



QORTI CIVILI PRIM` AWLA

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 31 ta` Ottubru 2019

Kawza Nru. 2

Rik. Gur. Nru. 170/2017 JZM

**Olive Gardens Investments
Limited**

kontra

**Il-Prof. Ian Refalo (I.D. nru.
169848M) li b`digriet tat-22 ta`
Marzu 2017 gie kkonfermat bhala
kuratur deputat ghall-assenti
Michelle Corinne Minter**

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fit-22 ta` Frar 2017 li
jaqra hekk :-

1. Illi kif ordnat permezz ta` sentenza moghtija mill-Onorabli Prim`Awla tal-Qorti Civili fit-tletin (30) ta` Jannar tas-sena elfejn u hmistax (2015) fl-ismijiet "Olive Gardens Investments Limited vs Dottor Mark Busuttil et nomine", in segwitu ghar-rikors mahluf bin-numru disa` mija erbgha u sebghin tas-sena elfejn u erbgha (974/2004), fit-tnejn u ghoxrin (22) ta` Lulju tas-sena elfejn u sittax (2016) gie ppubblikat att ta` bejgh-u-xiri min-Nutar Pubbliku Ritienne Bugeja Fenech, li permezz tieghu l-attrici xtrat u akkwistat il-proprjetajiet hawn taht deskritti (minn hawn `l quddiem imsejhin kollettivament u indivizament bhala "l-Immobbli") :

URBAN PROPERTY

One Sixth (1/6) undivided share of the following :-

1. The shop officially numbered one hundred (100), formerly numbered thirty nine (39) in Msida Street, Santa Venera, let at forty one Euro ninety three cents (€ 41.93) per annum.

2. The tenement officially numbered twelve (12) in Alley number one (1), Our Lady of Sorrows Street, Hamrun, subject to two euro thirty three cents (€2.33) annual perpetual ground rent, let at thirty seven Euro twenty seven cents (€ 37.27) per annum.

3. The tenement officially numbered fifteen (15) in Mesquita Street, Mdina, let at thirty two Euro sixty one cents (€ 32.61) per annum.

4. The store officially numbered sixteen (16) in Mesquita Square, Mdina, let at eighty three Euro eighty six cents (€ 83.86) per annum.

5. The temporary directum dominium and annual temporary ground rent of three hundred and two Euro eighty two cents (€ 302.82) for the remaining period of the lease of fifty (50) years which commenced on the twenty seventh (27th) day of May of the year one thousand nine hundred and seventy five (1975) and the full ownership thereafter as subject to its share of an annual perpetual ground rent of twenty three cents (€

0.23cents) of the terraced house officially numbered thirty eight (38), in Annunciation Street, Sliema.

6. The temporary directum dominium and annual temporary ground rent of two hundred ninety one Euro seventeen cents (€ 291.17) for the remaining period of the lease of ninety (90) years which commenced on the twenty fourth (24th) day of May of the year one thousand nine hundred and sixty six (1966) and the full ownership thereafter of the house officially numbered fifty two (52) and fifty four (54) formerly seventy three (73) and seventy four (74) in Siren Street, Senglea as subject to a burthen of six Euro sixty four cents (€ 6.64) towards Saint Lawrence Church of Vittoriosa and to a burthen of two Euro sixty two cents (€ 2.62) towards the Cathedral Church of Malta.

7. The shop officially numbered three hundred (300) in Saint Paul Street, Valletta, let at three hundred twenty six Euro eleven cents (€ 326.11) per annum.

8. The shop officially numbered two hundred and ninety nine (299) in Saint Paul Street, Valletta let at three hundred twenty six Euro eleven cents (€ 326.11) per annum.

9. The house officially numbered two hundred and ninety eight (298) in Saint Paul Street, Valletta, which house is with vacant possession.

10. The shop known as "Benefit Shoe Store" officially numbered fifty two (52) in Saint John Street Valletta let at two thousand and fifty Euro (€ 2050) per annum.

11. The shop officially numbered fifty four (54), formerly numbered fifty three and fifty four (53/54) in Saint John Street, Valletta, let at five hundred Euro eighty one cents (€ 500.81) per annum.

12. The garage officially numbered ten (10) in Luqa Briffa Street, Naxxar, let at sixty nine Euro eighty eight cents (€ 69.88) per annum.

13. One half (1/2) share of the Chapel containing two graves situated at the Addolorata Cemetery at Casal Paola bearing number twenty six (26), Section West, Compartment CC.

