COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE

MAGISTRATE DR. JOSEPH MIFSUD
B.A. (LEG. & INT. REL.), B.A. (HONS.), M.A. (EUROPEAN), LL.D.

The Police
(Inspector Doriette Cuschieri)

vs

Pieter Marinus Van Gelder

Number 77/2016

Today the 31st of January, 2019

The Court,

Having seen that **Pieter Marinus Van Gelder,** forty-four (44) years, a Dutch national, son of Pieter Jan Willem Van Gelder and Theodora Catherina nee` Dros, born in Amsterdam (The Netherlands) on the 3rd March 1968 and residing at eight (8), "Maple Leaf", Triq Giuseppe Bonnici, Nadur, Gozo holder of Maltese identity card number 47556(A) was accused of having on these Islands, during August 2011 and the preceding years, by means of several acts committed at different times, which constitute violation of the same provision of the Law and which were committed in pursuance of the same design:-

1. By means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event made gain of more than the sum of over two thousand, three hundred and twenty nine euro and twenty seven euro cents (€2,329.27c) to the prejudice of Carmela (k/a Karen) Camilleri ID 264069M;

2. And also on the same dates, location and circumstances misapplied, converted to his own benefit or to benefit of any other person, the sum of over two thousand, three hundred and twenty nine euro and twenty seven euro cents (€2,329.27c) to the prejudice of Carmela (k/a Karen) Camilleri ID 264069M which had been entrusted or delivered to him, under a title which implies an obligation to return such sum or to make use thereof for specific purpose;

3. And also on the same dates, location and circumstances to have committed theft of Bank of Valletta cashlink card ac/c 40014794773 to the prejudice of Carmela (k/a Karen) Camilleri ID 264069M, such theft is aggravated by amount and person.

The Court was also requested that, in pronouncing judgement or in any subsequent order, sentence the person/s convicted, jointly or severally,

to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgement or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen the documents exhibited and all acts of the Case;

Having heard the witnesses;

Having seen the note filed by the Attorney General (Fol. 82) dated 30th October 2017 by virtue of which the Attorney General sent the accused for trial by this Court of Magistrates (Gozo) as a Court of Criminal Judicature under the provisions of:

(a) Articles 308, 309 and 310(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
(b) Articles 293 and 310(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
(c) Articles 261, 267, 268, 279(b), 280(1) and 281 of the Criminal Code, Chapter 9 of the Laws of Malta;
(d) Articles 17, 18, 31, 310B(a), 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

Having seen that during the sitting of the 2nd November 2017 (Fol. 83) the articles sent by the Attorney General were read out in open court and

during the same sitting the accused declared that he had no objection that the case is heard and tried by this Court under summary proceedings;

Having seen the Court minute wherein the *parte civile* and the defence were granted until the 15th August 2018 and the 1st October 2018 respectively to file their note of submissions;

Having seen the notes of submissions filed by the parte civile (Fol 286 *et seq*) and by the defence (Fol. 296 *et seq);*

Having seen the decree dated 14th November 2018 wherein the case was adjourned for judgement for today.

Taking into consideration the evidence submitted before it:

The first witness to take the witness stand in relation to this case was **Inspector Jonathan Ferris** who testified during the sitting of the 10th May 2017 (Fol. 14 *et seq*). Inspector Ferris explained that in December 2011 he was on duty at the Economic Crimes Unit at the Police Headquarters when Ms Karen Camilleri reported an alleged case of fraud and/or misappropriation with regards to her former partner Pieter Marinus Van Gelder. She claimed that the said Mr Van Gelder with whom she had had a relationship for some time had allegedly made use of the credit card the Visa Quickcash to take money from the ATM without her consent at the time she used to be at work. Ms Karen Camilleri provided the inspector documentary evidence showing that she was working as an LSA as well as that she was working on a part-time basis at the Riviera Hotel in Imtarfa

(recte: Marfa). Karen Camilleri also claimed that at the time the alleged cases took place, Mr Van Gelder was in the presence of his brother Jan Willen and that both of them knew of the alleged misappropriation and fraud being carried out to her detriment.

Inspector Ferris attempted to summon Mr Van Gelder. However the address which was provided to him was not correct. Eventually an arrest warrant was issued and the Van Gelder brothers were brought under arrest to his office in Floriana in March 2012.

Upon the arrival of the Van Gelder brothers at the Police Headquarters, both of them in the presence of Inspector Frank Tabone, were informed of their right to consult a lawyer prior to any interrogation. At this point in time Mr Van Gelder had an argument with Inspector Ferris stating that his lawyer had informed him that no interrogation could take place without her being in the office and present for the interrogation. The witness tried to explain to Mr Van Gelder that such was not correct and that the law only allowed the person summoned to consult with a lawyer or legal procurator for an hour before interrogation. To solve the impasse, Inspector Ferris explained that he phoned the accused's lawyer, Dr Angele Formosa, and spoke to her in English telling her exactly what the Criminal Code stipulated for legal advice. Following this, Mr Van Gelder signed the declaration wherein he did not avail himself of the right to legal consultation. This was dated ninth (9th) March two thousand and twelve (2012).

During the interrogation Mr Van Gelder acknowledged the fact that he was Karen's boyfriend for almost or approximately two years and that they both lived together. They had gone separate ways in August two thousand and eleven (2011).

With regards to the alleged misappropriation or fraud vis-à-vis the cash withdrawals or use of Karen Camilleri's Quickcash card or Cashline card or Visa card, Mr Van Gelder stated that he had the verbal consent of Ms Karen Camilleri. However, when the Inspector presented Mr Van Gelder with the allegations being brought forward by Ms Camilleri, there was a complete diversion of opinion in the sense that Ms Camilleri had acknowledged that on one occasion when a sofa from Krea was purchased, Camilleri had given the PIN number to Mr Van Gelder for him to transfer money into her account so that she could have enough to pay Krea for this purchase. According to the victim Ms Karen Camilleri this was the only instant where she had given her consent and she had never given her consent to the accused so that he would go and make cash withdrawals from ATMs in Rabat, Nadur, and so on and so forth.

