

CIVIL COURT - FIRST HALL

Judge Anthony Ellul

Application Number 1170/2012

(1) Michael Daniel Bennett [I.D. No. 34101A] and;

(2) Nadya Vella [I.D. 787458M]

vs

(1) L.J. Construction Company Limited [C-20068] and;

(2) Emmanuel sive Lino Mangion [I.D. 873253M]

12th July, 2019.

1. On the 26th of November 2012, the plaintiffs filed a sworn application wherein they claimed and requested:
 - 1.1. They are the owners of and reside in apartment number 3, forming part of a block of apartments named '*The Rose Court*' number 22, Triq il-Ward, Madliena in the limits of Għargħur which property they had purchased on the 19th October 2006 from David and Pamela Farrugia Wismayer. The latter had in turn purchased said property from defendant company L.J. Construction Company Limited who had retained the ownership of the air space overlying the plaintiffs' property and the right to develop same;
 - 1.2. In 2007 the air space belonging to defendant company, which overlies both the plaintiffs' property as well as property belonging to neighbouring third parties, was developed into a penthouse with an adjacent terrace in terms of development permit number PA/05915/06 issued in the name of Emmanuel Mangion. Same belongs to defendant company but is leased to third parties;

- 1.3. Immediately after said development, various damages developed in the plaintiffs' property as listed in the architects reports dated 12th June 2007 and 17th March 2011 (attached as **Dok NV03** and **Dok NV04**) consisting mainly in ingress of water in various parts of plaintiffs' property as well as mould and peeling of paint as a consequence thereof. Mentioned architect's reports also identify works carried out in the overlying property, bad workmanship regarding same and the reasons which probably gave rise to mentioned damages in plaintiffs' property;
- 1.4. In the *interim* between architect's reports, plaintiffs were continuously in contact with the defendant, both in his personal capacity and as a director of the defendant company, to discuss necessary remedial works;
- 1.5. Remedial works were subsequently carried out in April 2011 but weren't sufficient / of good workmanship / efficient as resulted from a further architect's report dated 9th May 2011 (attached as **Dok NV05**). Same report also shows that damages kept increasing;
- 1.6. Defendants were notified about this even by means of legal and judicial letters, but they failed to address these shortcomings. Consequently the damages kept increasing to the prejudice of the plaintiffs;
- 1.7. During verbal discussions between the parties it was alleged that the ingress of water could have been due to holes which were perforated in the walls of plaintiffs' property through which air condition pipes were passed from without a proper sleeve. Yet, said air conditioners had been installed for 5 years prior to works done by the defendants and were skilfully installed according to trade. Water ingress and other problems in plaintiffs' property only occurred after works done by the defendants;
- 1.8. Plaintiffs incurred a lot of expenses for remedial works. Yet, after heavy rain in September, October and November 2012, water seeped in their property once more causing related damages as per architect's report **Dok NV10**. Plaintiffs suffered further damages after heavy rain between the 15th and the 20th November, 2012 (**Dok NV011 - Dok NV14**);

- 1.9. Plaintiffs were compensated for damages incurred between 2010 and 2011 by their insurance company, however damages incurred between 2011 and 2012 were not covered since the insurance company held defendant Mangion responsible to carry out the necessary repairs;
- 1.10. Moreover, further to the development of defendant's property, plaintiffs were also divested of their right of access to the roof of the property in terms of their contract of purchase;
- 1.11. They have missed various opportunities to sell their property as a result of the damages caused by defendants as well as the obstacle to access the roof of said property.
- 1.12. They therefore requested this Court to:
 - i. Declare that the development works including remedial works carried out by the defendants or either one of them, in the air space above their property weren't done according to trade practices, and this if necessary with the assistance of Court experts;
 - ii. Order the defendants or either one of them, within a short and perentory time-frame established by the Court, to carry out all remedial works that may be necessary and opportune under the direction of Court appointed experts;
 - iii. In the event of default on the part of the defendants, authorise the plaintiffs to carry out remedial works themselves, if necessary under direction of court appointed experts, exclusively at the expense of the defendants or either of them;
 - iv. Declare the defendants or either of them responsible for all damages suffered by the plaintiffs as a consequence of development works and remedial works which weren't skilfully done;
 - v. Liquidate, if necessary by means of court appointed experts, the damages in question, including loss of value of their investment and loss of potential sale of the same property;

- vi. Order the defendants or either of them to pay plaintiffs the sum liquidated in terms of damages.

With costs, including those relative to judicial letter number 2923/2012 of the 20th September 2012 and the various architects' reports, against defendants or either of them.

2. On the 21st January 2013 defendants replied¹:
 - 2.1. Emmanuel sive Lino Mangion in his own name is not the proper defendant in the present proceedings and should be freed from judgment;
 - 2.2. In any case and always without prejudice, plaintiffs' claims are unfounded both in fact and at law since defendants are not responsible for damages claimed by plaintiffs and no remedial works are necessary in the property belonging to L.J. Construction Company Limited;
 - 2.3. In any case and without prejudice, plaintiffs ought to prove damages claimed, since same are contested.

Court's reasoning.

3. By a decree dated 25th January 2013,² this Court appointed architect Edward Bencini, in agreement with both parties, to file a report regarding plaintiffs' complaints, namely:
 - i. the damages sustained to plaintiffs' property that in his opinion was caused by the development mentioned in the sworn application;
 - ii. the necessary works to repair plaintiffs' property;
 - iii. whether any repairs that have already been done weren't according to trade practices, and in the affirmative, to indicate the necessary works that need to be carried out to fix same;
 - iv. an estimate of the necessary repairs;

¹ Fol. 78.

² Fol. 80.

- v. the expenses which the plaintiffs' allege to have already incurred to carry out repairs;
- vi. the fifth request.

4. On the 28th May 2014 the court expert filed a report³ wherein he declared that:

'1. L-appartament Nru 3, 'The Rose Court', 22, Trid il-Ward, Madliena, inxtara mill-atturi minghand terzi, permezz ta' kuntratt ta' akkwist datat dsatax (19) ta' Ottubru 2006, in atti Nutar Dottor John Gambin (Dok NV01)

2. Illi fl-istess kuntratt ta' akkwist tar-rikorrenti, il-kumpannija konvenuta L.J. Construction Company Ltd, illi kienet originarjament bieghet il-fond tar-rikorrenti lit-terzi, zammet a favur tagħha d-dritt li tiżviluppa l-arja sovrastanti l-proprjetà tar-rikorrenti, liema arja baqgħet proprju tagħha meta bieghat lil terzi.

3. Illi l-arja sovrastanti għall-proprjetà tar-rikorrenti giet żviluppata fl-2007 meta nbena 'penthouse'. Dan il-'Penthouse' kien jestendi parzjalment fuq l-appartament numru 4. Fuq l-appartament numru 3 il-'penthouse' kien irtirat b' madwar 4.75 metri mill-faċċati tat-toroq 'Triq il-Ward' kantuniera ma' Triq oħra ġdida, b'hekk li kien hemm terrazzin ta' 4.75 metri fuq dan iż-żewġ toroq.