14. The temporary utile dominium for the remaining period of the concession of one hundred and fifty (150) years which commenced on the eighth (8th) day of February of the year one thousand eight hundred and ninety three (1893) of the garage officially numbered thirteen (13), formerly numbered six (6) in Balzan Valley, Balzan, as subject to the annual and temporary ground rent of seventy four cents (€ 0.74) being its share of annual temporary ground rent, let at five hundred fifty eight Euro twelve cents (€ 558.12) per annum.

15. One third (1/3) undivided share of the mezzanine now demolished situated at number one (1), Prison Street, Vittoriosa.

RURAL PROPERTY

One sixth (1/6) undivided part of the following :-

1. One third (1/3) undivided share of the field known as "Gnien iz-Zebbug" situated in the district of Hal-Mann within the limits of Hal-Lija, measuring about three thousand two hundred and sixty square metres (3260m²) containing a small rural room and an underground well, bordered on the East by property of Marquis Cassar Desain, on the south by property of Canon Isidoro Formosa or his assignees and on the north by property belonging to the Parish Church of Casal Lija, let at four Euro sixty six cents (€ 4.66) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `A`.

2. One third (1/3) undivided share of the field known as "Ix Xaghra ta` Tawwil" in the district of "Id-dar il-Hamra" at Zebbiegh within the limits of

Mgarr, Malta, having an area of twenty five thousand eight hundred and forty square metres (25,840 m²) bordered on the East by property belonging to Concetta Grant or her assignees, on the south by a public road and on the west by property of family Vella, let at seven Euro forty eight cents (€ 7.48) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `B`.

3. The field known as "Il-Hotba ta` Dell" sive "Habel Dell" sive "Ta` Hal Dragu" in the district of Hal Dragu at Bidnija, within the limits of Mosta measuring about eleven thousand six hundred and twenty five square metres (11,625 m²), bordered on the east by property belonging to Giovanni Muscat or his assignees, on the West by a public road and on the south by property of the families Said and Micallef or their assignees, let at nine Euro thirty two cents (€ 9.32) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `C`.

4. The field known as "Tal-Bidnija" in the district known as "Tal-Hireb" at Bidnija in the limits of Mosta, having an area of about four thousand two hundred and twelve square metres (4212m²), bordered on the north and west by Triq tal-Hzejjen and on the south by property belonging to Joseph Calleja or his assignees, let at one Euro thirty seven cents (€1.37) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `D`.

5. The field known as "Il-Bajada" situated in the district known as "Tal-Garda" within the limits of Hal Ghaxaq, having an area of about nine thousand nine hundred and ninety two square metres (9992m²) bordered on the east by Wied Kambu and by a public space, on the south by property belonging to the heirs of Nicola Cachia or their assignees and on the west by property belonging to the assignees of the late Lord Strickland, let at four Euro sixty six cents (€4.66) per annum, which field is being delineated in red

on the Land Registry Site Plan hereby attached marked as Document `E`.

6. The field known as "Ix-Xaghra tal-Garda" situated in the district having the same name within the limits of Hal Ghaxaq, having an area of about thirty eight thousand thirty two square metres (38,032m²) bordered on the south-west by a public road, on the east and north by property belonging to the Noble Emilia Trapani Galea or her assignees and on the south by a public road, let at ten Euro forty eight cents (€ 10.48) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `F`.

7. The temporary directum dominium for the remaining period of about twenty one (21) years and the relative temporary annual ground rent of twenty seven Euro ninety five cents (€ 27.95) as well as the full ownership after the expiration of the said emphyteutical concession of the land known as "Ta` Blat il-Qamar" in the district of the same name within the limits of Siggiewi containing a farmhouse and having an area of about thirteen thousand nine hundred and eighty eight square metres (13,988m²) bordered on the north by Triq Blat il-Qamar, on the east partly by Triq Patri Guseppe Delia and partly by property belonging to the heirs of Nicola Borg and on the south by property belonging to Carmelo Vassallo and Salvatore Ellul or their assignees, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `G`.

8. The field known as "Ta` Bellu" in the district known as "Tal-Providenza" within the limits of Siggiewi, having an area of about sixteen thousand two hundred and thirty six square metres (16,236m²) and containing three wells, bordered on the west by Triq Ta` Bellu, on the north by Wied Tal-Lewza and on the East by property belonging to the family Delia or its assignees let at thirty four Euro ninety four cents (€ 34.94) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `H`.

9. The territory known as "Ta` Santa Lucia" situated in the district "Ta` l-Imtarfa" within the limits of Mdina. This territory occupies a total area of about sixty one thousand and seventy two square metres (61,072m²) and is situated to the south of "Il-Wied tal-Qlejgha". The whole territory consists of three separate adjoining fields sloping from east to West.