Inspector Ferris also faced Mr Van Gelder with the fact that the ATM cash withdrawals were also made at odd hours in the sense that whilst Mrs Karen Camilleri was not in Gozo, money was being withdrawn from her account.

Inspector Ferris also delved into Mrs Camilleri's allegation namely that in the process of getting Mr Van Gelder's brother relocated to Malta from Amsterdam, Karen Camilleri alleged that from her statements, from her

Bank of Valletta statements, various withdrawals were made also from Amsterdam and money was used to pay for transport and logistics. In this respect Mr Van Gelder denied any involvement in this. However, when Inspector Ferris spoke to the accused's brother in order to confirm these facts, Mr Van Gelder also made reference to the fact that his brother had paid for his relocation to Malta with Karen's card.

There were other allegations, this time by Mr Van Gelder, with regards to MEPA permits and that Ms Karen Camilleri had no building permits to extend her property as well as allegations with regards to Mr Van Gelder penning the thesis for Ms Camilleri to present to the University of Malta with regards to her LSA diploma. These were ignored since they were of a civil nature and not of criminal nature.

During cross-examination, Inspector Ferris was asked whether there was an email by Karen Camilleri requesting the accused to remind her the PIN Number. He replied that he was not aware of such email. He went on to reply that a PIN number is to be used for a specific use and the PIN number does give a right to any other party to use it at his leisure whenever he wants.

Inspector Ferris was also asked whether the accused had referred to the MEPA and to the other payments, he was doing to indicate that the accused was effectively administering her accounts and her card during that period with her knowledge and consent. The witness however disagreed with that question in view of the fact that Van Gelder had also made reference that he was also contributing to the daily expenses for

the communal living. On being asked whether these transactions were mentioned to show the Inspector that he was using this card on a protracted period of time with Karen's consent, the witness pointed out that the issue for the Criminal Court for this case was the ATM cash withdrawals without the victim's consent. He stressed that he had presented the court the clockings, in and out, and also the Bank of Valletta's statement, to show that at a specific time when a cash withdrawal was being taken out from the ATM, Ms Camilleri could not be in person doing it, as alleged by the accused as she was at work in Malta during at that time. She could not be in two places at the same time.

Inspector Ferris also stated that he had not asked the question whether Karen Camilleri at any time changed her PIN number or actually regained possession of her card.

The witness could not confirm whether the only report that existed with regards the numerous transactions was a report that was made to his department years after the relationship had finished since it could be that reports were filed at the Gozo District. The witness did not exhibit any documents which were given to him by the accused since at the time he was testifying he no longer had access to the Police file. There was no reference to how the transactions made in Holland were paid to Karen Camilleri.

Karen Nowak nee` Camilleri also took the witness stand on the 10th May 2018 (Fol. 30). She explained that she had had a relationship with the accused and that at a certain point in time she called it a day as

cohabitation became difficult in view of the accused's violent behaviour and addictions. One day she realized that money was missing from her account. She kept the bank papers and the cards in a drawer and she realized that the accused had been taking money from her account. She went to file a Police Report. She also confronted the accused who told her that he was going to return the money to her. Every time she reminded him of this money, she ended being threatened. That is why she did not lodge the report from the outset she claimed.

The witness indicated that the accused had taken from her approximately the sum of fifteen thousand euro (€ 15,000) and recognized the accused in the Court room. Karen Camilleri denied ever having given her consent to the accused to use funds from her account and that she never gave him access to the BOV secure card or the PIN numbers. The PIN number was written on the documents and he knew it as he used it.

The witness went on to explain that her card was also used so that the accused's brother could bring his belongings to Malta and also for travelling purposes. On one occasion they met at a local restaurant. The accused gave her a document which the witness exhibited as Document KN 1 and told her that the amounts therein indicated were the amounts due to her. She insisted that he had told her he would not give her anything if she filed a police report. With reference to this document, the witness explained that these were principally travel expenses. In addition there were amounts related to Melita bills, rentals as well as cash withdrawals from Holland. There was also an instance wherein the

accused requested her to give him € 435, which she did via Western Union.

On being asked by the Court how come she was sponsoring the accused for three whole years when they were not in a relationship, the witness replied that the accused and his brother were going to set up a business in Malta and that she was given to understand that she was going to be involved in this business and that she was going to be entitled to a share.

During her cross-examination which took place on the 29th November 2017 (Fol. 124 et seq), Karen Camilleri stated that she was not making use of the bank's internet service notwithstanding that she had access to the same. She claimed that she only started making use of the internet some time before she filed the police report. She denied having been in a relationship with the accused notwithstanding that he lived at her house for a period of three (3) years. She confirmed that she did not have any problems with the accused when he was residing at her house for the first year. But then after the first year she wanted him to leave. Notwithstanding this, he continued living at her house for a further period of two (2) years. Camilleri specified that she did not take any action against him to evict him from her house. She also insisted that she did not give the accused any access to her personal things.

On being referred to various emails exchanged between Camilleri and the accused and exhibited in the acts, Camilleri could not remember these emails. She remembered giving the accused the details as regards one account number only, precisely the Halifax account number. Later on the

witness admitted that she had also given the person charged a second account number. She insisted that she had given him the accounts so that he would refund her the money which the accused had taken previously.

The witness also insisted that notwithstanding she had bank accounts and these bank accounts had cards linked to them, she did not use them to withdraw money. She did not withdraw any money from her earnings and she used to live on the tips she used to earn from her part-time at the hotel.

