Ezekuzzjoni Konvenju;
Artikolu 1357 tal-Kap 16 tal-Ligijiet ta' Malta;
"non refundable deposit" xi jfisser

QORTI CIVILI PRIM'AWLA

ONOR. IMHALLEF TONI ABELA LL.D.

Seduta ta' nhar it-Tlieta, 26 ta' Gunju, 2018

Numru 6

Citazzjoni Numru 971/04TA

Olive Gardens Investments Limited (C 16715)

vs

Charles Sant Fournier (ID 265083M) u James Sant Fournier (ID 15367M) u b'degriet tat-30 ta' April 2009, l-atti tal-kawza ghaddew mill-persuna ta' Charles Sant Fournier ghall-persuna ta' Anna Maria Sant Fournier u Vera Maria Sant Fournier minhabba l-mewt fil-mori tal-imsemmi Charles Sant Fournier u b'digriet tat-13 ta' Ottubru 2017 il-Qorti ordnat il-korrezzjoni fl-isem ta' Anna Maria Sant Fournier ghal Maria Anna Sant Fournier

Il-Qorti:

Rat ic-Citazzjoni prezentata mis-Socjeta` Attrici fl-14 ta' Dicembru 2004 u mahlufa minn Joseph Baldacchino fl-istess jum li permezz tieghu talbet is-segwenti:-

"Peress illi b'konvenju datat hmistax (15) ta' Mejju tas-sena elfejn u tlieta (2003) il-konvenuti solidalment u ndivizament bejniethom obbligaw ruhhom li jbieghu u jitrasferixxu lis-socjeta` attrici li accettat u obbligat ruhha li tixtri u takkwista minghand il-konvenuti l-immobbli msemmija fl-istess konvenju, inkluz:-

"URBAN PROPERTY

One third ($^1/_3$) undivided part of the following:

1. *The shop at number one hundred (100) formerly number thirty nine (39) in Msida Street, Santa Venera, let a eighteen Malta (Lm18) per annum.*

2. *The tenement at number fifteen (15) Mesquita Street, Mdina, let at fourteen Malta liri (Lm14) per annum.*

3. *The store at number sixteen (16) Mesquita Street, Mdina, let at thirty six Malta liri (Lm36) per annum.*

4. *The temporary directum dominium of one hundred and thirty Maltese liri (Lm130) for the remaining period of the lease of fity (50) years which commenced on the twenty seventh (27th) day of May of the year one thousand nine hundred and seventy five (1975) and the full ownership thereafter as subject to its share of an annual perpetual ground rent of ten cents (10 cents) of the terraced house at number thirty eight (38) Annunciation Street, Sliema.*

5. *The temporary directum deominium and annual temporary ground rent of one hundred and twenty five Maltese liri (Lm125) for the remaining period of the lease of ninety (90) years which commenced on the twenty fourth (24th) day of May of the year one thousand nine hundred and sixty six (1966) and the full ownership thereafter of the house at numbers seventy three (73) and seventy four (74) Siren Street, Senglea as subject to a burthen of two Maltese liri and eighty five cents (Lm2.85) towards Saint Lawrence Church of Vittoriosa and one Maltese lira twelve cents and five mils (Lm1.12,5) towards the Cathedral Church of Malta.*

6. *The shop or number three hundred (300) Saint Paul Street, Valletta, let at one hundred and forty Malta liri (Lm140) per annum.*

7. *The shop at number two hundred and ninety nine (299) Saint Paul Street, Valletta, let at one hundred and forty Malta liri (Ln140) per annum.*

8. *The house at number two hundred and ninety eight (298) Saint Paul Street, Valletta. This house is vacant.*

9. *The shop known as "Benefit Shoe Store" at number fifty two (52) Saint John Street, Valletta, let at eight hundred and eighty Malta liri (Lm880) per annum.*

10. *The shop at number fifty four (54) formerly numbers fifty three and fifty four (53, 54) Saint John Street, Valetta, let at two hundred and fifteen Malta liri (Lm30) per annum.*

11. *The garage at number ten (10) Luqa Briffa Street, Naxxar, let at thirty Malta liri (Lm30) per annum.*

12. *One undivided half ($^1/_2$) of the Chapel containing two gaves situated at the Addolorata Cemetery at Casal Paola bearing number twenty six (26), Section West, Compartment CC.*

13. *The temporary utile dominium for the remaining period of the concession of one hundred and fifty (150) years which commenced on the eight (8th) day of February of the year one thousand eight hundred and ninety three (1893) of the garage at number six (6) Balzan Valley, Balzan as subject to thirty one cents and seven mils (31c7m)) being its share of an annual temporary ground rent, let at two hundred and thirty nine Malta liri and sixty cents (Lm239.60) per annum.*

14. *One third ($^1/_3$) undivided share of the mezzanine now demolished situated at number one (1) Prison Street, Vittoriosa.*

RURAL PROPERTY

One third ($^1/_3$) undivided part of the following:

1. *One third ($^1/_3$) undivided share of the field known as "Gnien Iz-Zebbug" situated in the district of Hal-Mann within the limits of Hal-Lija measuring about three thousand two hundred and sixty square metres ($3260m^2$) containing a small rural room and an underground well, bordered on the East by property of Marquis Cassar Desain, on the South by property of Canon Isidoro Formosa or his assignees and on the North by property belonging to the Parish Church of Casal Lija, as shown on the plan hereto annexed and marked Enclosure "E" let at two Malta lira per annum (Lm2).*

2. *One third ($^1/_3$) undivided share of the field known as "Ix-Xaghra Ta' Tawwil" in the district of "Id-dar il-Hamra" at Zebbiegh within the limits of Mgarr, Malta, having an area of twenty five thousand eight hundred*

and forty square metres (25,840m^2), bordered on the East by property belonging to Concetta Grant or her assignees, on the South by a public road and on the West by property of the family Vella, as shown on the plans hereto annexed and marked Enclosures "F" and "G", let at three Malta liri and twenty one cents (Ln3.21) per annum.

3. *The field known as "Il-Hotba ta' Dell" sive "Ta' Hal-Dragu" in the district of Hal Dragu at Bidnija within the limits of Mosta measuring about eleven thousand six hundred and twenty five square metres (11625m^2), bordered on the East by property belonging to Giovanni Muscat or his assignees, o the West by a public road and on the South by property of the families Said and Micallef or their assignees, let at four Malta liri (Lm4) pr annum, as shown on the plan hereto annexed and marked Enclosure "H".*

4. *The field known as "Tal-Bidnija" in the district known as "Tal-Hireb" at Bidnija in the limits of Mosta, having an area of about four thousand two hundred and twelve square netres (4212m^2), bordered on the North and West by Triq tal-Hzejjen and on the South by property belonging to Joseph Calleja or his assignees, let at fifty nine cents (59 cents) per annum as shown on the plan hereto annexed and marked Enclosure "I".*

5. *The field known as "Il-Bajada" situated in the district known as "Tal-Garda" within the limits of Hal-Ghaxaq, having an area of about nine thousand nine hundred and ninety two square metres (9992m^2), bordered on the East by Wied Kambu and by a public space, on the South by property belonging to the heirs of Nicola Cachia or their assignees and on the West by property belonging to the assignees of the late Lord Strickland, as shown on the plan hereto annexed and marked Enclosure "J", let at two Malta liri (Lm2) per annum.*

6. *The field known as "Ix-Xaghra tal-Garda" situated in the district of the same name within the limits of Hal-Ghaxaq, having an area of about thirty eight thousand and thirty two square metres (38032m^2), bordered on the South-West by a public road, on the East and North by property belonging to the Noble Emilia Trapani Galea or her assignees and on the South by a public road, as shown on a plan hereto annexed and marked Enclosure "K", let at four Malta liri and fifty cents (Lm4.50c).*

7. *The temporary directum dominium for the remaining period of about twenty one (21) years and the relative temporary annual ground rent of twelve Maltese liri (Lm12) as well as the full ownership after the expiration of the said emphyteutical concession of the land known as "Ta' Blat il-Qamar" in the district of the same name within the limits of Siggiewi containing a farmhouse and having an area of about thirteen*

thousand nine hundred and eighty eight square metres (13988m^2) bordered on the North by Triq Blat il-Qamar, on the East partly by Triq Patri Giuseppe Delia and partly by property belonging to the heirs of Nicola Borg and on the South by property belonging to Carmelo Vassallo and Salvatore Ellul or their assignees, as shown on the plan hereto annexed and marked Enclosure "L".

8. *The field known as "Ta' Bellu" in the district known as "Tal-Providenza" within the limits of Siggiewi having an area of about sixteen thousand two hundered and thirty six square metres (16236m^2) and containing three wells, bordered on the West by Triq Ta' Bellu, on the North by wied Tal-Lewża and on the East by property belonging to the family Dellia or its assignees, let at fifteen Malta liri (Lm15) per annum, as shown on the plan hereto annexed and marked Enclosure M.*

9. *The territory known as "Ta' Santa Lucia" situated in the districs Ta' l-iMtarfa" within the limits of Mdina. This territory occupies a total area of about sixty one thousand and seventy two square metres (61072m^2) and situated to the South by "Il-wied tal-Qlejgha". The whole territory consists of three separate adjoining fields sloping from East to West and is shown on an aerial photograph hereto annexed an marked Enclosure "O" and "P".*

The first field measures forty two thousand eighty two square metres (42882m^2), contains part of a farmhouse and is subject to seventy five cents and four mils (75c4m) annual perpetual ground rent as we as a burthen of one mass and one quartana of wine and is subject to the servitude in favour of neighbouring owners to water animals from the spring existing therein. This field is bordered on the East by property belonging to the heirs of Count Nicolo` Sciberras Bologna, on the West by property belonging to the Manduca family ad in part by Triq Bingemma and on the South partly by Triq Bingemma and partly by property of the Stagno family or their assignees.