The first field measures forty two thousand eight hundred and eighty two square metres (42,882m²), contains part of a farmhouse and is subject to one Euro seventy six cents (€ 1.76) annual perpetual ground rent as well as a burthen of one mass and one quartana of wine and is subject to the servitude in favour of neighbouring owners to water animals from the spring existing therein. This field is bordered on the east by property belonging to the heirs of Count Nicolo` Sceberras Bologna, on the west by property belonging to the Manduca family and in part by Triq Bingemma and on the south partly by Triq Bingemma and partly by property of the Stagno family or their assignees.

The second field measures seven thousand one hundred and seventy four square metres (7,174m²) is subject to an annual perpetual ground rent of three scudi and four tari equivalent to as well as to a burthen of two Masses and one twelfth of the costs of the Church situated in the same district. The land enjoys the right of servitude to take water for animals for domestic purposes from a nearby fountain in third party property and is bordered on the East by a lane, on the South by property of the Sant Fournier family and on the north in part by a lane and in part by property belonging to the Manduca family.

The third area consists of two adjoining fields one measuring four thousand nine hundred and thirty six square metres (4936m²) and the other measuring six thousand and eighty square metres (6080m²) and are together subject to an annual burthen of four scudi four tari and four grana equivalent to two Euro ten cents (€2.10) towards

the Cathedral Church of Malta and together bordered on the East by a lane, on the north by property of the Sant Fournier family and by a lane and on the south by property belonging to Paolo Borg.

The whole of this territory is let at one hundred and two Euro forty nine cents (€ 102.49) per annum and is bounded on the South by property belonging to Paolo Borg, on the North by property belonging to the Manduca family and on the West in part by property belonging to the Manduca family and in part by Triq Bingemma or more correct boundaries and is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `I`.

10. The one half (1/2) undivided share of the lands known as "It-Taxis" in the district known as "Pwales" within the limits of Saint Paul`s Bay, having an area of about thirty five thousand and fourteen square metres (35,014m²) which lands contain a farmhouse in that part of the area known as "Il-Gnien", four unnumbered garages and two rural rooms. The said land has the right to participate in the yields of spring water known as "Il-Gnien" for twelve hours a week and another twelve hours on every third Sunday. The land is bordered on the south-east by the Simar natural reserve, on the north-east by Triq il-Hagra Wiegfa and on the east by property belonging to Augustinian Friary, let at sixty one Euro forty three cents (€ 61.43) per annum and is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `J`.

11 The field known as "Ta` Danda" in the district of "Ta` Wied Sara" within the limits of Zebbug, Gozo, measuring about thirteen thousand seven hundred and eighty eight square metres (13,788m²) and is bordered on the south by Triq Wied Sara, on the West by property belonging to the heirs of Luigi Portelli and on the east by property belonging to the families Borg and Leonardini or their assignees, which field is subject to the right of way by foot and by beast in favour of third parties, let at twenty Euro ninety six cents

(€ 20.96) per annum, which field is being delineated in red on the Land Registry Site Plan hereby attached marked as Document `K`.

12 One half (1/2) undivided share of the lands known as "Ta` Bingemma" in the district of the same name within the limits of Mgarr, Malta, formerly within the limits of Mdina. The said property consists of the following parcels of land, namely :-

a. A divided portion known as "Ix-Xaghra tar-Razzett", consisting of poor agricultural land of a superficial area of about eight thousand six hundred and sixteen square metres (8,616m²), which land is accessible from a private path leading to Bingemma Road;

b. Another divided portion of land forming part of the lands called "Il-Gnien ta` Bingemma" having an area of about twenty eight thousand one hundred square metres (28,100m²), bounded together with the portion of land described under paragraph (a) which is contiguous, on the east by property of the Calleja family, on the south-east by property of the Apap Bologna family, on the south by a public unnamed road, on the west in part by property of the Cilia family, in part by property of Victor Bonello and in part by property of the Calleja family, on the north-west in part by a public road and in part by property of the Calleja family and on the north by several buildings and a small valley belonging to third parties, which lands are subject to their share of an annual and perpetual pious burthen;

c. Two small portions of land the first having an area of about one thousand nine hundred and twenty eight square metres (1928m²) bounded on the east and south by the road known as "Tas-Santi" and on the north by property of the Calleja family, whilst the other portion of land has an area of about one thousand six hundred and forty seven point six square metres (1647.6m²) and is bounded on the east and south by Government property and on the west and north by the road known as "Tas-Santi", free and unencumbered.

d. A divided portion of land known as "Ic-Cens ta` fuq il-Gnien iz-Zghir" having a superficial area of about five thousand and ninety four square metres (5094m²) and is bounded on the east by a private path, on the west and south by the Victoria lines and on the north by the cliffs and in part by property of unknown persons, free and unencumbered.