On being asked for what reason in May 2011 she had asked the person charged for her PIN number, she replied that she wanted to pay a deposit for a kitchen. She claimed that Peter had taken € 1000 from her accounts without her consent and on that day he had to give her back the money. She had asked him the PIN number because she could not remember the number. On being asked whether she had requested a new PIN number and whether she changed her login internet credentials, the witness replied in the negative. However, she opened a new account and transferred the funds to a new account.

Saviour sive Alvin Scicluna, a Bank of Valletta representative, testified during the sitting held on the 28th September 2017 (Fol. 49). He exhibited the statements relative to the accounts held by Carmela sive Karen Camilleri from the 20th December 2005 till the 16th January 2012. The witness also confirmed the statement at folio 21 of the Acts.

During cross-examination, the witness was asked whether the statements indicated activity via internet bank. He replied in the negative. The statements only indicated the balances in the accounts and ATM withdrawals. The witness was not sure whether the internet banking key became inactive if not used for a certain period of time.

The witness confirmed that no charge is imposed if a client requests a new PIN number. A charge is levied if a card is lost or stolen. With reference to the statements, there were no charges as regards lost or stolen cards since the card in question was a debit card and no charges are applicable for debit cards. The witness identified the number of times the card was used from an ATM. It was used one time in September 2008, one time in December 2008, two times in January 2009 and another time in February 2009.

The witness went on to say that most probably the client had been given access to the internet banking service in February 2008 since from the statements exhibited the internet key charge was levied for the first time on the 8th February 2008.

Saviour sive Alvin Scicluna testified again during the sitting of the 17th July 2018. He confirmed that another card had been issued and that the customer service department would have the details when the card would have been reported as stolen. With reference to the internet key, the witness explained that in order to make use of such key a person would need to know the pin number. Any person using another person's internet key would necessarily have been given the pin number by the

holder of the key. This is an indication that the holder of the key would have given his consent to the third party to make use of such key. The witness also explained that the internet key is deactivated if it is not used for a period of two (2) months. On referring to the statements exhibited previously, the witness confirmed that the internet key was never used. Yet, the internet service was being renewed annually as confirmed by the charge levied by the Bank. The witness stated that there was no indication that a new key was issued since the renewal fee was being levied on the same date each year.

Marvic Cassar, representative of Job Plus, testified on the 2nd November 2017 (Fol. 85) and he exhibited the Personal Details and Employment History of Carmela (k/a Karen) Camilleri marked as Dok MC 1 (fol 86 – 88).

Dr. Denise Mifsud, a Department of Education representative, exhibited the Employment History of Carmela (k/a Karen) Camilleri with the Department of Education. She confirmed that Camilleri had been engaged with the Department since February 2008 (fol 91 - 92).

Ivan Sciriha, a Riviera Hotel representative, exhibited the work attendance sheets of Carmela (k/a Karen) Camilleri from the 1st of January 2009 till 20th December 2010 (fol 94 - 108).

The accused availed himself of the right not to testify in these proceedings.

William Van Gelder was called to testify by the defence during the sitting of the 29th November 2017 (Fol. 111 *et seq*). He started by saying that he and his brother were arrested by the police shortly after they had indicated to them the address where they were residing. The witness explained how they were taken under arrest to Inspector Ferris office. He also explained how he eventually gave the inspector fifty (50) pages of financial planning detail and all the money flows from his brother and from Karen and provided a detailed explanation of the same to Inspector Ferris. The witness explained that Inspector Ferris was a bit annoyed since he had told them that following the submission of these documents he had to change the focus of the investigation from he and his brother to Karen.

Turning to how Karen and his brother started their relationship, the witness explained that in May 2008, he and his brother were on holiday in Gozo. They were staying at the Kempinski Hotel. Karen was working there as a bar tender and his brother and Karen got to meet. The two went out together shortly after. When the vacation was over, the witness returned to Holland but his brother remained in Gozo and took up residence at her house in Nadur. Their relationship lasted for three (3) years. The witness described this as a loving relationship, which was intended to last. On being asked specifically about the charges being directed at his brother namely that his brother had used Karen's banking facilities and with taking money from her account without her consent, William Van Gelder replied that Peter did the administration and he had access to her banking facilities because she would ask him to do trading on a trading account, or make payments. He handled her school papers,

and did all kinds of administrative things for her. She also suggested he could use her credit card since he only had a bank card and sometimes when ordering plane tickets it was easier to make a payment with a credit card.

The witness did not consider strange that his brother made use of Karen's credit card since the two were in a relationship. He explained that in Holland credit cards were not that common as they were in Gozo. Most people just had a bank card. This could not be used everywhere and certainly not online. For them to make reservations for a plane ticket or to pay for the truck they had rented, it was easier for them to use a credit card. Since his brother did not have the credit card and Karen had one, she suggested that he use hers. He added that he checked with Bank of Valletta and the Bank kept login records. The Bank would know when a person goes online and makes a transaction. Records are kept for a substantial period of time. The witness explained that there would surely be records showing that Karen was logging onto her internet banking after her working hours. She therefore had the possibility of getting to know on the same day or within days of the amounts which would have been withdrawn.

The witness added that Karen did not complain of these withdrawals and his brother always reimbursed her the amounts which he would have taken from her account. The only time that Karen had a problem with this was after his brother broke off the relationship, after three (3) years. She then filed a police report and subsequently got married to some other foreign guy three (3) months later. The witness went on to explain that as

regards the financial overview his brother had a hundred fifty thousand euro (€150,000) coming in and he ended with about zero at the end of the relationship. He claimed that Karen had made forty thousand (€40,000) in wages or a bit less, and she had deposited a hundred and ten thousand (€110,000) into her account. At the same time she claimed that she had paid for everything and that she had been defrauded by his brother for another twenty-five thousand euro (€25,000). The witness insisted that these numbers did not add up and that consequently the whole claim could never be founded. Had Inspector Ferris gone through the information, it would have been clear that his brother did not defraud her. It was more likely that it was the other way around.