The second field measures seven thousand one hundred and seventy four square metres (7174m^2) is subject to an annual perpetual ground rent of three scudi and four tari as well as to burthen of two Masses and one twelfth of the costs of the annual festivities of Santa Lucia and to the maintenance of the Church situated in the same district The land enjoys the right of servitude to take water for animals for domestic purposes from a nearby fountain in third party property and is bordered on the East by a lane, on the South by property of the Sant Fournier family and on the North in part by a lane and in part by property belonging to Manduca family.

The third area consists of two adjoining fields one measuring four thousand nine hundred and thirty six square meters (4936m^2) and the other measuring six thousand and eighty square metre (6080m^2) and are together subject to the annual burthen of four scudi, four tari and four grana towards the Cathedral Church of Malta and together bordered on the East by a lane, on the North by property of the Sant Fournier family and by a lane and on the South by property belonging to Paolo Borg.

The whole territory is let at forty four Malta liri (Lm44) per annum.

10. *The one undivided half ($^1/_2$) share of the lands known as "It-Taxis" in the district known as "Pwales" within the limits of Saint Paul's Bay, having an area of about thirty five thousand and fourteen square metres (35014m^2) which lands contain a farmhouse in that part of the area known as "Il-Gnien", four unnumbered garages and two rural rooms.*

    The said land has a right to participate in the yields of spring water at "Il-Gnien" for twelve hours a week and another twelve hours on every third Sunday. The land is bordered on the South-East by the Simar natural reserve, on the North-East by Triq il-Hagra Wieqfa and on the East by property belonging to Augustinian Friary, as shown on the plan hereto annexed and marked Enclosure "Q" let at twenty six Malta liri and thirty seven cents (Lm26.37) per annum.

11. *The field known as "Ta' Danda" in the district of "Ta Wied Sara" within the limits of Zebbug, Gozo, measuring about thirteen thousand seven hundred and eighty eight square metres (13788m^2) and bordered on the South by Triq Wied Sara, on the West by property belonging to the heirs of Luigi Portelli and on the East by property belonging to the families Borg and Leonardini or their assignees which field is subject to the right of way by foot and by beast in favour of third parties, as shown on the plan herto annexed and marked Enclosure "R", let at nine Malta liri (Lm(9) per annum.*

GROUND RENTS

1. *The perpetual sub-directum dominium and annual perpetual sub-ground rent of sixty Maltese liri (Lm60) as subject to twenty cents (20c) annual perpetual head ground rent imposed on the following property, namely:*

    (a) *Forty five Maltese liri (Lm45) imposed on house number four (4) Annunciation Square, Sliema.*

(b) Three Maltese liri (Lm3) imposed on tenement number thirty seven (37) Annunciation Street, Sliema.

(c) Six Maltese liri (Lm6) imposed on tenement number thirty seven letter A (37A) Annunciation Street, Sliema.

(d) Six Maltese liri (Lm6) imposed on Tenement number thirty seven letter B (37B) Annunciation Street, Sliema.

2. The perpetual directum dominium and relative annual perpetual ground rent of fifteen cents (15c) imposed on tenement number thirteen (13) Saint George Street, Cospicua.

3. The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of one hundred and two Maltese liri and thirty three cents (Lm102.33) as subject to a head ground rent of one hundred and twenty three Malta liri and ninety six cents (Lm123.96), imposed on several tenements built on the land at Birkirkara known as "Tal-Ifniek" having a superficial area of about six thousand seven hundred and forty four square metres (6744m^2) bordered on the East by Fleur de Lys Road, on the South by property of the Reverend Giuseppe Borg Buttigieg or his successors in title and on the North by property of Doctor Francis Buttigieg or his successors in title.

4. The perpetual directum dominium and relative annual perpetual ground rent of one Malta Lira and thirty seven cents (Lm1.37) imposed on tenement number twenty three (23) Saint Ignatius Junction, Sliema named 2Alice House".

5. The perpetual directum dominium and relative annual perpetual ground rent of three Malta liri sixty seven cents and five mils (Lm3.67,5) imposed on tenement number twenty four (24) Saint Ignatius Junction, Sliema named "Alice House".

6. The perpetual directum dominium and relative annual perpetual ground rent of five Malta liri (Lm5) imposed on tenement number one hundred and forty seven (147) Blanche Street, Sliema.

7. The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of ninety Maltese liri (Lm90) as subject to seventy Maltese liri (Lm70) head ground rent imposed on various tenements in Hamrun along Villambrosa Street, Canon F. Bonnici Street, P.P. Mifsud Street, Depiro Street and Garden Street all built on a plo9t of land originally measuring about eight thousand five hundred square metres (8500m^2) and bordered on the East by Government property, on the West by Villambrosa Street and on the South in part

by property of Saint Augustine Friary of Valletta and in part by a lane.

8. *The perpetual sub-direction dominium and relative annual perpetual ground rent of forty two Maltese liri and fifty two cents (Lm42.52,0) as subject to a head ground rent of ten Maltese liri (Lm10) payable to the Mensa Filippina of the Collegiate Church of Birkirkara imposed on various tenements in Balzan along Main Street, Pope Urbanus Street and Pope Pius XII Street, all built on part of the lands known as "Tal-Lewza" originally covering an area of one thousand nine hundred and thirty seven square metres (1937m^2) and bordered on the South by Main Street, on the East by Pope XII Street and the West by Pope Urbanus Street.*

9. *The temporary sub-directum dominium and relative annual sub-ground rent for the remaining period of the concession of one hundred and fifty (150) years with effect from the eighth (8th) day of February of the year one thousand eight hundred and ninety three (1893) of eleven Malta liri and seventy five cents (Lm11.75) as subject to a head ground rent of seven Malta liri and eighty one cents (Lm7.81,0) payable to the Mensa Filippina of the Collegiate Church of Birkirkara iposed on Miami Flats at number four (4) Valley Road, Balzan.*

10. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of one hundred and twenty one Malta liri and fifteen cents (Lm121.15,0) as subject to a head ground rent of seventy seven Malta liri and fifty cents (Lm77.50,0) imposed on the lands known as "Ta' Wara l-Bjut" sive "Tal-merghi" sive "Ta' Busietta" at Naxxar originally measuring nineteen thousand one hundred and thirty one square metres (19131m^2) bordered on the North and South by public roads and on the West by property of the Parish Church of Naxxar or its assignees.*

11. *The one undivided half ($^1/_2$) of the temporary sub-directum dominium and relative annual temporary subground rent of five Malta liri (Lm5) for the remaining approximately forty four (44) years of the original concession imposed on a plot of land forming part of the territory known as "Ta' Wara l-Knisja" at Saint Julians having an area of about one hundred and ighty five square metres (185m^2) and containing a lime kiln, bordered on the West by Mensija Road, on the North by property of Giuseppe Attard and on the East by a new road.*

12. *The one undivided half ($^1/_2$) of the temporary sub-directum dominium and relative annual temporary sub-ground rent of five Malta liri twenty cents and eight mils (Lm5.20,8) for the remaining*

> *approximately forty four (44) years of the original concession imposed on a plot of land forming part of the territory known as "Ta' Wara il-Knisja" at Saint Julians having an area of about one hundred and eighty three square metres (183m^2) bordered on the West by Mensija Road, on the North-East and North-West by property of the assignees of the family San Fournier."*

U dan versu l-prezz u l-pattijiet u l-kondizzjonijiet stipulati fl-istess konvenju, fosthom li s-socjeta` attrici ghandha d-dritt li tissostitwixxi minflokha terza persuna/terzi persuni in toto jew in parte fuq il-kuntratt finali; kopja ta' liema konvenju qeghda tigi esibita u mmarkata bhala Dokument A.

Peress illi l-konvenuti naqsu milli jaddivjenu ghall-publikazzjoni tal-kuntratt definittiv relattiv ghat-trasferiment tal-immobbli mertu tal-imsemmi konvenju tal-15 ta' Mejju 2003 nonostante l-fatt ili, qabel id-data tal-iskadenza tal-istess konvenu, gew debitament interpellati ghal dan l-iskop mis-socjeta` attrici permezz ta' ittra ufficjali datata 12 ta' Novembru 2004.

Peress illi s-socjeta` attrici trid tixtri minghand il-konvenuti l-imsemmija immobbli kif gie miftiehem permezz tal-konvenju tal-15 ta' Mejju 2003.

Peress illi l-konvenuti qed jintimaw lis-socjeta` attrici illi mhumiex f'posizzjoni li jwettqu t-trasferiment kollu li weghdu fl-imsemmi konvenju.

Jghidu ghalhekk il-konvenuti l-ghaliex, ghar-ragunijiet premessi u prevja okkorrendo d-dikjarazzjoni li naqsu milli jaddivjenu ghall-kuntratt definittiv kif fuq spjegat, m'ghandux minn din il-Qorti:-

1. Jigu solidalment ordnati sabiex, fi zmien qasir u perentorju li jigi lilhom prefiss, jaddivjenu ghall-kuntratt relattiv ghat-trasferient minnhom favur is-socjeta` attrici tal-immobbli mertu tal-imsemmi konvenju tal-15 ta' Mejju 2003 u dan versu l-pattijiet u l-kondizzjonijiet stipulati fl-istess konvenju.

2. Jigi nominat Nutar sabiex jippubblika l-kuntratt relattiv fil-lok, jum u hin li jigu wkoll stabbiliti u kuraturi nominati biex jirrappresentaw lill-eventwali kontumaci fuq l-istess kuntratt u dan that dawk il-provvedimenti l-ohra li din l-istess Qorti jgħogobha taghti.