4. Matul iż-żmien li l-konvenut kien qed jibni l-penthouse, ir-rikorrenti kienu ċaqalqu il-kumpressuri ta' l-AC units' mill-gallarijiet ta' l-appartament tar-rikorrenti għal fuq il-bejt tal-'penthouse' u għaddew xi pajpijiet tal-'copper' mill-art tat-terazzin tal-'penthouse' u minn fuq l-art għal ġol-'penthouse' imbghad minn ġol-bitha għal fuq il-bejt tal-'penthouse' ...

5. Jirrizulta ukoll mix-xhieda tal-konvenut illi wara li r-rikorrenti għamlu x-xogħlijiet tal-pajpijiet ta' l-A/C fuq l-art tal-penthouse, illi hu kien qiegħed il-membrane, ix-xaħx u l-madum

Ladarba kif spjegat mill-konvenut stess fix-xhieda tiegħu hu kien għamel membrane sħiħ fuq dawn il-pajpijiet u għaldaqstant ma kienx hemm xi toqob fil-membrane ikkawżati minn dawn il-pajpijiet, fil-fehma umli tas-sottoskritt, jeskludi kull possibiltà li dawn il-pajpijiet setgħu jikkontribwixxu bl-ebda mod għall-ingress ta' ilma fis-saqaf ta' fuq l-appartament nru. 3.

6. Jirrizulta bla dubju li l-appartament numru 3 kien soġġett għal ingress ta' ilma tax-xita fis-saqaf tiegħu taħt il-penthouse f' diversi okkażjonijiet, l-ewwel darba fl-2007, u li l-ingress ta' ilma baqa' għaddej minn dakinhar sallum ...

7. Il-konvenut issuġġerixxa, bix-xhieda tiegħu, li l-problema ta' l-ingress ta' ilma tista' qed tiġi kkawżata minn penetrazzjonijiet fil-faċċata tal-bini li saru mir-rikorrenti biex jakkomodaw il-pajpijiet tas-sistema tal-A/C u/jew minn penetrazzjonijiet oħra għal servizzi oħra ...

Għalkemm hu fizikament possibbli li dawn il-penetrazzjonijiet seta jgħaddi minnhom ammont ferm limitat ta' ilma tax-xita (jew kien qed jiskula mal-ħajt direttament fuqhom waqt ix-xita, jew indirzzat lejhom bil-forza tar-riħ, fil-fehma umli tiegħu is-sottoskritt jeskludi kull possibiltà ta' ingress ta' kwantità ta' xita

³ Fol. 120 et seq.

suffiċjenti biex tarreka ħsara fl-intern tal-appartament, ħlief 'al piu' għal xi ħsara ferm limitata fiż-żona immedjatament madwar il-penetrazzjoni fuq in-naħa ta' ġewwa ta' l-appartament.

8. Jiġi rrilevat li t-terazzin il-kbir tal-penthouse jiddisponi mill-ilma tax-xita permezz ta' tlett drejnijiet (floor drains) imqegħda livell mal-wiċċ tal-madum, w għalhekk l' fuq mill-membrane. Hemm ukoll drejn ieħor fit-terazzin intern li jinsab fuq is-saqaf tal-appartament nru. 4.

Hu rilevanti ħafna li jiġi minnufih innutat li dawn il-floor drains huma konnessi mas-sistema tal-katusi ta' l-ilma tax-xita permezz ta' katusi li wieħed għandu jippreżumi l-ewwel jgħaddu orizzontalment 'l fuq mill-membrane, imbgħad jgħaddu minn penetrazzjoni fil-membrane biex jiġu konnessi mal-katusi vertikali fix-xaft li jiddisponu mill-ilma tax-xita fuq in-naħa l-oħra tal-membrane.

Din is-sistema ħolqot lokalitajiet speċifiċi fejn is-sistema tal-'waterproofing' tal-bejt setgħet għet preġudikata waqt ix-xogħlijiet tat-tqegħid tal-katusi biex jiddisponu mill-ilma tax-xita tat-terazzin tal-penthouse ...

9. Jirriżulta ukoll bla dubju li meta l-konvenut għamel xogħlijiet rimedjali, skond il-konvenut stess fi tlett partijiet fil-livell tat-terazzin tal-penthouse, instab li x-xaħx ta' fuq il-membrane kien imxarrab u kellu l-ilma fih ...'

5. The court expert also noted that notwithstanding remedial works undertaken by the defendants around July 2012, after the walls and ceilings in apartment number 3 were re-painted, water ingress persisted. With particular reference to the specific terms of his appointment as per Court decree of the 25th January 2013, he related as follows:

- i. **during three site visits he observed the damages sustained to plaintiffs' property, namely, damages to paint work in the bedroom, in the corridor, three bedrooms and the store that in his opinion were caused by water ingress from the penthouse level;**
- ii. the necessary works to repair plaintiffs' property are: ceiling paint needs to be scraped off and where necessary it needs to be coated with gypsum skim-coat before being repainted with three coats of paint; the walls of the rooms need to be repainted with two coats of paint. Paint work needs to be carried out in two phases as outlined in the report;
- iii. necessary remedial works at penthouse level are:

'... 3.5 Fl-ewwel alternattiva jinqala' l-bejt kollu u x-xaħx kollu inkluż il-'floor drains' u l-katusi bejn il-floor drains u l-katusi vertikali fix-xaftijiet. Dan imbgħad jiġi segwit billi jitqiegħed kontra bejt irqieq li jkollu qlib lejn l-inżulijiet ta' l-ilma tax-xita.

Fuq il-kontrabejt jitqiegħed membrane ġdid, għall-qlib, li jkun providut fl-aktar post / postijiet baxx/i bil-miżieb immanifatturat mill-membrane li jiġi iwweldjat mal-membrane, u li jferra l-ilma li jista jkun hemm fix-xahx għal ġol-katusi ta' l-ilma tax-xita. Dan il-miżieb jkollu passatur tal-'plastic' fuq in-naħa tax-xahx u fuq il-passatur jitqiegħed liżar għall-filtrazzjoni ta' l-ilma (soil filter cloth).

Għandu jingħad ukoll li jkun imperattiv li l-membrane mindud fuq il-kontrabejt għandu jkun pprovdut mal-perimetru kollu b'membrane wieqaf, bi żgoxx ta' 20x20mm fl-angolu, u l-membrane wieqaf għandu jittermina mal-ħajt xi 3cm 'l fuq mill-livell tal-madum, fejn imbgħad ikun issiġillat mal-ħajt wieqaf fl-għola parti tal-membrane.

Għandu jingħad ukoll li l-floor drain numru 1 għandu katusa li tingħaqad mal-katusa tal-ilma fix-xaft il-kbir maġemb it-taraġ. Din il-katusa tgħaddi minn taħt il-madum intern tal-penthouse u fuq is-saqaf ta' l-appartament numru 3. Hu neċessarju li din l-katusa jew tiġi eliminata jew tiġi ippressata u ittestjata u garantita li ma tagħmilx ilma taħt il-madum. Ikun għaldaqstant ieħor importanti li l-membrane il-ġdid jiġi ttestjat permezz ta' 'water test'. L-istess proċess japplika għall-floor drains 2 u 3 u il-komunikazzjoni tagħhom ma' l-inżul ta' l-ilma tax-xita fix-xaft iż-żgħir.