The witness insisted that Karen had given consent to his brother to make use of her credit card. The witness presented a memory stick with all emails exchanged in digital form, a hard copy of which was also presented in the records of the case and marked as Document WVG 1. He pointed out that the wording used in the emails was evident that his brother and Karen were in a relationship and that Karen had herself provided her personal bank details to his brother for him to use. He insisted that Karen was all the time aware of what was going on. The emails were colour-coded in the sense that the pink highlights referred to comments regarding the relationship whereas the green highlights referred to information regarding the consent given throughout the relationship for the use of the banking facilities.

During cross-examination, the witness said that during interrogation he was threatened that he would be kept for 48 hours if he did not cooperate

and that he signed his statement under duress. The witness denied that Inspector Ferris had phoned Dr Angele Formosa during the interrogation. On being asked how come he knew that his brother was asked whether he knew Karen's PIN number, the witness replied that he had acquired this information from emails sent by Karen to his brother.

He insisted that the two were in a relationship. There were circumstances where payments had to be made by credit card and Karen had suggested that Peter should use it. She also provided to Peter all her details of her trading account just a month after they met. She shared all this information. For the witness, it was not uncommon for persons who were in a relationship to share such information and use each other's banking facilities. He went on to add that Karen's consent was given by the fact that his brother made payments. She logged in to her bank account all the time. He also informed her, so she knew what was going on. If she used to ask his brother for her PIN number, it was obvious that she was authorizing his brother to make use of her banking facilities. He went on to explain that Karen could have easily changed her PIN number, something which she did not do.

On being asked whether consent was given every time his brother made use of the card, the witness replied in the affirmative since Karen logged in to her bank account and could have known within days that the amounts were missing. The witness insisted that Karen was very considerate about money so she would have known immediately. If she did not say anything, apparently there was no problem. On further

questioning he confirmed that he was not all the time with Karen and his brother.

During re-examination the witness insisted that consent was only withdrawn by Karen when she filed the police report.

PC 30 Malcolm Cachia from the Police Human Resources Section gave evidence before this Court (fol 268 – 269) on the 17th July 2018. He confirmed that Karen Camilleri today Novak used to be a police constable. She was enlisted on the 27th June 1988 and was eventually dismissed from the corps on the 28th of September 2004 following a conviction for theft by the Court of Magistrates of Gozo dated 30th June 2004.

Having considered:

That it is a well-established principle of Criminal Law that the Prosecution is duty bound to submit the best possible proof to secure a conviction of the person charged. As pointed out by Manzini in his book **Diritto Penale**[1] *"Il così detto onero della prova, cioé il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit".*

A person charged can only be convicted if the charges are proved **beyond reasonable doubt**. Reference is made to the judgement of the Court of Criminal Appeal dated 7th September 1994 in the names **Il-Pulizija vs. Philip Zammit et** wherein it was stated that not any doubt will suffice to acquit the person charged. What is required is a doubt "*dettat mir-*

[1] Vol. III, Kap. IV, pagna 234, Edizione 1890

raguni". An apt description of proof beyond reasonable doubt has been given by Lord Denning in the case **Miller vs. Minister of Pension**[2]: *"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice"*.

At times the Court may be faced with two conflicting versions of events surrounding the particular case. This would require the Court to assess the two versions in order to ascertain which version is to be considered credible. In the judgement **Il-Pulizija vs. Jonathan Micallef** dated 2nd February 2012 the Court of Criminal Appeal noted:

> *"Huwa minnu illi jista' jkollok sitwazzjoni fejn numru ta' xhieda qeghdin jaghtu verzjoni differenti minn ohrajn illi xehdu qabel. B'daqshekk ma jfissirx illi ghax hemm xhieda differenti bil-fors hemm konflitt li ghandha twassal ghal liberatorja. Fil-kawza **Pulizija vs. Joseph Thorn** deciza mill-Qorti ta' l-Appell Kriminali fid-9 ta' Lulju 2003, il-Qorti qalet '... mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal liberazzjoni tal-persuna akkuzata. Imma l-Qorti f'kaz ta' konflitt*

[2] 1974 - 2 ALL ER 372

ta' provi, trid tevalwa il-provi skond il-kriterji annuncjati fl-Artikolu 637 tal-Kap. 9 u tasal ghal konkluzzjoni dwar lil min trid temmen u f'hiex trid temmen jew ma temminx' (ara wkoll ***Repubblika ta' Malta vs. Dennis Pandolfino*** *19 t' Ottubru 2006)."*[3]

The Court will now proceed to determine whether the offences identified by the Attorney General in his note of the 30th October 2017 (Fol. 82) result from the evidence which has been submitted in the course of this case.

A. Articles 308 and 309 of the Criminal Code (Obtaining Money / Property by False Pretenses and Other Instances of Fraudulent Gain)

Article 308 refers to obtaining money or property by false pretenses whereas article 309 refers to other instances of fraudulent gain. Article 308 specifies that: *"Whosoever, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another*

[3] Refer also to **Il-Pulizija vs. Patrick Mangion et** (decided on the 17th September 2012), **Il-Pulizija vs. Michele sive Michael Fenech** (decided on the 17th September 2012), **Il-Pulizija vs. Mohammed Mansur Ali** (decided on the 24th 2013, **Il-Pulizija vs. Mario Pace** (decided on the 6th February 2013) and **Il-Pulizija vs. Hubert Gatt** (decided on the 11th July 2013)

person, shall, on conviction, be liable to imprisonment for a term from one to seven years."