3. Fil-kaz illi l-konvenuti ma jkunux jistghu jwettqu l-obbligazzjonijiet kollha minnhom assunti fl-imsemmi konvenju tal-15 ta' Mejju 2003 jigi minn din il-Qorti dikjarat u deciz illi s-socjeta` attrici sofriet danni li ghalihom huma responsabbli l-konvenuti b'mod solidali.

4. Jigu likwidati dawn id-danni hekk sofferti mis-socjeta` attrici, okkorrendo bl-opera ta' perit nominand; u

5. Jigu l-konvenuti solidalment ikkundannati jhallsu dawn id-danni hekk likwidati lis-socjeta` attrici.

Salv kull dritt iehor spettanti lis-socjeta` attrici fil-konfront tal-konvenuti u bl-ispejjez, inkuzi dawk tal-ittra ufficjali tat-12 ta' Novembru 2004 u tal-ittra bonarja tas-7 ta' Dicembru 2004, kontra l-konvenuti, li huma minn issa ngunti sabiex jidhru in subizzjoni."

Rat in-Nota tal-eccezzjonijiet tal-Konvenuti ahwa Sant Fournieripprezentata fil-21 ta' Jannar 2005 u mahlufa minn Charles Sant Fournier fl-istess data li permezz taghha wiegbu s-segwenti:-

"1. Illi t-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez.

2. Illi l-konvenuti kienu pprezentaw ittra ufficjali fit-(12) ta' Novembru 2004 (kopja esebita bhala Dok A), permezz ta' lie3m interpellaw lis-socjeta` attrici tersaq ghall-kuntratt, izda s-socjeta` attrici naqset li taghmel dan;

3. Illi la darba s-socjeta` attrici ghazlet li ma tersaqx ghall-iffirmar tal-kuntratt meta giet intrpellata taghmel dan qabel ma skada l-konvenju, is-socjeta` attrici ma tistax issa titlob il-Qorti tikkundanna lill-konvenuti jersqu ghall-kuntratt;

4. Illi l-konvenuti da parti taghhom kienu dejjem lesti li jersqu ghall-iffirmar tal-kuntratt fit-terminu miftiehem tal-konvenu, izda kienet is-socjeta` attrici li ghal skuza jew ohra dejjem evitat li taghmel dan;

5. Illi l-ittra ufficjali da parti tas-socjeta` attrici saret in mala fede in kwantu li kieku riedet tersaq ghall-kuntratt, setghet taghmel dan fiz-zmien tal-konvenju;

6. Illi l-procedura tal-ittra ufficjali permezz ta' liem wiehed jinterpella lill-parti l-ohra tersaq ghall-kuntratt, mhijiex intiza biex wiehed jaghti lilu nnifsu, jekk hu l-akkwirent, aktar zmien biex isib il-finanzi biex ihallas il-prezz tal-akkwist;

7. Illi l-konvenuti ma kkagunaw l-ebda danni lill-atturi u mhumiex responsabbli ghal ebda danni li allegatament is-soċjeta` attrici ser tbati minhabba l-inadempjenza taghha li tersaq ghall-kuntratt;

8. Salv eccezzjonijiet ohra."

Rat li l-konvenuti ipprevalew ruhhom mit-talbiet Attrici u ipprezentaw kontro-talba fil-21 ta' Jannar 2005 li permezz taghha ssottomettew is-segwenti talbiet rikonvenzjonali:-

> "Peress illi b'konvenju datat 15 ta' Mejju 2003 il-konvenuti kienu obbligaw ruhhom li jbieghu u jitrasferixxu lis-socjeta` attrici sensiela ta' proprjeta` immobbli, liema proprjeta` hija elenkata fic-citazzjoni attrici.
>
> Peress illi s-socjeta` attrici kienet talbet lill-esponenti jgeddu l-konvenju izda l-esponenti deherilhom li l-konvenju kien twil bizzejjed u ma kienx hemm bzonn jiggedded u ghalhekk il-konvenju ma ggedditx.
>
> Peress illi qabel ma skada l-konvenu huma interpellaw lis-socjeta` attrici sabiex tersqu ghall-att finali wara l-konvenju in kwisjtoni, kopja ta' liema ittra hija esebita u markata Dok A.
>
> Peress illi dan nonostante s-socjeta` attrici naqset li tersaq ghall-att finali relattiv u sabet skuza b'kappella li hija parti insinifikanti mill-konvenju kif ser jirrizulta apjament fis-smiegh u t-trattazzjoni ta' din il-kawza.
>
> Peress illi dan nonostante u nonostante li s-socjeta` attrici ma kellha l-ebda intenzjoni tersaq ghall-att finali relattiv ghazlet illi zzomm validu l-konvenju datat 15 ta' Mejju 2003 billi ppresentat ittra ufficjali fit-12 ta' Novembru 2004 u ppresentat il-proceduri odjerni fl-14 ta' Dicembru 2004.
>
> Peress illi fil-konvenju hemm specifikat illi jekk il-kuntratt finali ma jsirx sal-15 ta' Novembru 2004 id-depositu mhallas mis-socjeta` attrici lill-konvenuta ta' Lm30,000 jintilef definittivament favur il-konvenuti.
>
> Peress illi in oltre, minhabba dan l-agir doluz da parti tas-socjeta` attrici l-konvenuti sofrew danni.
>
> Tghid is-socjeta` attrici ghaliex m'ghandhiex din l-Onorabbli Qorti:
>
> i) Tiddikjara illi s-socjeta` attrici naqset illi tersaq ghall-atti finali wara l-konvenju tal-15 ta' Mejju 2003 ffimat bejn il-partijiet u dan minkejja li giet interpellata b'ittra ufficjali mill-konvenuti biex tersaq ghall-kuntratt.

ii) Tiddikjara, konsegwentement, li l-konvenuti m'humiex aktar marbutin illi jbieghu lis-socjeta` attrici kif imwieghed fil-konvenju tal-15 ta' Mejju 2003 ffirmat bejn il-kontendenti.

iii) Tiddikjara illi d-depositu ta' Lm30,000 mhallas mis-socjeta` attrici lill-konvenuti in segwitu tal-konvenju tal-15 ta' Mejju 2003 ffirmat bejn il-partijiet ghadda definittivament ghal ghand il-konvenuti.

iv) Tiddikjara illi minhabba dan in-nuqqas da parti tas-socjeta` attrici li tersaq ghall-att finali wara l-konvenju imsemmi u minhabba li dan nonostante zammet il-konvenuti marbuta billi ppresentat ittra ufficjali kif ukoll dawn il-proceduri, l-konvenuti sofrew u qed isofru danni.

v) Tillikwida d-danni sofferti mill-konvenuti ai fini tat-tielet talba okkorrendo bin-nomina ta' periti nominandi.

vi) Tikkundanna lis-socjeta` attrici thallas lill-konvenuti s-somma hekk likwidata.

Bl-ispejjez inkluz dawk tal-ittra ufficjali datata 12 ta' Novembru 2004 u l-imghax u s-socjeta` attrici ingunta in subizzjoni."

Rat in-nota tal-eccezzjonijiet tas-Socjeta` Attrici ghat-talba rikonvenzjonali tal-konvenuti datata 14 ta' Frar 2005, li permezz taghha eccepiet is-segwenti:-

"1. Preliminarjament it-talbiet tal-konvenuti fil-kontro-talba taghhom ghandhom jigu respinti ghaliex l-istess konvenuti naqsu milli jintavolaw il-pretensjonijiet taghhom fit-terminu ta' tletin gurnata stabbiliti fl-artikolu 1357 tal-Kodici Civili (Kap. 16).

2. Subordinatament fil-mertu, u minghajr pregudizzju ghall-premess, it-talbiet tal-konvenuti fil-kontro-talba taghhom huma nfondati fil-fatt u fid-dritt billi s-socjeta` ecipjenti kellha raguni valida ghaliex ma tersaqx ghall-kuntratt finali u dan stante illi l-konvenuti Sant Fournier ma keinux f'posizzjoni li jwettqu dak li ppromettew bil-konvenju tal-15 ta' Mejju 2003.

3. Salvi eccezzjonijiet ora jekk u meta jkun il-kaz."

Rat l-avviz tat-23 ta' Frar 2017 dwar l-assenjazzjoni ta' dmirijiet lill-Imhallfin ai termini tal-artikolu 11(3) tal-Kap. 12 tal-Ligijiet ta' Malta, li bis-sahha tieghu

l-kawza odjerna giet assenjata lil dina l-Qorti kif presjeduta meta kienet diga` mhollija ghas-sentenza;

Rat id-digriet moghti fl-20 ta' Settembru 2007 (a` fol 361A) permezz ta' liema giet milqugha t-tieni talba tar-rikors prezentat mis-Socjeta` Attrici fit-13 ta' Gunju 2007 (a` fol 347);

Rat l-atti kollha tal-kawza;

Rat il-verbal tal-11 ta' April 2017 fejn il-partijiet qablu li qabel ma l-Kawza tithalla ghas-sentenza jergghu jsiru sottomissjonijiet finali

Rat id-dokumenti li gew esebiti in atti;

Qrat ix-xhieda fil-kawza;

Rat il-verbal tal-udjenza tal-10 ta' April 2018 fejn il-kawza thalliet ghal-lum ghas-sentenza fit-terminu ta' dak milqugh mill-Qorti fl-istess verbal fejn, fuq talba tal-partijiet li ntlaqghet mill-Qorti, gie varjat "*id-digriet taghha tal-20 ta' Settembru, 2007 li jinsab a` fol 361A tal-process fis-sens kif ser jinghad u cioè, li l-kawza tithalla ghas-sentenza parzjali fuq l-ewwel tlett talbiet tac-citazzjoni tas-Socjetá Attrici li jinsabu a` fol 7 tal-process flimkien mad-decizjoni parzjali fuq l-ewwel tlett talbiet rikonvenzjonali tal-Konvenuti li jinsabu a` fol 43 tal-process*".