Hu probabbli li jinqala' l-madum u x-xahx biex isir il-membrane ġdid għall-qlib, il-livell tal-madum tat-terazzin jkollu jogħla bir-rizultat li jkun hemm bżonn ta' sol u tarġa baxxa minn ġol penthouse tat-terazzin.

3.6 Mil-banda l-oħra qabel ma wieħed jista' jasal għas-soluzzjoni kif spjegata hawn fuq fl-ewwel alternattiva, jista' jsir tentattiv biex tissolva l-problema billi jsiru xogħlijiet rimedjali skont it-tieni alternattiva spjegata hawn taħt.

F'dan il-każ ikollhom jiġu miftuħa il-partijiet kollha tal-bejt fiż-żoni kritiċi fejn hu l-aktar probabbli li qed jiskula l-ilma tax-xita taħt il-membrane.

Dawn iż-żoni jinkludu l-katusi kollha ta' l-ilma li hemm taħt il-madum tal-bejt, u d-dawra tond tal-bejt fejn il-membrane orizzontali jintrefa' mal-ilqugħijiet tal-ħitan ta' l-opramorta, max-xaftijiet, jew mal-ħitan esterni tal-penthouse.

Kull fejn jinqala' l-madum għandu jitneħħa x-xaħx, jiġi nvestigat il-membrane għal difetti, jissewwa, jissewwew xi difetti li jinsabu fil-katusi u fil-penetrazzjonijiet, jissewwew id-difetti fil-parti l-wieqfa tal-membrane, mbgħad jitkaħħal bir-ramel u siment maġemb ix-xaħx li jinkixef fejn ma jinqalax il-madum u jiġi sigillat bil-membrane wieqaf, wara, dan ix-xogħool jiġi ppruvat billi l-banju jew banjijiet tal-membrane hekk iffurmati jintlew bl-ilma, biex jiġi verifikat li m'hemmx telf ta' ilma minn go fihom.

Għandu jiġi enfasizzat li dan it-tieni tip ta' intervent hu wieħed esperimentali, u li sa ċertu punt ta' 'trial and error', u li

*għaldaqstant ma jistax jiġi assikurat li dawn l-interventi jggarantixxu soluzzjoni finali, mminhabba s-sempliċi fatt li ħsarat fis-sistema tal-membrane f'zona mhux itrattata twassal għall-ingress ta' l-ilma aktar 'l quddiem.'*⁴

- iv. remedial works to the current system to be finalised during summer were estimated to cost €3,030; should no further water ingress result after the following winter, paint work at plaintiffs' property should proceed at a further estimated cost of €2,390. Should water ingress persist, additional works are estimated to cost a further €8,680. In addition to said amounts, there is a further 10% to cover architect and project manager fees and another 18% VAT.
- v. **expenses already incurred by plaintiffs' to carry out repairs are acceptable limitedly up to the amount of €1,184.70;**
- vi. regarding the fifth request:

'L-esponent ikkunsidra u ndirizza l-kwistjoni dwar telf fil-valur ta' l-investment u telf tal-bejgħ potenzjali:

Jinħass, li għalkemm kien hemm ħsarat attwali u rejali f' appartament numru 3, jinħass għaldaqstant ieħor li dawn il-ħsarat mhumiex tali li ma jistgħux, u ma setgħux ġew indirizzati, b'mod tali li ħsara titneħħa b' mod permanenti, kemm fiżikament kif ukoll b' mod viżwali.

Imkien u qatt ma rriżulta li hemm xi ħsara permanenti u gravi u rrimedjabbli fl-appartament li tista' tikkawża tnaqqis konsiderevoli fil-valur tal-appartament fis-suq tal-proprjetà mingħand xerrej li jivvaluta l-appartament a bażi ta' osservazzjonijiet u kriterji oġġettivi. *Se mai, xerrej potenzjali li kien jara l-kundizzjoni tas-saqaf minn ġo l-appartament numru 3, kien ikun ġustifikat li jevalwa l-ispiza biex titneħħa l-problema ta' l-ingress tal-ilma fl-appartament imbgħad kien raġonevolment jiffattorizza din l-ispiza fl-offerti tiegħu.*

*Fil-każ prezenti, l-esponent qed umilment jikkonkludi li dawn l-ispejjeż tax-xogħlijiet rimedjali għandhom ikunu a karigu tal-konvenut jew il-kumpannija konvenuta, u li dawn **ix-xogħlijiet rimedjali sejrjn jirripristinaw appartament numru 3 f'post qisu ġdid.***

Dwar telf ta' bejgħ potenzjali ta' l-appartament ma ngiebet l-ebda prova da parte tal-atturi li kien hemm xi offerti mingħand terzi biex jixtru l-appartament, jew li dan l-appartament tqiegħed fuq is-suq, u l-esponent ma jistax

⁴ Fol. 150.

jikkonkludi li ntilfu xi okkażjonijiet ta' bejgħ. Għaldaqstant din it-talba qed tiġi miċhuda.'

6. During the sitting of the 9th July 2014, without admission of liability or fault, the defendant company declared that it had no objection to execute **investigative remedial works** as suggested by architect Bencini. Similarly, without prejudice to their rights, the plaintiffs' declared they had no objection to this.⁵ Therefore, by a decree delivered on the 29th July 2014, the Court ordered:

'that at this stage of the proceedings, without prejudice to the reciprocal rights of all the parties to the proceedings:

1. *The works mentioned in **paragraph 3.6** of the technical report executed by the defendants. The works are to be completed by not later than the **5th September 2014**;*
2. *The works are to be executed under the direction and supervision of architect Edward Bencini. Therefore no works are to be performed unless authorised and supervised by the referee.*
3. *Works at the level of the penthouse are provisionally at the charge of the plaintiffs.*
4. *Works in the property of the plaintiffs (vide architect Bencini's testimony – 9th July 2014) are provisionally at the charge of the plaintiffs.*
5. *Payment due to the referee for services to be rendered as per this decree, is provisionally at the charge of the plaintiffs.'*⁶

7. On the 25th September 2014, architect Bencini filed his report relative to the remedial works carried out according to the Court's decree.⁷
8. During the sitting of the 8th October 2014 the plaintiffs declared that further to the recent storm, the fresh paintwork bubbled. Under the circumstances, the Court ordered architect Bencini to hold a site inspection to establish whether water had seeped through the membrane.⁸
9. During the sitting of the 27th October 2014, architect Bencini stated that he held an on sight inspection and confirmed that at that stage there was no dampness and no mould on the ceiling, although it could appear at a later stage. He therefore proposed that the Court must allow a certain time period to elapse in order to establish whether water had seeped through the ceiling or whether mould would develop.⁹

⁵ Sitting of the 28th July 2014.

⁶ Fol. 277.

⁷ Fol.278 *et seq.*

⁸ Fol. 344.

⁹ Fol. 345.