Three are the elements which are necessary for a finding of guilt under article 308 of the Criminal Code:

(a) There has to be a link between the active subject (the offender) and the passive subject (the victim);

(b) Deceit has to be used and it must lead the victim to incur a financial loss;

(c) The intention on the part of the offender to deceive, which intention has to be aimed at securing a gain or other advantage for himself.

The three elements are cumulative and unless all three are present, there cannot be a conviction in terms of this article.

A detailed exposition of this article was carried out by the Court of Criminal Appeal on the 22nd February 1993 in the case **Il-Pulizija vs Charles Zarb** as reported by this Court in its judgement in the names I**l-Pulizija vs Victor Camilleri** decided on the 21st July 2016. This Court had commented as follows in relation to the constituent elements of the offence of *truffa*:

> *"Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inproprji u hu dak li fl-iskola u fil-*

legislazzjoni Rumana kien maghruf bhala steljolat u li ikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Franciz. […]

Id-disposizzjonijiet tal-Kodici taghna kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 tal-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi […].

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' ikun kulhadd.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal-fiducja reciproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu tal-ingann u tar-raggieri li jinducu bniedem jiddisponi minn gid li fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa u jikkommetti d-delitt tat-truffa kull min: a) b'mezzi kontra l-ligi, jew b) billi jaghmel uzu minn ismijiet

foloz jew c) ta' kwalifiki foloz jew d) billi jinqeda b'qerq iehor u e) ingann jew f) billi juri haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz, g) jew ta' hila; h) setgha fuq haddiehor jew i) ta' krediti immaginarji jew j) sabiex iqanqal tama jew biza dwar xi grajja kimerika, jaghmel qliegh bi hsara ta' haddiehor.

Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi.

[…] Dwar l-artifizzji intqal mill-Qorti illi "hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem ikun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti tal-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kolleggjalment komposta fil-kawza "Reg vs. Francesco Cachia e Charles Bech (03.01.1896 – Kollez.XV.350) li fiha intqal illi "quell' articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia

accompagnata da qualche atto diretto a darla fede"".

Illi fid-decizjoni fl-ismijiet Il-Pulizija vs. Charles Zarb kwotata hawn fuq, il-Qorti tal-Appell Kriminali ccitat lill-Imhallef Guze Flores fejn qal illi: "kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghall-verosimiljanza tal-falsita' prospettata bhala vera u b'hekk bhala mezz ta' qerq. Mhuwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-affermazzjonijiet menzjonjieri tal-frodatur. Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi tejatrali, li tissupera il-kawtela ordinarja kontra s-semplici u luzingi, u li taghti li dawk l-esterjorita' ta' verita' kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene".

L-istess Imhallef Flores kompla jghid li: 10 "….Kwantu jirrigwarda l-element formali, cioé kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-

ingustizzja tal-profitt tohrog mill-Artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu ikun konxju tal-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita' tal-profitt hija bizzejjed biex teskludi d-dolo."

Illi minn dina l-esposizzjoni maghmula mill-Qorti tal-Appell li ccittat diversi sentenzi ohra tal-Qrati taghna jidher illi l-elementi rikjesti sabiex jissussisti ir-reat tal-frodi baqghu invarjati fiz-zmien.

Illi f'sentenza moghtija mill-Corte di Cassazione Penale gie deciz illi element ewlieni fir-reat tal-frodi huwa "l'elemento del danno patrimoniale". Biex imbaghad jissussisti dana t-tip ta' reat huwa necessarju illi jezistu "I tre momenti di cui si compone il reato e' cioé la produzione dell'artificio, nella successive induzione in errore e nella conseguenziale produzione dell'ingiusto profitto per l'agente" (Cassazione Penale Sez. II 3 Ottobre 2006 n. 34179).

> *Illi, ghar-rigward ta' dana l-element soggettiv tar-reat tat-truffa, kif gie ritenut mill-awtur Francesco Antolisei, ikkwotat f'sentenza ohra moghtija mill-Qorti tal-Appell Kriminali, cioé Il-Pulizija vs. Patrick Spiteri, deciza fit-22 ta' Ottubru 2004: "L'agente […] deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stessa, la disposizione patrimoniale, come conseguenza dell'inganno e, infine, la realizzazione di quel profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volontà sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizzia del profitto avuto in mira e del danno che ne deriva all'ingannato."*

Article 309 lays down that: *"Whosoever shall make, to the prejudice of any other person, any other fraudulent gain not specified in the preceding articles of this sub-title, shall, on conviction, be liable to imprisonment for a term from two months to two years or to a fine (multa)."*

The elements of the offence under article 309 are very similar to those under article 308. In the judgement in the names **Il-Pulizija vs Emanuel Tabone** decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 25th September 2013, the Court noted that:

"Illi r-reati ta' truffa u frodi nnominata huma kontemplati flArtikoli 308 u 309 tal-Kodici Kriminali. In tema legali gie ritenut mill-Qorti tal-Appell Kriminali fis-sentenza taghha tat-12 ta' Frar, 1999 fl-ismijiet Il-Pulizija v. Anthony Francis Willoughby li: "Fil-ligi taghna sabiex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta' ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf partimonjali bil-konsegwenti qligh ghall-agent (Il-Pulizija v. Emmanuele Ellul, App. Krim., 20/6/97; ara wkoll Il-Pulizija v. Daniel Frendo, App. Krim., 25/3/94). Dan it-telf, hafna drabi jkun jikkonsisti filli l-vittma, proprju ghax tkun giet ingannata, volontarjament taghti xi haga lill-agent (Il-Pulizija v. Carmel Cassar Parnis, App. Krim., 12/12/59, Vol. XLIII.iv.1140). Jekk l-ingann jew qerq ikun jikkonsisti f' "raggiri o artifizi" – dak li fid-dottrina jissejjah ukoll mise en scene – ikun hemm it-truffa; jekk le, ikun hemm ir-reat minuri ta' frodi nnominata (jew lukru frawdolent innominat) (ara, fost ohrajn, Il-Pulizija v. Carmelo Cassar Parnis, App. Krim., 31/10/59, Vol. XLIII.iv.1137; Il-Pulizija v. Francesca Caruana, App. Krim., 25/7/53, Vol. XXXVII.iv.1127; ara wkoll Il-

Pulizija v. Giuseppe Schrainer, App. Krim., 3/3/56)."