All the said portions of land are let at twenty five Euro sixty two cents (€ 25.62) per annum and are being delineated in red on the Land Registry Site plan hereby attached marked as Document `L`.

GROUND RENTS

One sixth (1/6) undivided share of the following :-

1. The perpetual sub-directum dominium and annual perpetual sub-ground rent of one hundred thirty nine Euro seventy six cents (€ 139.76) as subject to forty six cents (€ 0.46c) annual and perpetual ground rent imposed on the following property, namely:-

(a) One hundred and four Euro eighty two cents (€ 104.82) imposed on the house officially numbered four (4) in Annunciation Square, Sliema;

(b) Six Euro ninety nine cents (€ 6.99) imposed on the tenement officially numbered thirty seven (37) in Annunciation Street, Sliema;

(c) Thirteen Euro ninety eight cents (€ 13.98) imposed on the tenement officially numbered thirty seven letter A (37A) in Annunciation street, Sliema.

(d) Thirteen Euro ninety eight cents (€ 13.98) imposed on the tenement officially numbered thirty seven letter B (37B) in Annunciation Street, Sliema.

2. *The perpetual directum dominium and relative annual perpetual ground rent of thirty five cents (€ 0.35c) imposed on the tenement officially numbered thirteen (13) in Saint George Street, Cospicua.*

3. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of two hundred thirty eight Euro thirty six cents (€ 238.36) as subject to a head ground rent of two hundred eighty eight Euro seventy five cents (€ 288.75), imposed on several tenements built on the land at Birkirkara known as "Tal-Ifniek" having a superficial area of about six thousand seven hundred and forty four square metres (6744m²), bordered on the east by Fleur de Lys Road, on the south by property of the Reverend Giuseppe Borg Buttigieg or his successors in title and on the north by property of Doctor Francis Buttigieg or his successors in title.*

4. *The perpetual directum dominium and relative annual perpetual ground rent of three Euro nineteen cents (€ 3.19) imposed on the tenement officially numbered twenty three (23) in Saint Ignatius Junction, Sliema.*

5. *The perpetual directum dominium and relative annual perpetual ground rent of eight Euro fifty six cents (€ 8.56) imposed on tenement officially numbered twenty four (24) in Saint Ignatius Junction, Sliema named "Alice House".*

6. *The perpetual directum dominium and relative annual perpetual ground rent of eleven Euro sixty five cents (€ 11.65) imposed on tenement officially numbered one hundred and forty seven (147), Blanche Street, Sliema.*

7. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of two hundred and nine Euro sixty four cents (€ 209.64) as subject to one hundred and sixty three Euro six cents (€ 163.06) head ground rent imposed on various tenements in Hamrun along Villambrosa Street, Canon F. Bonnici Street, P.P.Mifsud Street, Depiro Street and Garden street all built on a plot*

of land originally measuring about eight thousand five hundred square metres (8500m²) and bordered on the east by Government property, on the west by Villambrosa Street and on the south in part by property of Saint Augustine Friary of Valletta and in part by a lane.

8. The perpetual sub-directum dominium and relative annual perpetual ground rent of ninety nine Euro four cents (€ 99.04) as subject to a head ground rent of twenty three Euro twenty nine cents (€ 23.29) payable to the Mensa Filippina of the Collegiate Church of Birkirkara imposed on various tenements in Balzan along Main street, Pope Urbanus Street and pope Pius XII Street, all built on part of the lands known as "Tal-Lewza", originally covering an area of one thousand nine hundred and thirty seven square metres (1937m²) and bordered on the south by Main street, on the East by Pope Pius XII Street and on the west by Pope Urbanus street.

9. The temporary sub-directum dominium and relative annual sub-ground rent for the remaining period of the concession of one hundred and fifty (150) years with effect from the Eighth (8th) day of February of the year one thousand eight hundred and ninety three (1893) of twenty seven Euro thirty seven cents (€ 27.37) as subject to a head ground rent of eighteen Euro nineteen cents (€ 18.19) payable to the Mensa Filippina of the Collegiate Church of Birkirkara, imposed on `Miami Flats` at number four (4), Valley Road, Balzan.