In vista ta' dan il-verbal il-Qorti sejra ghalhekk permezz ta' din id-Decizjoni tipprovdi parzjalment dwar l-ewwel tliet talbiet Attrici u l-ewwel tlett talbiet rikonvenzjonali tal-Konvenuti.

Punti ta' fatti

1. Din il-kawza hija rizultat ta' konvenju datat 15 ta' Mejju 2003 (a` fol 17, 59 u 154) fl-atti tan-Nutar Victor Bisazza. Permezz ta' dan il-Konvenju l-Konvenuti vendituri obbligaw ruhhom li jbieghu u jittrasferixxu lis-Socjeta` Attrici kompratrici terz indiviz ta' sensiela ta' proprjetá urbana u rurali kif ukoll terz indiviz ta' sensiela ta' cnus u sub-cnus.

2. Ai fini ta' kompletezza jinghad li s-Socjeta` Attrici dahlet f'konvenju iehor ma' kugini tal-Konvenuti sabiex jakkwistaw ishma ohra tal-istess proprjetá urbana u rurali kif ukoll cnus u sub-cnus (ara affidavit ta' Joseph Baldacchino a` fol 102).

3. Fit-termini tal-ewwel klawsola tal-Konvenju inkwistjoni, il-bejgh kellu jsir bil-prezz ta' tlitt mija u ghaxar liri Maltin (LM310,000) mill-liema ammont is-Socjeta` Attrici hallset "non-refundable deposit" ta' hmistax-il elf Maltin (LM15,000) akkont tal-prezz lil kull Konvenut venditur permezz ta' zewg cekkijiet numri 2071 u 2072. In virtù tat-tieni (2) klawsola, il-Konvenuti vendituri intrabtu li jaghtu l-garanzija tal-pacifiku pussess. Permezz tal-hames klawzola gie stabbilit li l-validitá tal-Konvenju kellha tkun ta' sitt (6)

xhur minn meta jitlestew ir-ricerki izda fi kwalunkwe kaz sa tmintax il-xahar mid-data tal-konvenju, jigifieri sal-15 ta' Novembru 2004 (ara l-ahhar pagna tal-Konvenju). Ma huwiex maghruf jekk il-konvenju giex registrat mal-awtoritajiet fiskali kompetenti kif titlob il-ligi.

4. Permezz ta' Ittra Ufficjali datata 12 ta' Novembru 2004 (a' fol 105), is-Socjeta` Attrici intimat lill-Konvenuti li "*hija ghadha trid illi l-imsemmija immobbli jigu lilha mibjugha, assenjati u ttrasferiti minnkhom lilha skont il-pattijiet u l-kundizzjonijiet stipulati fl-istess konvenju*" u interpellathom sabiex "*F'kaz illi inhtom ma tersqux ghall-att definittiv ta' trasferiment skond kif miftiehem bl-mesmmi konvenju sal-15 ta' Novembru 2004 il-mittenti tipprocedi kontra taghhkom skond id-drittijiet moghtija lilha mill-Ligi*".

5. Fl-istess data, cioe' fit-12 ta' Novembru 2004, il-Konvenuti wkoll prezentaw ittra ufficjali (a' fol 58, 114 u 124) permezz ta' liema interpellaw lis-Socjeta` Attrici "*sabiex tersaq ghall-att finali wara l-istess konvenju sa' dik id-data*" li fiha l-konvenju jiskadi, ossia l-15 ta' Novembru 2004.

6. Mir-ricerki kondotti min-Nutar Victor Bisazza rrizulta li l-Konvenuti ghandhom kwota izghar mis-sehem tal-proprjetá elenkata fil-Konvenju bin-numru 12 taht l-intestatura 'Urban Property', ossia l-Kappella b'zewg oqbra fic-Cimiterju tal-Addolorata f'Rahal Gdid li ghandha n-numru 26, Section West, Compartment CC. Filwaqt li fil-Konvenju l-Konvenuti ppromettew li

jbieghu sehem ta' wiehed minn sitta (terz ta' nofs indiviz) ta' din il-proprjetá, ir-ricerki juru li l-Konvenuti fil-fatt wirtu wiehed minn disgha (ara x-xhieda tan-Nutar Bisazza a` fol 212 u 213).

7. Il-Konvenju permezz tal-klawsola 7 jipprovdi biss ghall-eventwalitá li jirrizulta li hemm proprjetá iktar minn dik deskritta fl-istess però ma jikkontempla xejn fuq x'jigri f'kaz li jkun hemm l-invers, jigifieri f'kaz li jirrizulta li hemm proprjetá anqas. Mill-affidavit ta' James Sant Fournier (a` fol 270) jirrizulta li tali eventwalitá kienet giet diskussa bil-mod kif gej: "Niftakar illi quddiem in-nutar, Baldacchino kien qajjem il-punt dwar x'kien ser jigri jekk jiskopri illi hemm xi proprjetá li mhix inkluza fil-lista. Fil-fatt konna nizzilna fil-konvenju illi jekk jirrizulta dan tigi inkluza. Jien imbaghad kont saqsejt lin-nutar x'kien ser jigri li kieku Baldacchino isib xi haga nieqsa. In-nutar kien qal, u Baldacchino kien qabel mieghu, illi f'dak il-kaz il-kuntratt isir xorta u jigi aggustat il-prezz a paragun mal-valur tal-proprjetá kollha." (ara wkoll f'dan is-sens l-affidavit ta' Charles Sant Fournier a' fol 285).

8. Jirrizulta mix-xhieda tan-Nutar Bisazza li huwa gharraf b'din id-diskrepanza lill-partijiet fi stadju qrib l-iskadenza tal-Konvenju, fi zmien meta s-Socjeta` Attrici kompratrici kienet diga` nfurmatu li kellha ntenzjoni ggedded il-Konvenju (ara fol 216 sa 218 u 220). Difatti kien gie mfassal ftehim ta' estensjoni tal-Konvenju (a` fol 209) min-Nutar Bisazza fejn hemm dikjarat li "Il-Konvenju qieghed jiggedded ghall-perjodu ta' xahar mil-lum bl-

istess prezz, pattijiet u kondizzjonijiet". Ma hemm xejn f'dan il-ftehim li juri li l-konvenju se jiggedded minhabba d-diskrepanza su riferita. Dan il-ftehim ta' estensjoni gie ffirmat mis-Socjeta` Attrici biss.

9. Jidher li l-Konvenuti vendituri kellhom kull intenzjoni li jersqu ghall-kuntratt izda ma kellhom l-ebda intenzjoni li jgeddu l-Konvenju (ara xhieda tan-Nutar Bisazza a` fol 219, 220, 223 u 242 sa 243; ara wkoll affidavit tal-Konvenuti ahwa Sant Fournier a` fol 270 sa 271 u 286 u xhieda tas-sensar George Grima a` fol 260 u 297).

10. Fl-affidavit taghha s-Socjeta` Attrici tinsisti li ma ressqitx ghall-Att finali minhabba li ghalkemm "ppruvat tilhaq ftehim mal-konvenuti dwar din il-pendenza (rigwardanti is-sehem inqas li rrizulta li ghandhom il-Konvenuti tal-kappella n kwistjoni) ma rnexxilix u ghalhekk is-Socjeta` Attrici kellha taghmel din il-kawza." (ara affidavit ta' Joseph Baldacchino a` fol 102 u 103).

<u>Punti ta' Ligi</u>

11. Fl-ewwel talba principali s-Socjeta` Attrici qed titolbu lil din il-Qorti sabiex il-Konvenuti jaddivjenu "*ghall-kuntratt relattiv ghat-trasferiment minnhom favur is-socjetá attrici tal-immobbli mertu ta' l-imsemmi konvenju tal-15 ta' Mejju 2003*". Fit-tielet talba s-Socjeta` Attrici talbet ukoll sussidjarjament sabiex "*Fil-kaz illi l-konvenuti ma jkunux jistghu jwettqu l-obbligazzjonijiet kollha minnhom assunti fl-imsemmi konvenju tal-15 ta' Mejju*

2003 jigi minn din il-Qorti dikjarat u deciz illi s-socjetá attrici soffriet danni li ghalihom huma responsabbli l-konvenuti b'mod solidali."

12. Ghalhekk jidher car li l-azzjoni li qed tkun esperita hija dik ai termini tal-artikolu 1357 tal-Kodici Civili.

13. Il-Konvenuti jinsistu li "*s-socjetá attrici ma setghatx tagixxi kif ghamlet gudizzjarjament u titlob l-inforzar ta' l-obbligi assunti fil-konvenju, ossia li jsir kuntratt ta' vendita a bazi tal-konvenju* (l-ewwel tlitt talbiet) *u fl-istess nifs titlob id-danni ghaliex tali vendita ma tistax issir kif imwieghda*" (ara fol 401). Il-Konvenuti jsejsu dan l-argument billi jaghmlu referenza ghas-Sentenzi **Zahra vs Cutajar** u **Cachia vs Cutajar** u jissottomettu ghalhekk li z-zewg rimedji huma alternattivi (ara wkoll nota ta' sottomissjonijiet a` fol 387 u trattazzjoni orali a` fol 480 tieni faccata).