Illi fis-sentenza tat-30 ta' Dicembru 2004 fl-kawza fl-ismijiet 'Pulizija vs Carmela German' il-Qorti tal-Appell Kriminali qalet is-segwenti dwar il-fatt jekk gidba semplici ghad-differenza ta' artifizzji u raggiri tistghax tigi kkunsidrata bhala frodi nnominata. "Kwantu ghall-kwistjoni mqajjma mill-appellanti u cioe' jekk il-"gidba semplici" – a differenza tal-artifizji u raggiri – tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal "qerq", cioe' tkun intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba, u basta, s'intendi, li tkun effettivament waslet ghal dan it-telf min-naha u arrikkiment min-naha l-ohra."

After having gone through the Acts of the case and the evidence submitted, this Court notes that the Prosecution failed to bring forward any evidence indicating that there were deceitful acts on the part of the accused and that as a result of these deceitful acts, the accused acquired some sort of financial gain to the detriment of the parte civile.

This Court notes that one of the constituent elements of the offences contemplated under articles 308 and 309 necessitates that the victim voluntarily consents to give or pay something to the accused after that the victim's consent would have been extorted by deceit. However in the case under examination, the parte civile has always insisted that the money had allegedly been taken by the accused without her consent. Indeed when reporting the case to Inspector Ferris, Karen Camilleri claimed that the accused had *"allegedly made use of the credit card the Visa Quickcash to take money from the ATM* ***without her consent.***"[4] (Emphasis of this Court). Moreover, when testifying before this court she insisted that: *"Niftakar imbagħad darba minnhom jiġifieri ndunajt li kelli l-flus neqsin mill-account. Vuoldiri jien ma kontx inħares lejn l-account kuljum. Naf li kelli karti tal-bank u pereżempju l-cards kont inħallihom f'kexxun għalih. Indunajt li sibt, indunajt li qed joħodli l-flus mill-account. U jien mort nagħmel rapport l-għassa. Però għidtlu lilu. Qalli, "le, jien ħa ntihomlok, don't worry," għax kienu qegħdin jaħdmu kif ħa jiftħu kumpanija Malta hu u ħuh, din il-kumpanija qatt ma irnexxiet."* [5] Hence the offences contemplated in these two (2) articles cannot be said to result as the constituent elements of the offences do not result from the records of the case.

B. Article 293 (Misappropriation)

Articles 293 of Chapter 9 specifies that:

[4] Fol. 14 of the Acts
[5] Fol. 31 of the Acts

"Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:

Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party."

The constitutive elements of this offence have been discussed in detail in the case ***Il-Pulizija vs Joanne Sciberras***[6]. In this case the Court quoted the judgement ***Il-Pulizija vs Charles Abela***[7] wherein it was stated that:

"Għar-rigward tar-reat ta' miżapproprjazzjoni referenza ssir għas-sentenza fl-ismijiet ***Il-Pulizija vs Enrico Petroni u Edwin Petroni****, fejn il-Qorti elenkat l-elementi ta' dan ir-reat:*

"Dana r-reat iseħħ meta wieħed (1) jirċievi flus jew xi ħaġa oħra mingħand xi ħadd; (2) bl-obbligu li

[6] 10 ta' Jannar 2018, Kumpilazzjoni Nru 37/2016, Maġ Dr Donatella M. Frendo Dimech
[7] 06 ta' Lulju 2016, Maġ Dr Josette Demicoli

jrodd dawk il-flus jew dik ix-xi ħaġa lura jew li jagħmel użu minnhom b'mod speċifiku; (3) u minflok ma jagħmel hekk idawwar dawk il-flus jew dak l-oġġett bi profitt għalih jew għal ħaddieħor."

Antolisei comments that *"La vera essenza del reato [di appropriazione indebita] consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne danneggia il patrimonio"*[8]

In another judgement in the names ***Il-Pulizija vs Marbeck Cremona***[9], which was also reproduced in the case ***Il-Pulizija vs Joanne Sciberras*** reported above it was noted that:

"Skond ġurisprudenza kostanti u anke skond awturi, ġeneralment huwa ritenut li l-estremi ta' dan ir-reat ta' approprjazzjoni indebita huma dawn li ġejjin:

1. Illi l-pussess tal-ħaġa jkun ġie trasferit lis-suġġett attiv tar-reat volontarjament mill-proprjetarju jew detentur, ikun min ikun. Jiġi speċifikat hawnhekk biex ma jkunx hemm ekwivoċita', li l-konsenja da parti tal-proprjetarju

[8] *Manuale di Diritto Penale, Giuffre' (Milano), 1986, Parte Speciale, Vol 1, p 276*
[9] 15 ta' Frar 2007, Maġ Dr Conseulo-Pilar Scerri Herrera, Nru 1/2006

jew detentur lil aġent jew lis-suġġett attiv tad-delitt, trid tkun magħmula con l'animo di spostarsi del possesso*, għax altrimenti jiffugura mhux ir-reat tal-approprjazzjoni indebita, imma s-serq.*

2. Illi t-trasferiment tal-pussess ma jridx ukoll ikun jimporta t-trasferiment tad-dominju cioe tal-proprjeta' għaliex f'dan il-każ ma jiffugurax l-element tal-azzjoni indebita.