10. Further to a request by the plaintiffs, architect Bencini carried out another on site inspection on the 20th January 2015 and on the 23rd February 2015, however, no water ingress resulted in plaintiffs' property from the overlying penthouse.¹⁰
11. A further inspection was carried out on the 4th of June 2015 during which, it resulted that there was no water ingress in plaintiffs' property from the overlying penthouse.¹¹ **Hence, architect Bencini proposed to proceed in terms of para 4.2 of his report of the 17th April 2014, namely, the second phase of painting of ceilings and walls in plaintiffs' property.** Plaintiffs however requested that works be carried out after April, 2016 to make sure that no further water ingress takes place. Whereas this request was deemed reasonable, it was made clear to the plaintiffs that they would have to incur any added costs should the expenses for the contractor be higher than €2,390 as currently quoted. The case was therefore adjourned to the 2nd May 2016.¹²
12. During the sitting of the 2nd May 2016, architect Bencini informed the court that a further inspection was held the day before. He confirmed that no water ingress resulted in the rooms which were referred to in his report but there were traces of water ingress in the shower room and in the main bedroom apparently due to two holes above the level of the slab of the roof which need to be sealed off by the defendants. Plaintiffs therefore requested the Court to adjourn the sitting to November/ December to allow for proper verifications to be made. Defendants confirmed there was no objection to this from their end.¹³
13. Architect Bencini carried out another on site inspection on the 24th February 2017 and confirmed as follows:

`iii. it-tbajja li sab fl-aħħar access huma dawk li jidhru fir-ritratt numru 3 u fir-ritratt numru 8.

iv. it-tbajja li jidhru fir-ritratt numru 8 qiegħed jattribwihom għall-qsim li hemm fil-ħajt estern tal-block li għalih hu responsabbli il-kondominju (ara ritratt numru 11).

v. it-tbajja li jidhru fir-ritratt numru 3 huma lokalizzati u l-opinjoni tal-perit tekniku hi li jekk xi qsim bejn l-appoġġ u l-art tal-bejt li pero titlob biss li ssir manutenzjoni.

¹⁰ Fol. 347.

¹¹ Fol. 353.

¹² Fol. 356.

¹³ Fol. 358.

vi. Apparti dak li ngħad hawn fuq, il-perit tekniku kkonferma li ma sab l-ebda tbajja oħra mill-aħħar aċċess li kien sar f' Novembru 2016.

vii. il-perit tekniku kkonferma li fil-fehma tiegħu, kull ma fada xi jsir huwa t-tibjid tas-saqaf tal-appartament u xi ħitan fil-kmamar tal-appartament fejn hemm jew it-tbajja jew il-flaking.¹⁴

14. In view of this, plaintiffs filed a note with questions for the court exper.¹⁵ The court expert confirmed his position and specified that the outstanding works that need to be carried out for him to conclude his appointment are the following:

*`i) Xogħol preparatorju (sanding down) fejn hemm bżonn tas-soqfa;
ii) Żewġ passati 'anti-fungal water paint' fis-soqfa kollha.
iii) Passata 'anti-fungal water paint' fil-ħitan kollha ħlief fil-kmamar tal-banju;
iv) Tindif.'¹⁶*

15. Architect Bencini also gave evidence on the 28th July 2017 and *inter alia* confirmed that there's an approximate 20% increase in the prices previously quoted for the works that still need to be carried out.¹⁷

16. During the sitting of the 17th November 2017 the Court was informed that there was extensive water seepage in the main bedroom and some water seepage in the living room. It therefore ordered architect Bencini to hold another on-site inspection to: (i) determine the source of the water seepage; (ii) advice the Court what works are necessary.

17. Architect Bencini gave evidence and filed photographs during the sitting of the 12th January 2018.¹⁸ He testified that Wednesday prior to the sitting he carried a site inspection during which he saw two seepages, one in the main bedroom and the other living room. In his opinion the latter is due to combined reasons, that is, **seepage from the facade and seepage from the terrace of the penthouse**. Regarding dampness in the main bedroom, he was not in a position to confirm whether this was caused by a crack in the overlying terrace between the party wall and the skirting which he had previously instructed defendants to fix. However, he could not exclude it was a contributory factor.

¹⁴ Fol. 326 – emphasis by the Court.

¹⁵ Fol. 368 *et seq.*

¹⁶ Fol. 374A.

¹⁷ Fol. 377.

¹⁸ Fol. 380 *et seq.*

18. During the sitting of the 2nd March 2018,¹⁹ defendants declared that works referred to during the sitting of the 12th January 2018 had been carried out. On the other hand, plaintiffs declared that on the 16th February 2018 there was further water seepage in the main bedroom. A site inspection was therefore to be held on the 7th March 2018.
19. During the site inspection carried out on the 7th March 2018,²⁰ the Court inspected apartment number 3 owned by plaintiffs and the terrace overlying the apartment. It appeared that at that stage there was still a problem with the last room of the apartment used as a bedroom which had stains on the ceiling and wall indicating water seepage. It was established that the defendants carried out the works mentioned in the proces verbal of the 12th January 2018. The Court expert declared that at this stage he was not in a position to express an opinion as to whether water is seeping into the bedroom through the terrace of the penthouse or the third party terrace. **It was agreed that defendants remove part of the skirting and some floor tiles at both ends of the terrace under the direction and supervision of architect Bencini to enable the latter to determine whether further remedial works have to be undertaken in these two areas of the terrace to ensure that it is properly sealed against water ingress. Defendant was to inform architect Bencini at least 7 days prior regarding date of said works. Plaintiff Nadya Vella was also authorised to be present and assisted by an architect appointed at her own expense. The defendant argued that should it result that such works are of no use, the plaintiffs should pay for the expenses.**
20. In terms of a report filed by architect Bencini,²¹ part of the skirting of the terrace of the penthouse was removed on the 4th April 2018. He related that:
- '3. Deherli li ma kienx hemm għalfejn jitkompla jinqala' aktar skirting u madum għax irriżulta li l-membrane orizzontali taħt il-madum li kont kxift xi snin ilu meta kont għamilt l-ewwel intervent ta' tiswijiet kien kontinwu ma dak vertikali ma' l-opramorta, biex jifforma banju.*
4. Dakinhar stess avżajt lill-Mrs Vella li kien sar ix-xogħol biex jiġi nvestigat il-membrane fl-estremità tal-bejt fuq iż-żewġ naħat ...
5. ... fis-6 ta' April fit-8:00am ... attendejt flimkien ma' Mrs Vella u l-Perit Edgar Attard Montalto li kien qed jassistiha.'
21. During the sitting of the 23rd April 2018, after the plaintiffs declared that defendants could put back the skirting that was removed during the last site

¹⁹ Fol. 398.

²⁰ Fol. 413.

²¹ Fol. 417.

inspection, defendants were ordered to seal off the said areas by not later than the 30th April 2018.

22. During the sitting of the 18th June 2018,²² the Court reiterated that defendants are to ensure that within the following 24 hours, the areas where the skirting was removed and still exposed were to be sealed off in terms of its decree of the 23rd April 2018. Defendants' lawyer stated that:

'1. Defendants have obtained a development permit PA/10670/2017 which decision was published on the 13th June 2018 which will include the building of the terrace area.

2. An architect was sent by defendants to prepare a condition report of plaintiffs' property and Nadya Vella did not permit the architect to enter her property. She also informed the architect that she would be abroad for 3 weeks.

3. Nadya Vella declared that an architect went to her residence unannounced and asked to inspect the property. She informed him that at the time she had guests and asked him to postpone the inspection after she returns from abroad.'