<u>Konsiderazzjonijiet</u>

<u>L-ewwel tlett talbiet attrici</u>

(1) Zewg rimedji mitluba kontestwalment

14. Il-Qorti ezaminat dawn iz-zewg Sentenzi, u ma tara li l-ebda wahda minnhom fil-fatt ma titratta jekk hux guridikament possibbli li jintalbu z-zewg rimedji moghtija b'artikolu 1357 tal-Kap. 16 kemm jekk flimkien jew b'mod alternattiv. F'dawn iz-zewg kawzi l-Qorti giet mitluba biss tikkundanna lill-

Konvenuti sabiex jersqu ghall-pubblikazzjoni tal-kuntratt in kwistjoni. Fl-ebda wahda dawn iz-zewg Sentenzi ma saret talba ghad-danni in aggunta mat-talba sabiex titwettaq il-weghda ta' bejgh bhal ma ghandha quddiemha din il-Qorti fil-Kawza tal-lum.

15. F'dan l-istadju issir referenza ghas-Sentenza moghtija mill-**Qorti tal-Appell fit-3 ta' Dicembru 2010 fl-ismijiet Alexandra Dalmas et vs Mark Micallef et**. F'din is-sentenza l-Qorti tal-Appell, ghalkemm irrevokat parzjalment is-sentenza tal-ewwel Qorti, qablet mar-ragjonament addottat mill-ewwel Qorti ghal dak li jirrigwarda l-possibbilta` guridika ta' dawn iz-zewg rimedji jigu mitluba kontestwalment b'mod alternattiv. Il-Qorti ta' l-ewwel grad ikkonkludiet dan li gej:

"*Il-kwistjoni taht ezami tohrog minn interpretazzjoni ta' dik il-parti tal-artikolu 1357 tal-Kap.16 li tirregola l-weghda tal bejgh fejn jinghad illi jekk il-weghda "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.*

L-effett principali tal-obbligazzjoni ta' dak li wieghed hu allura li jaghmel il-bejgh. Jekk kien hemm xi mod legali li dan seta' jirrejalizza ruhu l-venditur kellu d-dritt li jesigi bil-mezzi kollha disponibbli ghalih fil-ligi li dak li gie lilu mwieghed jinghatalu. Ghalhekk l-interpretazzjoni korretta ta' dawn il-kliem hi li l-obbligu ghall hlas tad-danni mill-accettant iqum jekk il-bejgh ma jkunx

jista' jsir mhux biss ghaliex materjalment dan ma jkunx ghadu possibbli imma wkoll ma jkunx ghadu possibbli bl-applikazzjoni tar-rimedji guridici disponibbli lill-kompratur prospettiv tramite l-azzjonijiet gudizzjarji lilu kompetenti. (ara sentenza App Bongailas vs Magri et 15/1/2002).

Ghalhekk f'dan il-kaz l-Qorti l-ewwel trid tiddeciedi jekk il-konvenju jistax jigi enforzat kif qed jitolbu l-atturi, u f'kaz li tiddeciedi li ma jistax jigi enforzat, l-atturi jkunu sofrew danni minhabba l-agir tal-konvenuti."

Il-Qorti tal-Appell osservat ulterjorment li "*l-ligi taghna fl-Artikolu 1357 kienet provvida billi ikkontemplat dak li ghandu jigri kemm fil-kaz li jista' jsir t-trasferiment fliema eventwalita` l-bejgh jigi enforzat, kemm fil-kaz ta' meta l-bejgh ma jkunx jista' izjed jsir, f'liema kaz ghandhom jithallsu d-danni lill-accettant. Huwa minnu li l-atturi fl-istess citazzjoni talbu z-zewg alternattivi u cioe` l-ezekuzzjoni tal-konvenju bit-trasferiment tal-proprjeta` jew il-hlas tad-danni. Dan mhux normali izda lanqas ma hija normali s-sitwazzjoni li l-atturi kienu jinsabu fiha. Il-fatt li saru talbiet alternattivi ma jgiebx in-nullita` tac-citazzjoni, kif propost mill-appellant u dan ghas-semplici raguni li, fic-cirkostanzi partikolari, wahda ma teskludix lill-ohra.*

Wara li l-Qorti stabbilit li z-zewg azzjonijiet ma humiex inkompatibbli kompliet tirraguna bil-mod segwenti : ".....omissis... " *Pero` mhux gust u lanqas ma hu logiku li l-konvenuti jigu kundannati jaddivienu ghal kuntratt ta' bejgh, u fl-*

istess hin jigu kundannati jhallsu d-danni minhabba l-inadempjenza taghhom. Fic-cirkostanzi din il-Qorti hija tal-fehma li soluzzjoni ragjonevoli kienet tkun li l-ewwel Qorti, stabbilit li l-appartament ma kienx jezisti, tastjeni milli tiehu konjizzjoni tal-ewwel erba' talbiet fl-impossibilita` tal-ezekuzzjoni tal-konvenju, u tillimita` ruhha li tiddikjara lill-konvenuti responsabbli ghad-danni ai termini tal-Artikolu 1357(1) billi l-bejgh ma jistax izjed isir."

Il-Qorti taqbel ma' din l-interpretazzjoni ta' l-artikolu 1357 billi ma hemm xejn fl-artikolu msemmi li jeskludi z-zewg rimedji jintalbu flimkien b'mod sussidjarju bhal ma sar fil-kaz odjern.

(2) Esigenza ta' dak imwieghed fil-konvenju

16. Stabbilit il-qafas legali bil-mod kif proposta l-azzjoni odjerna, il-Qorti sejra l-ewwel tqis jekk is-Socjeta` Attrici kompratrici ghandhiex dritt tesigi li dak li gie mwieghed fil-Konvenju jinghatalha. Fit-termini tal-artikolu 1357 (2) l-effett tal-konvenju jispicca meta dan jiskadi kemm-il darba l-accettant, f'dan il-kaz is-Socjeta` Attrici, ma jsejjahx lil dak li wieghed, f'dan il-kaz il-Konvenuti, b'att gudizzjarju pprezentat qabel l-iskadenza tal-Konvenju "sabiex jaghmel il-bejgh, u kemm-il darba, fil-kaz li dak li wieghed jonqos li jaghmel hekk", din l-ittra ufficjali tigi segwita b'rikors guramentat ipprezentat fi zmien tletin jum mill-iskadenza tal-Konvenju ghat-twettiq tal-istess.

17. Il-Qorti tosserva li s-Socjeta` Attrici ssodisfat ir-rekwiziti procedurali u t-termini ta' zmien iddettati mill-artikolu 1357(2). L-ittra ufficjali giet prezentata minnha tlett (3) ijiem qabel l-iskadenza tal-konvenju (12 ta' Novembru 2004), filwaqt li t-talba b'rikors guramentat sabiex titwettaq il-weghda giet prezentata fl-14 ta' Dicembru 2004, jigifieri entro tletin (30) jum mill-iskadenza tal-konvenju. Minn naha l-ohra irid jinghad li mill-ittra ufficjali prezentata fit-12 ta' Novembru 2004 mill-Konvenuti, -dawn ukoll kellhom kull intenzjoni li jonoraw il-Konvenju.

18. B'dana kollu, ma jidhirx li wara kull sejha gudizzjarja kien hemm intenzjoni komuni ghaz-zewg partijiet. Qieghed jinghad mill-Konvenuti, li s-Socjeta` Attrici riedet testendi u mhux tersaq ghall-kuntratt finali jekk mhux ukoll tipprokrastina biex tersaq. Is-Socjeta` Attrici minn naha l-ohra tinsisti li riedet tersaq, izda kien hemm xi problema b'xi titolu ta' wahda mill-propjetajiet materja tal-Konvenju inkwistjoni.

19. Dan ifisser ghalhekk, li kieku iz-zewg partijiet tassew riedu li jersqu ghall-kuntratt finali kif professaw fl-ittri ufficjali imsemmija, din il-Qorti ma kienx ikollha dawn il-proceduri quddiemha. Fid-dawl ta' dawn il-posizzjonijiet dijametrikament kontrastanti, il-Qorti kellha tezamina liema miz-zewg versjonijiet tal-fatti hija l-aktar wahda verosimili, gwidata dejjem mill-principju, li l-grad ta' prova mehtieg fil-kamp civili huwa dak tal-bilanc ta' probabbilitajiet u preponderanza tal-provi (ara **Sentenza tal-PA per Imhallef**

Tonio Mallia tat-30 ta` Ottubru 2003 fl-ismijiet Bugeja vs Meilak u dik tal-istess Qorti fl-ismijiet Farrugia vs Farrugia tal-24 ta' Novembru, 1966).

20. F'dan ir-rigward takkwista rilevanza partikulari x-xhieda tan-nutar Victor Bisazza, l-aktar xhud li la ghandu minn parti u lanqas minn ohra. Certu passaggi mix-xhieda ta' dan in-Nutar jimmeritaw li jkunu citati estensivament biex jigi apprezzat aktar il-punt involut:

> "**Xhud**: *Mas-sur Baldacchino l-uniku kuntatt li kelli kien biex jitlobni biex issir l-estensjoni tal-konvenju…*
>
> ***Domanda:*** *Qallek ghalfejn xtaq estensjoni tal-Konvenju ?*
>
> **Xhud:** *Le ma qalliex.*
>
> **Domanda:** *Nifhem sew li talbek estensjoni qabel inti ma kont ghedtlu bil-problema tal-kappella?*
>
> **Xhud:** *Ehe….qabel."*

Dwar x'kienet l-attitudni ta' Joseph Baldacchino biex jersaq ghal kuntratt, tul ix-xhieda tieghu, in-Nutar Victor Bisazza, kemm-il darba ta x'jifhem, li l-imsemmi ma bediex juri xi hegga partikulari biex jersaq it-trasferiment finali.