3. Illi l-oġġett irid ikun mobbli.

4. Illi l-konsenjatarju in vjolazzjoni tal-kuntratt jagħmel tiegħu l-ħaġa cioe japproprja ruħu minnha, jew ibiegħha, jew jiddistruġġiha a proprio commodo o vantaggio*;*

5. Irid ikun hemm ukoll l-intenzjoni tas-suġġett attiv tar-reat li japproprja ruħu mill-oġġett li jkun jaf li huwa ta' ħaddieħor."

As regards the intentional element necessary for a finding of guilt, Maino notes that *"Finalmente, a costituire il delitto di appropriazione indebita e' necessario il dolo. Trattandosi di delitto contro la proprieta', a scopo d'indebito profitto per se' o per un terzo, il dolo sara' costituito dalla volontarieta' della conversione con scienza della sua illegittimita', e dal fine di lucro: onde colui che si appropria o rifiuta di consegnare, nella*

ragionevole opinione d'un diritto proprio da far valere, non commette reato per difetto di elemento intenzionale. [...] Il dolo speciale nel reato di appropriazione indebita e' (come nel furto e nella truffa) l'animo di lucro, che deve distinguere appunto il fatto delittuoso, il fatto penale, dal semplice fatto illegittimo, dalla violazione del contratto, dell'inadempimento della obbligazione: osservazione questa non inopportuna di fronte alle esagerazioni della giurisprudenza ed ai deviamenti della pratica giudiziale, che diedero spesse volte l'esempio di contestazioni di indole civile trasportate affatto impropriamente in sede penale. Rettamente pertanto fu giudicato non commettere appropriazione indebita (e neppure il delitto di ragion fattasi, per mancanza di violenza) il creditore che trattiene un oggetto di spettanza del suo debitore a garanzia del credito; l'operaio che avenda ricevuto materiale prima di lavorare, si rifiuta, perche' non pagato dal committente, di proseguire nel lavoro e di rendere la materiale ricevuta; l'incaricato di esigere l'importo di titoli, che non avendo potuto compiere tale esazione, trattiene i titoli a garanzia del dovutogli per le pratiche inutilmente fatte allo scopo di esigere. In generale la giurisprudenza e' costante nel richiedere come elemento costitutivo imprescindibile il dolo." (Refer also to ***Il-Pulizija vs Anthony Bonello***[10] and ***Il-Pulizija vs George Grech***[11])

In line with what has been expounded by Maino, the Court in the case ***The Police vs Artur Arakelyan***[12] commented that *"Consequently for the prosecution of the crime to be successful, the author of it must have the*

[10] 14 ta' Mejju 2018, Mag. Dr Claire L. Stafrace Zammit, Kumpilazzjoni Nru 564/2016
[11] 22 t'April 2009, Onor. Imħallef David Scicluna, Appell Kriminali Nru 350/2006
[12] 17 ta' Lulju 2013, Onor Mag Dr Edwina Grima

specific intention to make use of the object entrusted to him for a specific purpose, as if he were the owner and therefore make use thereof or disposing of the same, at a resultant profit for himself or for others."

After having gone through all the evidence presented as well as the numerous documents and emails filed, this Court has no doubt whatsoever that the parte civile and the accused were involved in an amorous relationship following their initial meeting in 2008. After a three-year stint together, things turned sour and each of them parted different ways. The existence of this relationship is proved by none other than the emails which have been exhibited in the records of this case. The use of terms and phrases like *"Honey"*,[13] *"Sweetie"*,[14] *"Baby"*, *"Thanks Honey for your emails and for your gorgeous voice"*[15] , *"I know the fact that you are handsome and very sexy"*[16] by the parte civile when writing to the accused do not indicate a platonic or a business relationship between the two. This point is also confirmed by none other than the accused's brother who in very succinct terms described it as follows: *"The emails will show that that was, you know, a loving relationship with the intention to last."*[17] Indeed the accused did not return back to Holland at the end of his holiday in May 2008 but took up residence with the parte civile at her place. This following an invitation to this effect by the parte civile.

[13] Fol. 148 of the Acts
[14] Fol. 152 of the Acts
[15] Fol. 163 of the Acts
[16] Fol. 165 & 169 of the Acts
[17] Fol. 114 of the Acts

Moreover, there are also numerous references to the fact that the parte civile was carrying out improvements at her residence so as to render her residence comfortable for both of them. One finds it difficult to reconcile this with the claim that the two were not in a relationship and they were not a heterosexual couple, planning to live together under the same roof.

Bearing in mind this prevailing context as emerging from the Acts, the Court considers the version given by the defence that the parte civile willingly communicated her banking details to the accused, provided him access to her accounts and investments and consented to cash withdrawals as much more credible than the version given by the parte civile. The consent given by the parte civile was not something one-off limited to one particular occasion; it is clear that this consent was given to the accused since the two were living as a couple and the accused was managing the couple's financial affairs, even running errands for the parte civile as she used to be in Malta most of the time. For example, the parte civile even gave instructions to the accused to pay her condominium contributions.[18]

Reference is made in particular to the email dated 5th July 2008 – an email which was sent merely two months after the two got to know each other – wherein the parte civile provided in written format the passwords and login details of her Halifax account to the accused. From the wording used in the email, it is quite clear that the parte civile was not giving a one-off consent: *"The above are my passwords details to enter into Halifax Account.* ***I will trust you and hope that we do have some luck***

[18] Fol. 197 of the Acts

from now onwards." [19](Emphasis of the Court) The parte civile was also keeping note of what the accused was doing with her shares, so much so that she congratulated him when he made a financial move and averted her a potential loss of money.[20] Moreover when there were changes to her credentials of the account, the parte civile resent the same to the accused: *"Before I continue to read and rest, I will hereby send you the new and final particulars and changes for the Halifax account."*[21] At one point, the parte civile even offered the accused her credit card details herself. Reference is made to the email dated 6th February 2009: *"Do you need my credit card details ? Just rang you to check but no answer. I will definitely try again later!!"* [22] as well as to the email dated 31st March 2011: *"Just checking my account number is 4****)"*[23] So the parte civile not only provided the accused with two of her personal accounts as claimed by her in her cross-examination; she went further than that.