23. A further on site inspection was consequently agreed.
24. During the sitting of the 13th July 2018²³ the parties confirmed that works relating to the skirting referred to during the sitting of the 18th June 2018 had been carried out. Defendants' lawyer also informed the Court that construction works mentioned in the development permit would commence the following Monday. Plaintiffs' lawyer declared that according to the permit not all the terrace would be developed and therefore would be filing a note with their relative requests.
25. The relative note was filed on the 27th September 2018²⁴ whereby plaintiffs informed the Court that defendants commenced construction works on the 27th August 2018. They also insisted that, since the water leakage/seepage problem remained unresolved notwithstanding the investigative/remedial works, the works detailed in paragraph 3.5 of the technical report filed by AIC Bencini should be carried out under the supervision of a court appointed expert.
26. During the sitting of the 5th October 2018,²⁵ defendant confirmed that **the whole terrace overlying plaintiffs apartment had been roofed**. The Court was shown a photo of the additional floor built and defendant indicated the part of the additional floor that would be used as a terrace. He also

²² Fol. 423.

²³ Fol. 424.

²⁴ Fol. 505 – 506.

²⁵ Fol. 509.

confirmed that the floor tiles would not be removed and in this area he would put waterproof membrane and floor tiles throughout. He had no objection to the court appointed expert being present during laying of roof membrane and committed himself to inform him a week in advance of said works. Plaintiffs requested the Court to order defendants to close all apertures during ongoing works in order to exclude the possibility of water ingress since it rained on the 2nd and 3rd October and water seeped in the first room of the apartment.

27. On the 8th of October 2018 the Court ordered²⁶ that until works are ongoing on the floor overlying the apartment owned by the plaintiffs, all openings on that floor are to be temporarily weather proofed as a precautionary measure by the 25th October, 2018 at defendants' charge.
28. During the sitting of the 12th November 2018,²⁷ plaintiffs declared that in the past weeks water from the overlying apartment had seeped into the sitting room of her apartment. Parties therefore agreed that architect Bencini ought to hold another inspection to determine whether plaintiffs' complaints were justified.
29. By decree of the 16th November 2018,²⁸ the Court ordered architect Bencini to inspect plaintiffs' property and the overlying development and in writing advise:

'i. Whether water is presently seeping from the overlying tenement into plaintiffs' apartment.

ii. In the affirmative, identify and advise:

- *The cause of the water seepage;*
- *The rooms in the plaintiffs' apartment where water is seeping;*
- *What works are necessary (including temporary works) in order to stop the water seepage.*

Costs are provisionally at the charge of the plaintiffs.'

30. Further to a site inspection carried out on the 3rd December 2018, the court expert related that:

'3.1 Irrizulta waqt l-aċċess li l-penthouse li qabel kien jeżisti fuq l-appartament tal-attur issa ġie estiż biex jestendi fuq l-appartament kollu tal-attur, u li nbena sular ieħor fuq is-sular li qabel kien il-penthouse.

²⁶ Fol. 510.

²⁷ Fol. 511.

²⁸ Fol. 522.

3.2 Irriżulta li hemm xi ħsarat ikkawżati fl-appartament tal-attur jew fil-partijiet komuni minn ingress tal-ilma li seħħ fix-xhur li għaddew, u dan fit-tlett żoni:

i) Fis-sala fil-kantunierata tal-faċċata maġenb it-tromba tat-taraġ u taħt is-saqaf tal-gallerija tal-faċċata;

ii) Fil-kamra tas-sodda prinċipali reġgħew tfaċċaw sinjali limitati ta' umdita;

iii) Fit-tromba tat-taraġ reġgħet tfaċċat sinjal ta' umdita fejn kien hemm qabel: fl-indana tat-taraġ reġgħet tfaċċat l-umdità;

iv) Imkien ieħor ma ġie osservat ingress tal-ilma fl-appartament tal-attur u għandu jiġi innotat illi iż-żoni milquta fis-sala u fil-kamra tas-sodda huma l-istess żoni fejn qabel kien ġie osservat ingress tal-ilma, u cioè maġenb il-gallerija tal-faċċata, u fil-kamra tas-sodda prinċipali ma ġenb l-appoġġ ta' terzi.

3.3 Saru ukoll dawn l-osservazzjonijiet:

i) Fis-sular fejn qabel kien il-livell tal-penthouse, il-madum tal-bejt li kien hemm qabel ma nqalax u intużaw il-ħitan tal-opramorta biex inbena fuqhom il-kumplament tal-bricks tal-faċċata li fuqhom imbagħad ġie imsaqqaf il-kumplament tas-sular tal-penthouse.

ii) Sar il-plastik fl-aperturi kollha f'attentat li jitnaqqas l-ammont ta' xita li taqa' fuq l-ex terazzin tal-penthouse.

iii) Issemma mill-konvenut waqt l-aċċess li kien hemm okkazzjoni fejn is-saqaf ta' fuq il-gallerija kien imtela' bl-ilma, imma immedjatament kif dan ġie osservat kienet ġiet installata katusa żgħira biex tiddevja l-ilma għal fuq l-art li qabel kien il-bejt tal-penthouse.

4.1 Għandu jintqal qabel kollox li fi proġett fejn qed jiżdiedu sulari ġodda fuq bini eżistenti hu faċli li jitfaċċaw problemi ta' ingress tal-ilma tax-xita fil fond/i sottostanti fil-perjodu li matulu jkunu qed isiru ix-xogħolijiet.

Xi drabi dan ikun minħabba nuqqas manifest ta' azzjonijiet u xogħolijiet biex dan ma jseħħx, jew per eżempju għax jinqala' il-madum jew il-kontrabejt tas-sular ta' fejn ser jiżdiedu sular/i oħra mingħajr ma jittieħdu prekawzjonijiet biex il-propjetà ta' taħt ma ġġarafx ħsarat, jew għax bi traskuragni jittella' materjal fuq il-bejt eżistenti li jostakola il-medded fuq il bejt minn fejn l-ilma tax-xita jiġri lejn il-katusi li minnhom l-ilma tinzel għal-livell tat-triq.

Fil-każ in eżami ma jidhirx li kien hemm ebda traskuragni, anzi il-madum tal bejt li kien hemm qabel ma nbdew ix-xogħolijiet, ma ntmisx, u il-ħitan li jerfgħu is-saqaf il-ġdid saru generalment fuq il-ħitan tal-opramorta eżistenti.

Mhux hekk biss imma ittieħdet ukoll il-prekawzjoni li it-twieqi kollha ġew magħluqa bil-plastik f'tentattiv biex jitnaqqas l-ilma tax-xita li taqa' fuq il-bejt ta' qabel.'