Is-segwenti passagg mix-xhieda tieghu huwa indikattiv ta' dan l-atteggjament:

" D: … Inti xi tghid li s-sur Baldachino kien qed jittrattjeni jew le biex jersaq ghall-kuntratt?

R: Ifihmni, anke lili esprimieli li ried jaghmlu l-kuntratt imma speci ried jixtri dak li suppost jixtri, dak li weghduh li se jixtri." (ara wkoll ix-xhieda tan-Nutar Bisazza a' fol 243).

U f'passagg iehor tax-xhieda tieghu jindika x'tip ta' atteggjament kien qieghed jiehu Joseph Baldacchino kwantu jirrigwarda appuntament biex isir il-kuntratt finali:

*"**Domanda:** Ara nghidx sew mela li s-sur Baldacchino ma ghamel ebda tenattiv biex jikomunika mieghek biex tigi iffirmata gurnata ghal-iffirmar tal-kuntratt.*

***Risposta:** le.*

***Domanda:** U la hu u lanqas is-sensar ma cemplulek jew gew ghandek u qalulek ' Nutar , meta ser niffirmawh dan il-kuntratt?'.*

***Risposta**: Le. . Is-sensar meta gie ghandi, gie ghandi biex jitlob l-extension."* (ara a` fol 219 u 220).

Din giet esebita (a' fol 209 Dok VB1).

21. Ovvjament is-Socjeta` Attrici kellha kull dritt tinsisti li tixtri dak li kien imwieghed, izda kif ser ikun spjegat aktar 'l isfel, din l-insistenza trid tittiehed fil-kuntest tal-fatti li jiccirkondaw il-kaz u ta' dak li hu ragjonevoli. Di piu', il-fatt li Joe Baldacchino indika li ried estensjoni **qabel** ma kien jaf bil-problema tal-Kappella, hija indikazzjoni li kien hemm ragunijiet ohra wara t-talba tieghu biex jestendi. Skont il-Konvenuti minhabba li kellu problemi finazjarji tant li meta talbuh xi haga aktar bhala deposit biex jestendu l-konvenju, il-Konvenut Charles Sant Fournier fl-affidavit tieghu ghid *" …li huwa ma setax ihallas pero' kien ser jircievi xi flus fi ftit zmien."* (ara a` fol 286). Hekk ukoll jixhed il-Konvenut l-iehor, James Sant Fournier u cioe' "*Huwa pero' qal li fil-mument ma kienx f'posizzjoni li jhallas flus. Kliemu preciz kien: 'Xejn ma nista' johrog bhal issa'. Pero' qal li kien ser idahhal xi flus fil-vicin."* (ara a` fol 271). Dan jaqbel ukoll ma dak li xehed in-Nutar Victor Bisazza meta semma' laqgha li kienet saret bejn il-partijiet fl-ufficcju tieghu (ara a` fol 223 u 224).

22. Mix-xhieda kollha imressqa, partikularment dik tan-Nutar Victor Bisazza, il-Qorti setghet tinduci x'kellu f'mohhu Joseph Baldacchino u ghalhekk is-Socjeta` Attrici, meta din irrikorriet ghall-proceduri odjerni. Di fatti, f'passagg iehor tax-xhieda tieghu l-imsemmi Nutar, sa fejn jirrigwarda x'kienu l-intenzjonijiet tal-Konvenuti, jispjega kif dawn konsistentament riedu li jersqu ghall-Kuntratt finali. F'dan ir-rigward huwa kategorikament ighid: *"Le.. le ta' Sant Fournier riedu jaghmluh illum qabel ghada"* (a` fol 216). Di

fatti jirrisulta mill-ittra tat-18 ta' Novembru 2004, indirizzata lis-Socjeta` Attrici (a` fol 47), li l-Konvenuti, wara l-ittra interpellatorja li rcevew minghand is-Socjeta` Attrici, ghamlu appuntament ghat-22 ta' Novembru 2004 fil-11.30 ghand in-Nutar Victor Bisazza biex isir il-kuntratt finali. X'gara minn dak l-appuntament ftit intefa' dawl waqt il-Kawza, jirrisulta pero', li l-Konvenuti tassew kienu disposti li jersqu ghall-kuntratt finali. Mentri George Grima, is-sensar li kien inkarigat mis-Socjeta` Attrici (ara xhieda a` fol 251 u 260), jikkonferma li s-Socjeta` Attrici riedet testendi l-effetti tal-konvenju u mhux li tersaq ghall-Kuntratt (ara xhieda a` fol 256).

23. Meta l-Qorti tigi biex tizen u tqis il-kwalita' tax-xhieda, trid tiehu ukoll kont ta' min hu x-xhud li ghandha quddiemha. In-Nutar Victor Bisazza huwa xhud disinteressat ghal kollox fin-negozju li kien qieghed isir bejn il-partijiet. Il-parti tieghu f'dan kollu kienet limitata ghall-funzjonijiet tieghu bhala Nutar. Fi ftit kliem, kif accennat aktar 'l fuq, ma kellu ebda interess suggettiv li jxaqleb lejn naha jew lejn ohra. Dan ma jistax jinghad ghas-sensar George Grima, li kien ilu zmien jahdem ma' Joe Baldacchino f'xoghol iehor (ara xhieda tieghu a` fol 251 ) u li kif intqal aktar 'l fuq, fil-kwistjoni li ghandha quddiemha din il-Qorti, kien inkarigat biex jagixxi mis-Socjeta` Attrici tant li gieli anke tkellem fl-interess taghha.

24. Kif jirrisulta mill-istess dokument tal-estensjoni, dan gie iffirmat minn Joe Baldacchino biss, fil-waqt li l-Konvenuti kienu qed jirrifjutaw li

jiffirmawha (ara affidavits tal-Konvenuti fosthom a` fol 271 u 286). Fid-dawl ta' dan kollu **l-Qorti taghmel referenza ghal principju ribadit fid-Decizjoni tal-Prim Awla tal-24 ta' Marzu 2004 fl-ismijiet Maria Xuereb et -vs- Clement Gauci et** li: *"Huwa pacifiku f'materja ta' konflitt ta' versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni talprovi quddiemha: Li taghraf tislet minn dawn il-provi korroborazzjoni li tista' tikkonforta xi wahda miz-zewg verzjonijiet bhala li tkun aktar kredibbli u attendibbli minn ohra u li fin-nuqqas, li tigi applikata l-massima "actore non probante reus absolvitur.*"

25. Minn ezami tal-provi jirrisulta, li minkejja l-ittra ufficjali taghha tat-12 ta' Novembru 2004, li biha talbet lill-Konvenuti sabiex jersqu ghall-kuntratt finali, kienet is-Socjeta` Attrici stess, li qabel ma ntbaghtet din l-ittra, bdiet issib oggezzjoni li tersaq ghal dan il-Kuntratt. Ir-raguni kienet Kappella fic-cimiterju tal-Addolorata. Huwa minnu, li fil-konvenju l-Konvenuti kienu weghdu li jitrasferixxu wahda minn sitt ($^{1}/_{6}$) partijiet indivizi ta' din il-kappella. Wara li saru r-ricerki irrisulta, li l-Konvenuti kellhom biss wiehed minn disgha partijiet indivizi ($^{1}/_{9}$). Il-kappella kienet wahda minn lista twila ta' propjetajiet ta' kull xorta li kienu l-oggett tat-trasferiment li kellu jsir, b'uhud minnhom b'valur hafna akbar minn ta' din il-Kappella.

26. Il-Konvenuti bdew isostnu li l-bejgh kellu jsir ghax wara kollox din kienet porzjoni tant zghira li ma kienitx ser teffettwa s-sustanza ta' valur u

entita' tal-bejgh. Minn naha tieghu Joe Baldacchino jispjega ghalfejn dan is-sehem indiviz tal-kappella kellu valur ghalih. Fl-affidavit tieghu jaghti din l-ispjegazzjoni:

"Apparti l-konsiderazzjonijiet legali li s-socjeta' attrici ghandha dritt tesigi illi jigi mill-konvenuti trasferit lilha dak kollu li l-istess konvenuti weghduha bil-konvenju de quo, ghas-socjeta` attrici tali kappella hi ta' importanza kbira. Fiha hemm midfuna l-antenati tal-familja Sant Fournier u ghal xi uhud mid-dixxendenti midfuna fiha ghandha valur ferm akbar minn wiehed sentimentali. ***Ghalhekk aktar ma jkollha minnha s-socjeta' attrici aktar tkun f'posizzjoni ta' sahha li tinnegozja kemm mal-kugini tal-konvenuti ghax-xiri ta' immobli ohra minghandhom kif ukoll ma' membri ta' rami ohra tal-familja Sant Fournier; dan peress illi kif jirrisulta mill-istess konvenju l-konvenuti u l-imsemmija kugini taghhom flimkien ghandhom nofs kappella."*** *(emfazi ta' din il-Qorti, ara a` fol 183 u 184).*

27. Meta jigu ezaminati l-bqija tal-provi, din il-Qorti hija tal-fehma, li s-Socjeta` Attrici kienet qed tfittex raguni, mhux wisq biex ma tersaqx ghall-kuntratt daqs kemm biex tirbah aktar zmien sabiex tkun f'posizzjoni li tkun tista' taghmel il-kuntratt finali meta l-aktar jaqblilha. Jekk kif ghid Joe Baldacchino fil-passagg imsemmi tax-xhieda tieghu, din il-Kappella tassew kienet daqstant ta' valur biex biha jakkwista sahha fin-negozjati ma' fergha ohra tal-familja Sant Fournier biex jakkwista aktar propjeta`, b'wiehed minn

disgha bicca indiviza ($^1/_9$) xorta kien ser ikollu dan il-vantagg, jekk tassew dawn il-familjari kellhom daqstant ghal qalbhom l-antenati taghhom.