The accused also informed the parte civile of instances where he made use of her banking facilities, at times even requesting her permission to do so.[24] A case in point is where he paid the Melita Bill and as soon as payment was effected he informed the parte civile accordingly.[25] The parte civile's reply was "Excellent", which is definitely not indicative that the payment was being made without her knowledge, consent and approval. He also informed her of other instances when he used her

[19] Fol. 148 of the Acts
[20] Fol. 238 of the Acts
[21] Fol. 149 of the Acts
[22] Fol. 185 of the Acts
[23] Fol. 196 of the Acts
[24] Fol. 239 of the Acts
[25] Fol. 187 of the Acts

funds, like when he rented out the truck so that he would be in a position to transfer his belongings to Gozo[26] and when he used the credit card to pay for the bus.[27] It is quite clear that the parte civile was being kept abreast by the accused of all the instances where the accused was using her finances. This goes to show that the intentional element of this offence was completely lacking on the part of the accused. The accused was at no point trying to get any form of benefit from the parte civile.

The fact that the parte civile asked the accused for her PIN number is also indicative that she had given it to him before: *"By the way, thank you so much for the pin code number since I did not have any idea what was it. At that time I was at the cash point to pay my deposit at the Krea Store. But I had no idea what the number was. That was really great."*[28] This email was sent by the parte civile on the 25th May 2011, shortly before their relationship terminated. The fact that the accused had the PIN number also suggests that the parte civile used to instruct the accused to withdraw money from the ATM. There exists no other plausible reason why the parte civile felt the need to give the accused her PIN number. This become more probable when one considers that the parte civile admits that she did not withdrawn money herself from the ATM. This Court finds it hard to believe that the parte civile did not feel the need to withdraw any money from the bank because the tips she earned sufficed for her daily needs!!

[26] Fol. 191 of the Acts
[27] Fol. 192 of the Acts
[28] Fol. 200 of the Acts

From the voluminous amounts of emails sent by the parte civile, it is also clear that the parte civile was quite computer literate and knew how to make proper use of internet and in fact she used it quite frequently. Indeed in her email correspondence sent to the accused, she would feel the need to tell him that she would not have internet access if she were to be in a place where internet was not available. It is therefore rather unlikely that the parte civile did not log into her internet banking service frequently to check her finances. In addition no evidence was brought confirming that she reported any stolen or misplaced cards or that she requested changes in PIN numbers. Had it really been a case of unauthorised use of her credit cards, the immediate reaction would have been to block the cards and request a change in the login credentials, rather than going through the rather long and cumbersome process of going to the bank and opening a new account to transfer the funds into this new account and leaving the account or accounts which have been misused dormant.

It is to be noted that the parte civile did not in any way attack the veracity of these emails. In her cross-examination she simply limits herself to saying that she does not remember sending these emails, although on being shown the emails she recognises her email address and she does not deny sending the emails.

All the above dents the parte civile's credibility and puts her claims and report into very serious doubts. The facts definitely exclude that the accused misappropriated any of the funds to which he was voluntarily given access to by his ex-partner. The fact that there could be amounts

which could still be due by the accused to the parte civile for payments he made with his ex-partner's consent does not even remotely imply that the accused misappropriated these funds, as the parte civile seems to suggest in her final submissions when referring to the document exhibited at fol. 35. Such a matter would simply be a civil issue which would need to be addressed and settled before the competent courts. The fact that the report was filed by the parte civile at a point in time where she and accused were juggling to solve their civil issues, including the value of improvements which the accused installed in the parte civile's house, is another nail in the parte civile's coffin. It suggests that the parte civile could have had ulterior motives when filing this report.

In the light of the above, the misappropriation charge being attributed to the accused definitely does not result.

C. <u>Articles 261, 267, 268 (Theft aggravated by value and person)</u>

Unlike the offence of misappropriation, the Maltese Criminal Code does not provide a definition as regards theft and our Courts have had to rely on the definition coined by Carrara: *"la contrattazzione dolosa della cosa altrui fatta invito domino con animo di farne lucro."*[29] In terms of this definition for this crime to subsist, the offender must (a) take control of an object; (b) such object must belong to another person; (c) know that the object belongs to somebody else; (iv) take the object without its owner's consent; (e) have the intention of making a gain from such taking.

[29] Programma Parte Speciale, vol. IV, para 2017. Ikkwotata f' **Pulizija vs Mario Tanti et** deciza fid-9 ta' Dicembru 1944 u **Pulizija vs Carmelo Felice** deciza fl-10 ta' Jannar 1942, it-tnejn sentenzi tal-Qorti ta' l-Appell Kriminali.

The charges related to theft cannot be said to subsist either. As pointed out above, the taking of an object must have been done without the owner's consent. As already noted earlier on, all information was supplied by the parte civile to the accused spontaneously and voluntarily without any form of pressure whatsoever. The parte civile herself confirms that she provided details of at least two (2) accounts to the accused and in addition also gave him access to her PIN number, so much so that on one occasion she also contacted him so that he could provide the same to enable her to finalise a purchase. The parte civile was authorising the transactions herself and was being kept informed of everything. At no point did the Prosecution show that there was the taking of any bank or credit cards or else internet keys. Nor was any proof brought indicating that other reports were filed other than the one which led to this case. Contemplating that there has been a theft aggravated by person and value in such a scenario is totally illogical.

DECIDE

Therefore for the reasons expounded earlier on the Court does not find the accused guilty of all the charges brought against him and consequently acquits him from all charges.

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Dr. Joseph Mifsud

Magistrate