta` trasferiment ta` ishma.

Minn analizi *tax-share sale and purchase agreement*, il-Qorti tqis li kien hemm procedura li kellha tigi segwita sabiex jigu rkuprati ammonti li thallsu mis-socjeta` intimata indebitament ghax kienu obligazzjonijiet li ma kinitx taf bihom. Fl-istess waqt, tghid illi ma tressqux provi li juru li nbdew proceduri skont l-*agreement* ghax ma kienx hemm *indemnity* jew li ma kienx jifdal triq ohra ghajr li titiehed azzjoni dwar is-*security properties* fosthom il-fond in kwistjoni. Dan qed jinghad b`referenza partikolari ghal klawnsoli 5.4 sa 5.8 *tax-share sale and purchase agreement*.



B`zieda ma` dan anke li kieku l-klawsoli 5.4 sa 5.8 ma kellhomx jigu applikati minhabba l-klawsola 5.9 tal-istess *agreement* (op. cit.), xorta ma tressqux provi li ttiehdet xi azzjoni sabiex is-socjeta` intimata tagixxi dwar l-allegati nuqqasijiet da parti tal-vendituri u l-*guarantors* li dehru fuq is-*share sale and purchase agreement*. Fl-*agreement*, is-*security properties* jissemmew biss sabiex tinghata interpretazzjoni ta` l-frazi ossija fi klawsola 1.1 u mbaghad fit-tielet skeda fi klawsola 5.6 fejn jinghad illi Town Investments Limited ghamlet konvenju dwar is-*security properties*. Minn imkien ma jirrizulta fis-*share sale and purchase agreement*, x`kellu jigri fil-kaz li jkun hemm xi nuqqasijiet ai termini ta` il-ftehim. Lanqas ma tressqu provi illi kienu gew kostitwiti xi ipoteki debitament registrati fuq din il-proprjeta` partikolari sabiex ikun hemm registrazzjoni fuq l-istess proprjeta` tal-garanzija moghtija.

Huwa minnu wkoll li din il-proprjeta` fost proprjetajiet ohra kienet indikata bhala *security property*, izda din kienet biss wahda mill-proprjetajiet hekk deskritti bhala *security property*. Mad-daqqa t`ghajn, din il-proprjeta` partikolari hija dik bl-anqas valur peress li l-hamsa l-ohra ndikati kienu lkoll appartamenti (mhux garage). Ghalhekk il-valur tal-hames proprjetajiet l-ohra kien jaghmel tajjeb ghal kwalunkwe pretensjonijiet ta` kumpens li setghet tippretendi li ghandha s-socjeta` konvenuta.

Ghal din il-Qorti, it-trapass ta` zmien jimmilita kontra l-argument tal-konvenuta ghax ladarba kienet rinfaccjata bil-kawza tal-lum kien messha hadet azzjoni biex turi li tassew ghandha pretensjonijiet kontra l-vendituri u l-garanti li dehru ghax-*share sale and purchase agreement* kif ukoll illi kienet ser tiehu azzjoni partikolari fir-rigward tal-fond de quo. Provi ta` din ix-xorta baqghu ma tressqux fil-kors ta` din il-kawza.

Huwa wkoll sinjifikattiv il-fatt illi sa minn mindu sar il-konvenju in ezami, il-fond baqa` dejjem fil-pussess tas-socjeta` attrici u qatt ma ttiehdet azzjoni biex l-attrici tirrilaxxa l-fond, minkejja li l-konvenuta baqghet tikkontendi li kien hemm ragunijiet tajba ghala ma kellhiex tersaq ghall-att finali.

Il-Qorti tqis infondata fil-fatt u fid-dritt il-kontestazzjoni fil-mertu tas-socjeta` konvenuta u ghalhekk qeghda tilqa` t-talbiet attrici.

## **Decide**

**Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talbiet attrici, u dwar l-eccezzjonijiet [hlief ghat-tielet (3) eccezzjoni li**

kienet deciza b`sentenza tal-Qorti tal-Appell tal-31 ta` Mejju 2013] billi qeghda taqta` u tiddeciedi hekk :-

Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni, stante li din l-eccezzjoni kienet irtirata fil-mori tal-kawza.

Tichad it-tieni (2) u r-raba` (4) eccezzjonijiet.

Tilqa` l-ewwel (1) talba billi tikkundanna lis-socjeta` konvenuta sabiex tidher u taddivjeni fuq il-pubblikazzjoni tal-att notarili relattiv ghall-bejgh ta` garaxx (lock-up) internament immarkat bin-numru 1 fil-kumpless ta` garaxxijiet maghruf bhala "70s" tal-kumpless maghruf bhala Madliena Village (gia Busietta Gardens), Triq il-Fortizza, Madliena, limiti tal-Gharghur, kif ahjar deskritt fil-konvenju Dok. A.

Tilqa` t-tieni (2) talba billi tahtar lin-Nutar Pubbliku Dottor Pierre Attard sabiex nhar it-Tlieta 27 ta` Marzu 2018 f`nofsinhar fil-bini tal-Qrati tal-Gustizzja, Valletta, jippubblika l-att finali notarili relattiv ghall-imsemmi bejgh. Tahtar ukoll lill-Avukat Dottor Anna Mifsud Bonnici sabiex tirrapprezenta lill-eventwali kontumaci fuq l-istess att.

Tordna lis-socjeta` konvenuta sabiex thallas l-ispejjez ta` din il-kawza, komprizi dawk tal-ittra gudizzjarja tas-27 ta` Mejju 2010.

**Onor. Joseph Zammit McKeon**  
Imhallef

**Amanda Cassar**  
Deputat Registratur