28. Il-Qorti tifhem, li fil-logika tar-raguni kif spjegata minn Joe Baldacchino, il-valur sentimentali li din il-kappella kellha ghal fergha ta' din il-familja, ma kienx wisq il-kobor tas-sehem indiviz ta' terzi barranin. Skont il-logika ta' Joe Baldacchino dawn ma ridux li bhala kompropjetarju maghhom, kien ser ikollom lil xi hadd barrani f'post tant sagru ghalihom (fejn jistriehu l-gjacimenti tal-antenati taghhom) biex b'hekk dan il-barrani jkun jista' jaghmel li jrid b'sehemu b'dispett lejn il-memorja ta' dawn l-antenati, indipendentement minn kemm huwa kbir is-sehem ta' dan il-barrani.

29. Izda b'dana kollu jirrisulta, li dak li tassew riedet is-Socjeta` Attrici kien, li jinghatalha riduzzjoni fil-prezz. Joe Baldacchino beda jinsisti ghal riduzzjoni ta' madwar hamsa u ghoxrin elf jew tletin elf liri antiki maltin (ara xhieda Nutar Victor Bisazza a` fol 224, 225 u 238, George Grima a` fol 257, affidavit James Sant Fournier a` fol 271 u Affidavit Charles Sant Fournier a` fol 285). Dan iwaqqa' ghal kollox dak li qal fl-affidavit tieghu l-imsemmi Joe Baldacchino. Kieku tassew kif qal hu, din il-kappella kienet taghtih sahha biex jinnegozja mal-membri l-ohra tal-familja Sant Fournier sabiex ikun f'posizzjoni li jixtri l-ishma ta' dawk ukoll, kieku ma kienx jimbarka fuq it-triq li jitlob riduzzjoni fil-prezz, hu kemm hu s-sehem li ghandu.

30. Tajjeb ukoll li jigi nnotat, li Joe Baldacchino fl-affidavit tieghu f'ebda hin ma jaghmel referenza ghall-fatt li f'xi mument talab xi riduzzjoni fil-prezz minhabba din il-kappella. Dan ovvjament ma setax jaghmlu ghaliex f'nifs wiehed kien ikun qieghed jikkontradixxi lilu nnifsu. L-insistenza tieghu li jkollu riduzzjoni fil-prezz, jista' ukoll jkun indikattiv, li l-problema veru tas-Socjeta` Attrici kien l-aspett finanzjarju u mhux dak li qal fl-affidavit tieghu.

31. Ghalhekk meta s-Socjeta` Attrici interpellat lill-Konvenuti sabiex tersaq ghall-kuntratt finali (ara ittra ufficjali supra), fir-rejalta' r-raguni li waslitha biex tibda dawn il-proceduri kienet l-insistenza taghha li ma tersaqx ghall-konvenju u li testendi t-terminu tieghu. Ir-raguni wara t-talba tas-Socjeta` Attrici sabiex jigi estiz it-terminu tal-konvenju, hija irrelevanti ghall-finijiet tal-artikolu 1357(2). Dan qieghed jinghad, ghaliex fit-termini tal-istess sub-artikolu, is-Socjeta` Attrici setghet tuzufruwixxi mir-rimedju kontemplat fis-sub-artikolu msemmi unikament u biss "fil-kaz li dak li wieghed jonqos li jaghmel hekk" u cjoe' li l-Konvenuti jonqsu milli jwettqu l-weghda kontenuta fil-Konvenju billi ma jersqux ghall-kuntratt finali. Kif spjegat aktar 'l fuq, f'dan ir-rigward, il-Konvenuti dejjem kienu konsistenti, is-Socjeta` Attrici ma kienitx. Fi ftit kliem, ladarba l-Konvenuti qatt ma rrifjutaw li jersqu ghall-pubblikazzjoni tal-att tal-bejgh u ladarba s-Socjeta` Attrici baqghet tinsisti mal-Konvenuti sabiex igeddu l-konvenju u mhux sabiex jaddivjenu ghall-att

imsemmi, hija ma setghetx tirrikorri ghar-rimedju tal-ezekuzzjoni taht l-Artikolu 1357(2).

32. Irid jinghad ukoll li l-istess konvenju kien soggett ukoll li jsiru r-ricerki (ara klawsola 5). Fil-fatt il-partijijiet ftehmu li " *……….that the final deed of sale shall be published* ***under the following terms and conditions accepted by the parties.*** " (ara fol 23 u emfazi tal-Qorti). Ghalhekk ma kien hemm xejn xi jzomm lis-Socjeta` Attrici milli titlob li tinhall mill-Konvenju. Apparti dan, is-Socjeta` Attrici kellha wkoll l-ghazla li tixtri bis-salvagwardji *ex lege* tal-garanzija tal-pacifiku pussess. Is-Socjeta` Attrici mhux qeghdha tixtri sehem indivis ta' eredita' komposta minn kwantita' ta' immobbli. Ser tixtri sehem indiviz ta' kwantita' ta' immobbli kif elenkati u indikati fil-konvenju, indipendentement mill-fatt, li xi darba kienu possibilment jaghmlu parti minn eredita` wahda. Ghalkemm kwantita` ta' immobbli ser jinxtraw b'kuntratt wiehed, is-sehem indiviz f'kull immobbli xorta qed jinxtara *ut singoli*.

33. Di piu`, filwaqt li l-partijiet qablu li jeskludu l-garanzija tad-difetti mohbija (a` fol 17) ma ghamlux hekk fir-rigward tal-garanzija tal-pacifiku pussess. Anzi specifikawha espressament (ara kundizzjoni 2 a` fol 23 tal-Konvenju), bil-konsegwenzi favorevoli li jgibu maghhom ghax-xerrej l-artikli 1411 u 1412 tal-Kodici Civili. Irid inoltre jigi osservat, li r-resistenza li offriet is-Socjeta` Attrici sabiex tersaq ghall-att finali ghax minflok riedet li testendi

minhabba l-Kappella inkwistjoni, ma kien ragjonevoli xejn. Jekk semmai riedet estensjoni, messha talbitha limitatament ghall-Kappella u mhux ghall-propjetajiet l-ohra kollha. Kif inghad aktar 'l fuq, fir-rejalta' il-Konvenju jikkontjeni multiplicita` ta' trasferimenti ta' ammont ta' immobbli *ut singuli*. Jigi ribadit l-argument, li l-Konvenuti ma weghdux li jitrasferixxu sehem indiviz f'eredita', anke jekk il-provenjenza ta' kull immobbli tirrisali ghas-successjoni ta' missier il-Konvenuti.

34. Il-Qorti hawn hekk qed taqbel ma' dak sottomess mill-Konvenuti fin-nota ta' sottomissjonijiet (a` fol 388) u trattazzjoni (a'`fol 481) kif ukoll ghal dak kwotat minnhom mis-**Sentenza Cachia vs Cutajar moghtija mill-Qorti Civili Prim' Awla fit-12 ta' Gunju 2002 kif konfermata mill-Qorti tal-Appell permezz ta' sentenza moghtija fl-1 ta' Lulju 2005.** Hija l-fehma soda ta' din il-Qorti, li l-linja ta' hsieb adottata f'din is-Sentenza tispjega l-pozizzjoni guridika korretta tal-artikolu 1357 tal-Kodici Civili u dan sa fejn jirrigwarda r-rimedju li jipprovdi dan l-artiklu fis-sens li:

"***Dawn id-disposizzjonijiet pero` ma jistghux jitqiesu li huma effettivi fil-konfront ta' xi parti li, in effett, tkun trid tersaq ghall-att definittiv. Dawn id-disposizzjonijiet qeghdin hemm sabiex jistabilixxu procedura kif parti ghall-konvenju tista' tissalvagwardja d-drittijiet taghha naxxenti mill-istess konvenju fil-kaz li l-parti l-ohra tkun qed tirrifjuta li tersaq ghall-att definittiv ta' bejgh kif obbligat ruh[h]a li taghmel fil-konvenju.***"

(emfazi ta' din il-Qorti). F'dan is-sens hija wkoll is-Sentenza moghtija mill-**Qorti Civili Prim' Awla fis-sentenza Patricia Degiorgio vs Ramel u Zrar Limited tas-16 ta' Dicembru 2003.**

35. Illi ghaldaqstant, l-ewwel talba, u in konsegwenza diretta, it-tieni talba Attrici, ma jistghux jintlaqghu.

(3) Kwistjoni ta' Danni

36. Kwantu ghat-tielet talba Attrici sussidjarja ghad-danni jidher car li hija msejsa fuq is-sub-inciz 1 tal-Artikolu 1357. Cioe' "*Il-wegħda ta' bejgħ ta' ħaġa bi prezz determinat, jew bi prezz li għandu jiġi stabbilit minn persuna waħda jew iżjed bħalma jingħad fl-artikoli ta' qabel dan, ma titqiesx bejgħ; iżda, jekk tiġi aċċettata,* ***iġġib, f'dak li wiegħed, l-obbligu li jagħmel ilbejgħ, jew, jekk il-bejgħ ma jkunx jista' iżjed isir, l-obbligu li jħallas id-danni lill-accettant.****"* (emfazi ta' din il-Qorti).

37. L-element principali sabiex persuna twiegeb ghad-danni irid qabel xejn **ma titwettaqx il-weghda u ghalhekk il-bejgh ma jsirx**. Ghalkemm il-ligi ma tghidhiex, ir-raguni tiddetta, li sabiex persuna tkun obbligata thallas id-danni taht dan is-subartiklu, jekk il-weghda ma titwettaqx u, **il-bejgh ma jsirx tort ta' dik il-persuna**. Jesisti ghalhekk, l-element l-iehor, li l-kawza tal-fatt li l-weghda ma twettqitx u l-bejgh ma sarx , tkun imputabbli ghal dik il-

persuna, li skont dan is-subartiklu , tkun obbligata thallas id-danni lill-accettant u cioe' lill-parti l-ohra.