31. This notwithstanding, the court expert recommended that:

4.2 Bħala prekawzjoni addizzjonali qed jiġi rakkomandat li għandu jithalleb il-madum tal-livell ta' fuq l-appartament tal-attur, inkluż il-madum

tal-parti li qabel kien l-intern tal-penthouse u inkluz is-soqfa kollha tal-gallarijiet maqgħluqa tal-livell tal-attur, biex kull fejn setgħu infetħu xi fil-fil-madum jew fil-kontrabejt tas-soqfa tal-gallarijiet magħluqa permezz ta' xi ċaqlieg żgħir tal-bini kawża tal-piż ġdid tas-sulari addizzjonali, dawn il-fili jingħalqu bit-taħlib. Dan ix-xogħol hu intenzjonat bħala protezzjoni temporanja biex fil-perjodu sakemm is-sulari l-ġodda jitlestew mix-xogħlijiet kollha u tingħalaq il-qoxra esterna tas-sulari addizzjonali kontra l-elementi, jiġu evitati ħsarat ġodda fis-sulari ta' taħt.

4.3 Wara li imbagħad il-qoxra esterna tas-sulari addizzjonali tingħalaq kontra l-elementi, il-konvenut ikun obligat li jikkompleta l-obbligu tiegħu li jiżboh żewġ passata tal-hitan u tas-soqfa interni fl-appartament tal-attur.'

32. By decree of the 18th December 2018,²⁹ the Court ordered the defendants to perform, by not later than the 31st December 2018, the temporary works recommended by the court expert and authorised them to communicate with the court expert in order to request instructions should they require any clarifications.
33. During the 8th January 2019,³⁰ the court expert confirmed that if defendants decide to retain the current floor paving and place on top of it water proof membrane and then new paving, he has no objection to such works. He also confirmed on oath that he does not exclude that in 5 or 10 years time, traces of rusting of the steel reinforcement in the ceiling might occur. However, today there are no such signs. The court expert explained also that the material under the paving will by time dry up. However this will not be a short time. He also confirmed that he does not predict that further damages will be caused to the premises to the plaintiff if what he stated in the note filed today is done properly. To date from the various site inspections held, the problem is limited to two particular zones in the apartment. The court expert also clarified that in this case the waterproof membrane is under the torba. This was according to practice in the building industry at the time the development was made. The ideal situation would be to remove all the underlying torba and replace same. **He also confirmed that in his opinion presently there is no seepage from the floor of the roof.**
34. During the same sitting, the legal representative of the defendants also declared that works ordered by the Court's decree on the 18th December 2018 hadn't yet been performed since the defendants required more time, that is, another 3 to 4 weeks. Legal representative for the plaintiffs objected and insisted that temporary measures should have been completed and asked the

²⁹ Fol. 524.

³⁰ Fol. 533..

Court to take all appropriate measures to ensure that works are carried out immediately.

35. By means of a decree dated 15th January 2019,³¹ the Court ordered that the temporary works mentioned in the court expert's additional report be completed by not later than the 31st January 2019.
36. By means of a note filed on the 28th February 2019,³² the defendants confirmed that the temporary works ordered by this Court were not carried out. They claimed that such works were not possible due to installed services, namely conduits for the passage of electrical cables and plumbing as confirmed by architect Stephen Micallef, who also confirmed that the pre-existing terrace was roofed over.³³ Defendants also confirmed that they would be laying screed over the tiles in the roofed terrace and shall be laying tiles above all the paved area under consideration within an approximate period of one (1) month and within 2 weeks all aluminium fixtures would be fixed.
37. The parties then submitted their written submissions and the case was adjourned for judgment.

Preliminary Plea

38. On a preliminary basis, defendants held that Emmanuel sive Lino Mangion in his own name is not a legitimate defendant in the present proceedings and should be freed from judgment.
39. There is no contestation that the airspace overlying the property pertaining to the plaintiffs is owned by the defendant company L.J. Construction Ltd. This results clearly even from the contract by which the plaintiffs purchased their apartment on the 19th October 2006.³⁴
40. Plaintiffs however claim that the responsibility for damages sustained by them is attributable to the defendants or either one of them as the individual/entity which have carried out the development in question, irrespective of the ownership of said property. They maintain that defendant failed to prove that the development in question is being carried out solely by defendant company. Moreover, plaintiffs claim that it clearly results from the acts of the case that

³¹ Fol. 535.

³² Fol. 541 *et seq.*

³³ Fol. 543.

³⁴ Fol. 11 *et seq.*, clause 7.

defendant Emmanuel Mangion interacted with plaintiffs on several occasions without bringing to their attention that he was acting in the capacity of director of defendant company L.J. Construction Ltd.

41. By means of an affidavit filed on the 8th April 2013, Emmanuel Mangion testified that he's a director and shareholder with Joseph Xerri in L.J. Construction Co. Ltd. which in 1996 had acquired five plots of land in Madliena. 'Rose Court' was thereafter built on part of said plots consisting of garages, 3 floors of apartments and an overlying penthouse. Whereas all apartments and most garages were sold to third parties, defendant company retained ownership of the penthouses together with their air space. He confirmed that:

*'Jiena qatt ma kont involut fil-kapaċità tiegħi personali fix-xiri tal-imsemmija proprjetà jew l-iżvilupp sussegwenti tagħha, dejjem aġixxejt bħala direttur ta' L.J. Construction Co. Ltd.'*³⁵

42. On the other hand, plaintiffs testified that they always dealt with defendant Emmanuel Mangion who never mentioned to them that he was acting on behalf of defendant company.³⁶ In her subsequent testimony³⁷ and in her affidavit Nadya Vella also testified that³⁸ during the first water ingress in 2007, Emmanuel Mangion had paid for damages which had been sustained in plaintiffs' apartment whereas some of the damages sustained between 2007 and 2011 were partly paid for by her insurance company.
43. The details regarding the payment effected by Emmanuel Mangion for damages sustained by the plaintiffs in 2007 remains unclear. There is no evidence proving that such payment was effected on behalf of defendant company as opposed to defendant Mangion personally.
44. Also pertinent is the fact that in terms of MEPA permit number PA/05915/06,³⁹ granted on the 11th September 2007 for the development of the penthouse in question, **the name of the applicant is 'Mr. Emmanuel Mangion'**. The relative application submitted to the Planning Authority was not presented. There is no evidence sustaining defendants' claim that only the defendant company was responsible for the development and that Emmanuel Mangion was merely acting in his capacity as a director thereof.

³⁵ Fol. 84.

³⁶ Fol. 91 *et seq.*

³⁷ Fol. 123 – first sitting before the court expert.

³⁸ Fol. 178 *et seq.*

³⁹ Fol. 19.

45. In the circumstances, plaintiffs are justified to have instituted proceedings both against defendant company and Emmanuel Mangion personally. Defendants' preliminary plea is therefore being rejected.

The merits of the case.

46. Since the Court has already listed in detail the chronological sequence of events and findings during the present proceedings in its considerations, for the avoidance of unnecessary repetition it shall hereby limit itself to summarise the salient points leading to its conclusions.
47. It has already been established that the first water ingress in plaintiffs' property occurred in 2007. At the time Emmanuel Mangion had paid for damages which had been sustained by plaintiffs. Nadya Vella testified⁴⁰ that at that stage they had to move out because of the works and lived elsewhere for a year and a half. Thereafter further damages were noted and they brought in their insurance. With the latter's approval, they repainted the apartment in 2011. The insurance reimbursed plaintiffs for painting costs, mouldy curtains, and bathroom gypsum. Yet, after heavy rains in September 2011, further damages occurred and defendant Mangion was informed about same and asked to properly remedy the situation at roof level. The latter carried out some works in the summer of 2012 however the problem subsisted and the present proceedings instituted.
48. During the course of these proceedings, the court appointed expert's first technical report was submitted on the 28th May 2014⁴¹ where it was established that the damages sustained to plaintiffs' property, namely, damages to paint work in the bedroom, in the corridor, three bedrooms and the store that in his opinion were caused by water ingress from the penthouse level.
49. For this reason, plaintiffs' first request is being upheld.
50. The court expert consequently gave his opinion on the necessary remedial works at penthouse level and in plaintiffs' apartment. The options were two: either complete removal and relaying of the penthouse flooring or investigative works which only required partial removal and relaying of the penthouse flooring. For the avoidance of unnecessary repetition, the Court refers to its considerations above where the necessary remedial works and

⁴⁰ Fol. 123 – 124.