38. F'dan ir-rigward, il-Qorti taghmel referenza ghar-ragjonament taghha aktar 'l fuq, fejn apparti ragunijiet ohra hemm imsemmija, hareg b'mod car li kienet l-istess Socjeta` Attrici li naqset u mhux il-Konvenuti fit-termini ta' dak li jiddisponi l-artiklu 1357 tal-Kodici Civili. Ghalhekk din il-Qorti ma tistax tara kif qatt tista' tilqa' t-tielet talba attrici. Konsegwentement anke din ser tkun michuda.

<u>L-ewwel tlett talbiet rikonvenzjonali tal-Konvenuti</u>

39. Din il-Qorti issa sejra titratta l-ewwel tlett talbiet mressqa mill-konvenuti fil-kontro-talba prezentata minnhom.

40. Il-Qorti tqis li l-ewwel talba rikonvenzjonali hija korrollarja ghall-ewwel talba attrici ladarba l-ewwel talba Attrici ma tistax tintlaqa' in kwantu s-Socjeta` Attrici ma setghetx tirrikorri ghar-rimedju tal-ezekuzzjoni taht l-Artikolu 1357(2). Di piu', **qabel** ma inbdiet din il-Kawza, il-Konvenuti qatt ma rrifjutaw, anzi kellhom kull disposizzjoni, li jersqu ghall-pubblikazzjoni tal-att tal-bejgh. Dan ifisser li kienet is-Socjeta` Attrici li fil-fatt naqset milli tersaq ghall-att finali wara li l-Konvenuti m'accettawx li jestendu l-validitá tal-Konvenju u kif ukoll minhabba ragunijiet ohra, anke ta' natura legali li ghas-

salvazzjoni ta’ ekonomija ta’ kliem qed issir referenza ghar-ragjonament ta’ din il-Qorti aktar ‘l fuq.

Ghaldaqstant, l-ewwel talba rikonvenzjonali sejra tintlaqa’.

41. Konsegwentement, ghandha tintlaqa’ wkoll it-tieni talba rikonvenzjonali, li hija direttament konsegwenzjali ghall-ewwel talba. Dan qieghed jinghad, peress li fit-talbiet rikonvenzjonali taghhom, minkejja l-ittra interpellatorja taghhom tat-12 ta’ Novembru 2004, imkien ma huma qeghdin jitolbu lis-Socjeta` Attrici sabiex tersaq ghall-Att finali. Fit-talbiet rikonvenzjonali l-Konvenuti ghazlu li jillimitaw rwiehhom ghal aspetti ohra tal-vertenza. Il-konsegwenza legali ghalhekk hija cara: li l-Konvenuti ritrattanti illum ma humiex aktar marbuta bil-weghda li ghamlu fil-Konvenju tal-15 ta’ Mejju 2003. Dan ifisser li anke it-tieni talba ritrattanti ser tintlaqa’.

42. Fir-rigward tat-tielet talba, din ghandha tigi mistharrga billi jehtieg jigi determinat jekk id-depozitu mholli mis-Socjeta` Attrici favur il-konvenuti abbazi tal-konvenju inkwistjoni kienx wiehed penitenzjali (“*arra penitentialis*”) ossia kapparra (“earnest”) hekk kif definit fl-artikolu 1395 tal-Kodici Civili, jew inkella wiehed akkont tal-prezz minkejja li gie deskritt bhala “*non refundable*”.

43. F'kaz ta' depozitu akkont tal-prezz, gie stabbilit li "*huwa minnu li, meta att ta' konvenju jagħlaq bla ma jkun sar il-kuntratt finali, l-effett legali jkun li kull parti trid terġa' titqiegħed fil-qagħda li kienet qabel dak inhar (**P.A. GV 30.4.2004 fil-kawża fl-ismijiet Edward Portelli et vs Hector Cassola**). Dan iġib miegħu ukoll il-konsegwenzi li kull parti trid trodd lura kull benefiċċju li setgħet kisbet bis-saħħa tal-konvenju (**App. Ċiv. 25.5.2007 fil-kawża fl-ismijiet Christine Cassar Torregiani vs Dr. Godfrey Gauċi Maistre**). B'mod partikolari, il-parti li tkun tħallset lilha parti mill-prezz akkont u li tkun naqset li twettaq l-effetti tal-konvenju bil-proċedura speċifika mfissra mil-liġi (Art. 1357(2) tal-Kap 16), ma jifdlilha l-ebda jedd li tibqa' żżomm għandha xi somma mħallsa lilha bħala akkont tal-prezz, ukoll jekk dak l-akkont issejjah bħala ħlas mhux rifondibbli (App. Ċiv. 14.1.2002 fil-kawża fl-ismijiet Vella noe vs Abela noe (Kollez Vol.. LXXXVI.ii.165));*" **(Didier Sergent et vs Michael Anthony Liley**, **Prim' Awla tal-Qorti Civili, 14 ta' Dicembru 2012** ara ukoll **Sentenza PA per Imhallef Joseph Azzopardi fl-ismijiet Angelo Zahra -vs- John Parnis tal-11 ta' Dicembru 2006** u kif ukoll **Decizjoni tal-Qorti tal-Appell fl-ismijiet Nazzareno Vella nomine -vs- Joseph Abela tal-14 ta' Jannar 2002).**

44. Fir-rigward ta' kapparra ai termini tal-artikolu 1395 tal-Kodici Civili, gie ritenut li "*Diversi kienu s-sentenzi tal-qrati taghna (ara "Cassar noe vs Camilleri": Appell Civili: 6 ta` Gunju1986: Kollezz. Vol. LXX.II.326 ; "Mamo et*

vs Penza et": Prim`Awla tal-Qorti Civili (PA/RCP): 17 ta` Jannar 2001; u "Galea Pace vs Dimech noe": 11 t` Ottubru 1989 Kollezz. Vol. VLXXIII.II.379) fejn inghad illi fil-kazi fejn id-depositu jkun jikkonsisti f`forfeitable deposit`, is-sitwazzjoni tkun totalment differenti minn dik fejn id-depozitu jkun sar bhala akkont tal-prezz. Jekk kuntratt ma jigix konkluz u d-depozitu jkun thallas bhala kapparra (forfeitable deposit), dak id-depozitu jinzamm mill-prospettiv venditur purche` l-kumpratur ma jkollux raguni valida skond il-ligi biex ma jersaqx ghall-kuntratt. Semplici depozitu akkont tal-prezz ghandu jintradd lill-kumpratur fi kwalunkwe kaz." (**Carmel Brincat et vs Victor Galea et**, **Prim' Awla Qorti Civili, 17 ta' Jannar 2013**).

45. Huwa ghalhekk opportun li tigi citata l-klawsola rilevanti tal-Konvenju inkwistjoni ai fini ta' ezami tan-natura tad-depozitu mhallas:

"The parties agree and declare that the final deed of sale shall be published…for the price of three hundred and then thousand Maltese liri (LM310,000). <u>Of this amount a non-refundable deposit of fifteen thousand Maltese liri (LM15,000) payable to each vendor is being paid **on account of the said price**</u> payable by two cheques number 2071 and 2072 drawn on HSBC Bank plc Luqa Branch on this agreement. The balance of the price is payable on the final deed of sale" (sottolinear u emfazi ta' din il-Qorti).

46. Min dak citat johrog li l-Konvenju msemmi ma jirreferiex ghad-depozitu effettwat bhala 'earnest' (kapparra) jew 'forfeitable deposit' fit-termini tal-artikolu 1359 tal-Kodici Civili. Lanqas ma jista' jinghad li hlas imsemmi fil-konvenju mertu ta' din il-Kawza jammonta ghall-penali fit-termini tal-artikolu 1120(2) tal-Kodici Civili. Dan ifisser li l-pagament moghti mill-akkwirenti prospettivi (Socjeta` Attrici) lill-vendituri prospettivi (Konvenuti), kien wiehed akkont tal-prezz minkejja li gie desinjat bhala "*non refundable*". Ghalhekk, la darba l-kuntratt finali ma sehhx, fid-dawl tat-taghlim gurisprudenzjali fuq imsemmi u kif ukoll principji legali involuti, il-Konvenuti fil-Kawza odjerna ma humiex intitolati li jzommu l-hlasijiet li saru mis-Socjeta` Attrici.

<u>Decide</u>

Ghaldaqstant u ghar-ragunijet fuq imsemmija, il-Qorti qieghda taqta' u tiddeciedi din il-kawza billi:-

<u>Talbiet tas-Socjeta` Attrici</u>

Tichad l-ewwel, it-tieni u t-tielet talbiet Attrici.

<u>Talbiet rikonvenzjonali tal-Konvenuti</u>

Tilqa' l-ewwel u t-tieni talbiet rikonvenzjonali tal-Konvenuti.

Tichad it-tielet talba rikonvenzjonali tal-Konvenuti.

Tordna l-prosegwiment tal-kawza dwar il-bqija tat-talbiet Attrici u t-talbiet rikonvenzjonali.

Spejjes ta' din id-decizjoni parzjali kwantu ghall-hamsa minn sitt partijiet ($^{5}/_{6}$) a` karigu tas-Socjeta` Attrici u kwantu ghas-sesta parti ($^{1}/_{6}$) rimanenti a` karigu tal-Konvenuti.

Imhallef Toni Abela

Deputat Registratur