⁴¹ Fol. 121 *et seq.*

findings by the court expert were listed in detail. In his report the court expert also liquidated the sum of €1184.70, expenses incurred by plaintiffs' to carry out repairs until that stage.

51. In view thereof, further to agreement between the parties, investigative remedial works at penthouse level were carried out. Thereafter plaintiffs complained of further water ingress. Various other site inspections were held by the court appointed expert, towards the end of 2014. At that point in time, the court expert did not conclude that there was **water ingress in plaintiffs' property from the overlying penthouse**. A further inspection was carried out on the 4th of June 2015 during which, it resulted that there was no water ingress in plaintiffs' property from the overlying penthouse.⁴² **Hence, architect Bencini proposed to proceed in terms of para 4.2 of his report of the 17th April 2014, namely, the second phase of painting of ceilings and walls in plaintiffs' property**. Plaintiffs requested to delay these works to make sure no further water ingress takes place.
52. During the sitting of the 2nd May 2016, architect Bencini informed the court that a further inspection was held the day before. He confirmed that there was no water ingress in the rooms which were referred to in his report. However, there were traces of water ingress in the shower room and in the main bedroom apparently due to two holes above the level of the slab of the roof which the defendant had to seal.
53. In May 2017 the court appointed expert confirmed that the only outstanding works that still needed to be carried out for him to conclude his appointment were the following repairs in plaintiffs' property:

- i) Xogħol preparatorju (sanding down) fejn hemm bżonn tas-soqfa;*
- ii) Żewġ passati 'anti-fungal water paint' fis-soqfa kollha.*
- iii) Passata 'anti-fungal water paint' fil-ħitan kollha ħlief fil-kmamar tal-banju;*
- iv) Tindif.*⁴³

54. After further water seepage in November 2017, the court appointed expert reported that during a further inspection he saw two seepages, in the main bedroom and living room. In his opinion the latter is due to combined reasons, that is, seepage from the facade and seepage from the terrace of the penthouse. Regarding dampness in the main bedroom, he was not in a position

⁴² Fol. 353.

⁴³ Fol. 374A.

to confirm whether this was caused by a crack in the overlying terrace between the party wall and the skirting which he had previously instructed defendants to fix. Although defendants carried out said works, plaintiffs complained of further water seepage in March 2018.

55. After another on site inspection, the Court expert declared that he was not in a position to express an opinion as to whether water was seeping into the bedroom through the terrace of the penthouse or the third party terrace. It was therefore agreed that defendants remove part of the skirting and some floor tiles at both ends of the terrace under the direction and supervision of architect Bencini to enable the latter to determine whether further remedial works have to be undertaken in these two areas of the terrace to ensure that it is properly sealed against water ingress. Said investigative works were indeed carried out, however no irregularities were found by the court expert.
56. It further results that subsequently, defendants' lawyer informed the Court that defendants had obtained a **development permit PA/10670/2017 on the 13th June 2018** which would include the building of the terrace area of the penthouse overlying plaintiffs' property. During the sitting of the 13th July 2018⁴⁴ defendants' lawyer informed the Court that construction works mentioned in the development permit would commence the following Monday. The construction has been completed (vide report filed by the court expert and dated 10th December, 2018). Therefore, today there is no terrace overlying plaintiffs apartment.
57. Yet, plaintiffs insisted that,⁴⁵ since the water leakage/seepage problem remained unresolved notwithstanding the investigative/remedial works, the works detailed in paragraph 3.5 of the technical report filed by AIC Bencini should be carried out under the supervision of a court appointed expert, that is, *'jinqala' l-bejt kollu u x-xaħx kollu inkluż il-'floor drains' u l-katusi bejn il-floor drains u l-katusi vertikali fix-xaftijiet'* and everything redone from scratch as directed by the technical expert. Plaintiffs still insist on this position in their note of submissions.
58. **Clearly this extreme measure is no longer necessary:**
- (i) Following a site inspection carried out on the 3rd December 2018, the court expert reported that, *'Imkien ieħor ma ġie osservat ingress tal-ilma*

⁴⁴ Fol. 424.

⁴⁵ Fol. 505 – 506.

*fl-appartament tal-attur u għandu jiġi innotat illi iż-żoni milquta fis-sala u fil-kamra tas-sodda huma l-istess żoni fejn qabel kien ġie osservat ingress tal-ilma, u cioè **maġenb il-gallerija tal-faċċata**, u fil-kamra tas-sodda prinċipali **ma ġenb l-appoġġ ta' terzi'** (report dated 10th December, 2018).*

- (ii) He also confirmed that during the latest construction, the defendants had taken all possible measures to prevent water ingress in the underlying apartment belonging to the plaintiffs, even though he recommended that *'4.1..... għandu jithalleb il-madum tal-livell ta' fuq l-appartament tal-attur, inkluz il-madum tal-parti li qabel kien l-intern tal-penthouse u inkluz is-soqfa kollha tal-gallerijiet maqgħluqa tal-livell tal-attur, biex kull fejn setgħu infetħu xi fili fil-madum jew fil-kontrabejt tas-soqfa tal-gallerijiet maqgħluqa permezz ta' xi ċaqlieg żgħir tal-bini kawża tal-piż ġdid tas-sulari addizzjonali, dawn il-fili jingħalqu bit-taħlib ... Wara li imbagħad il-qoxra esterna tas-sulari addizzjonali tingħalaq kontra l-elementi, il-konvenut ikun obligat li jikkompleta l-obbligu tiegħu li jiżboh żewġ passata tal-hitan u tas-soqfa interni fl-appartament tal-attur';*
- (iii) By means of a note filed on the 28th February 2019,⁴⁶ the defendants confirmed that they would be laying screed over the tiles in the roofed terrace and shall be laying tiles above all the paved area under consideration within an approximate period of one (1) month and within 2 weeks all aluminium fixtures would be fixed.

59. **It therefore follows that now the only remedial works that remain are:-**

- i. Proper water proofing of the two balcony concrete bases that form part of the apartment overlying plaintiffs apartment.**
- ii. Repair of all areas in plaintiffs apartment damaged through water seepage, whitewashing and related works of the walls and ceilings of plaintiffs apartment.**

60. The works are to be carried out under the supervision and direction of architect Edward Bencini. If the defendants fails to effect the works within the stipulated period, the plaintiffs are authorized do the same under the supervision and

⁴⁶ Fol. 541 *et seq.*

direction of architect. **All works, contractors chosen to execute the works, prices for works and materials, have to first be approved in writing by the court expert.**

61. Based on what the court expert stated, the court cannot accept plaintiffs claim that water seepage has recently occurred.
62. Regarding plaintiffs' claim for the payment of damages, in her affidavit⁴⁷ plaintiff Nadya Vella requested the following:
 - (i) €11,193 for alternative accomodation;
 - (ii) €1,266.50 legal expenses;
 - (iii) €2,105.15 in connection with various reports carried out by Architecture Projects;
 - (iv) €68.72 for Perit Reuben Sciortino's report dated 12th June 2007; and
 - (v) €210.86 to Adrian Cassar for various maintenance works.
63. The court appointed expert expressed the view that only €1,184.70 of these expenses are acceptable:
 - (i) €11,193 for alternative accomodation is not '*stima tal-ispejjeż sabiex issir it-tiswija*',⁴⁸
 - (ii) €1,266.50 legal expenses is not '*stima tal-ispejjeż sabiex issir it-tiswija*',⁴⁹
 - (iii) regarding the sum of **€2,105.15** in connection with various reports carried out by Architecture Projects, the Court appointed expert stated that only €1,184.70 is due since plaintiff herself testified that expenses up to 2011 were claimed from her insurance. On reading Nadia Vella's affidavit, the court understood that expenses relating to reports were personally paid by plaintiffs. Therefore the whole sum is due.
 - (iv) The sum of **€68.72** is claimed as a fee paid to Perit Reuben Sciortino for a report dated 12th June 2007. The court expert

⁴⁷ Fol. 178 *et seq.*

⁴⁸ Fol. 80.

⁴⁹ Fol. 80.

concluded that plaintiff herself testified that expenses up to 2011 were claimed from her insurance therefore this claim should have been made to her insurers. The same reasoning made in paragraph (iii), applies.

- (v) regarding the €210.86 to Adrian Cassar for various maintenance works, it was not proved that same were incurred as a consequence of the damages caused by the defendants.

64. Regarding item (i) it results that plaintiffs' were renting a Villa in Naxxar from the **5th November 2007 until the 4th November 2008** for the sum of €22,386.⁵⁰ Yet, plaintiff declared that their claim is limited to the sum of €11,193 since it's *'the sum worked out at the normal rental rate payable for an apartment of similar size as ours'*.⁵¹ The Court rejects the request:

- First of all the period in question is up to 2008, that is prior to the damages complained of in these proceedings which occurred after plaintiffs' insurance had made good for damages up to 2011;
- secondly, plaintiff Nadya Vella claims to have moved out because of the extreme noise, mess and stones crumbling down from the development of the penthouse – this has nothing to do with plaintiffs' claim for damages caused by water ingress in their property from the overlying penthouse merits of this case. Plaintiff's fourth request reads: *"4. Tiddikjara lill-konvenuti jew min minnhom responsabbli għad-danni kollha sofferti mir-rikorrenti in konsegwenza tal-fatt illi kemm ix-xogħlijiet ta' żvilupp kif ukoll dawk il-ftit xogħlijiet rimedjali li saru ma sarux skont is-sengħa u l-arti"*.

65. As to the €1,266.50 incurred in legal expenses,⁵² defendants argue that documents exhibited by plaintiffs are merely invoices and not fiscal receipts attesting proof of payment and in any case exceed the recommended guidelines on fees to be charged by advocates for services rendered.⁵³ The court understands that fees were paid by plaintiffs. Dr. J. Vella testified regarding same at fol. 130 saying the plaintiffs were charged an hourly rate although no further details were provided. Furthermore, he did not declare that the claim

⁵⁰ Fol. 201 – 202.

⁵¹ Fol. 181.

⁵² Fol. 192 – 195.

⁵³ Fol. 245.

was still outstanding. However, the court is not satisfied that extra-judicial fees referred to in the letters dated 9th July 2012 and 11th April 2013 relate to the lawsuit filed by plaintiffs and decided by today's judgment. With regards to items mentioned in the letters dated 8th July 2011 and 20th October 2011, the court *arbitrio boni viri* liquidates the sum of two hundred and fifty euro (**€250**).

66. For completeness sake, reference is also made to the fact that with their note of submissions, plaintiffs' attached a set of documents which they refer to as an '*updated list of expenses*'. These documents are inadmissible as they were filed by the plaintiffs' during the final submissions. Moreover, the case was adjourned for submissions and judgment on the 8th January 2019. Almost all invoices filed with the note of submissions are dated before such date. The only ones which aren't are those at fol. 588 and 589 which refer to legal fees for sittings and acts filed in the present proceedings and will therefore be taxed according to the applicable tariff. The court refers to the case ***Jesmond Farrugia et vs Jonathan J Borg***⁵⁴ (26th October, 2016), where this court stated:

'Hija l-fehma konsiderata ta' din il-Qorti illi l-ispejjez legali ma jistghux jigu pretizi mis-socjeta rikorrenti bhala parti mill-ammont da liquidarsi ghaliex altrimenti s-socjeta rikorrenti tkun qed tiehu spejjez doppji meta jigi deciz il-kap tal-ispejjez.'

67. The court expert also expressed the opinion that there was no loss in value of plaintiffs' investment. In this respect, the Court finds no reason to disagree with his opinion.
68. All judicial costs are at the charge of defendants. In the court's opinion it is unacceptable that a neighbour is subjected to the inconvenience which the plaintiffs had to deal with in this particular case in the enjoyment of their residence. Furthermore, all plaintiffs demands made throughout the proceedings were made to ensure that the overlying apartment is waterproof and no further damage and inconvenience is caused to plaintiffs apartment.

For these reasons the Court:-

1) Rejects defendants preliminary plea;

2) Upholds plaintiffs first request;

⁵⁴ Final Judgment.

- 3) Upholds the second request and condemns the defendants, by not later than the 31st August 2019, to carry out all works mentioned in paragraph 59 of this judgment. Works are to be executed under the direction and supervision of architect Edward Bencini and plaintiffs are to give access to their apartment for execution of the same. The same applies to defendants if they fail to perform the works in their property;**
- 4) Furthermore, architect Edward Bencini is to verify and confirm that in the apartment overlying plaintiffs apartment:
 - i. The floor tiles have been properly grouted and sealed and works have been carried out according to good workmanship and there is no danger of water seepage in the underlying apartment;**
 - ii. All windows and doors overlooking the road, have been installed;**
 - iii. The walls (from the outside) have been properly pointed and sealed to ensure that they are water proof from the outside.****
- 5) Architect Bencini is authorized to give instructions to the defendants and plaintiffs during the execution of his duties.**
- 6) Upholds the third demand and orders that should defendants fail to carry out the works, the plaintiffs are authorized to execute the remedial works themselves under the direction and supervision of architect Edward Bencini, at the joint expense of the defendants;**
- 7) Upholds the fourth demand limitedly to those damages as explained above;**
- 8) Condemns jointly the defendants to pay plaintiffs the sum of two thousand four hundred and twenty four euro (€2,424).**

Defendants are condemned to jointly pay all costs, including the judicial letter 2923/2012 (20th September 2012) and all court expert's expenses and fees as taxed by the Court Registrar.

Anthony Ellul.