10. The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of two hundred eighty two Euro twenty cents (€ 282.20), as subject to a head ground rent of one hundred and eighty Euro fifty three cents (€ 180.53) imposed on the lands known as "Ta` Wara il-Bjut" sive "Tal-Merghi" sive "Ta` Busiett" at Naxxar originally measuring nineteen thousand one hundred and thirty one square metres (19131m²) bordered on the north and south by public roads and on the west by property of the Parish Church of Naxxar or its assignees.

11. *The one undivided half (1/2) of the temporary sub-directum dominium and relative annual temporary sub-ground rent of eleven Euro sixty five cents (€ 11.65) for the remaining period of approximately forty four (44) years of the original concession imposed on a plot of land forming part of the territory known as "Ta` Wara il-Knisja" at Saint Julians having an area of about one hundred and eighty five square metres (185m²) and containing a lime kiln, bordered on the west by Mensija Road, on the north by property of Giuseppe Attard and on the east by a new road.*

12. *The one undivided half (1/2) of the temporary sub-directum dominium and relative annual temporary sub-ground rent of twelve Euro thirteen cents (€ 12.13) for the remaining period of approximately forty four years of the original concession imposed on a plot of land forming part of the territory known as "Ta` Wara l-Knisja" at Saint Julians having an area of about one hundred and eighty three square metres (183m²), bordered on the west by Mensija Road, on the north-east and north-west by property of the assignees of the Sant Fournier family.*

2. *Illi permezz ta` cedola ta` depozitu bin-numru elf mitejn wiehed u disghin tas-sena elfejn u sittax (1291/2016), il-konvenuta iddepozitat taht l-Awtorita` ta` l-Onorabbli Prim`Awla tal-Qorti Civili s-somma ta` tlett mija u hamsa u disghin elf Ewro (€395,000) "... sabiex dan id-depozitu jservi biex b`hekk l-esponenti tirkupra minghand l-intimata b`titolu successorju jigifieri bhala ko-werrieta ai termini tal-Artikolu 912 tal-Kodici Civili, dak kollu trasferit lill-intimata minn Robert Sant Fournier bl-att tat-22 ta` Lulju 2016 ippubblikat min-Nutar Dottor Ritienne Bugeja Fenech u dak kollu intiz li jigi trasferit ai termini tas-sentenza precitata tat-30 ta` Jannar 2015 li ordnat l-esekuzzjoni tal-konvenju precitat datat 23 ta` Mejju 2003, u sabiex din is-somma hekk depozitata tkun tista` tigi liberament irtirata mill-istess intimata wara li tithalla d-debita ricevuta, liema somma tkopri dak kollu indikat fil-paragrafu precedenti, u b` rizerva li jekk jirrizultaw spejjez ulterjuri li l-esponenti ma tafx bihom f`dan l-istadju, l-esponenti tiddepozita ammont ulterjuri biex tkopri ukoll dawk l-eventwali spejjez".*

3. *Illi c-cedola ta` depozitu bin-numru elf mitejn wiehed u disghin tas-sena elfejn u sittax (1291/2016) hija nulla u minghajr effett billi l-konvenuta ma ghandha ebda dritt li tirkupra l-Immobbli akkwistati mill-attrici kif suespost.*

4. *Illi b`ittra ufficcjali bin-numru elfejn disa` mija sitta u erbghin tas-sena elfejn u sittax (2946/2016), l-attrici kkontestat fermement il-jedd ta` rkupru vantat mill-konvenuta.*

5. *Illi minkejja l-interpellanza maghmula mill-attrici, l-konvenuta baqghet inerti u inadempjenti.*

6. *Illi ghalhekk qed issir din il-kawza.*

7. *Illi Janice Baldacchino, debitament awtorizzata tirrapprezenta lill-attrici fi proceduri gudizzjarji, tiddikjara li taf bil-fatti suesposti personalment.*

Ghaldaqstant ghar-ragunijiet kollha hawn fuq premissi l-attrici umilment titlob lil dina l-Onorabbli Qorti joghgobha :

(1) *tiddeciedi u tiddikjara illi l-konvenuta m`ghandha ebda jedd li tirkupra l-Immobbli akkwistati mill-attrici permezz ta` l-att publikat min-Nutar Pubbliku Ritienne Bugeja Fenech fit-tnejn u ghoxrin (22) ta` Lulju tas-sena elfejn u sittax (2016).*

(2) *tiddeciedi u tiddikjara li konsegwenzjalment ic-cedola ta` depozitu prezentata mill-konvenuta fil-Prim`Awla tal-Qorti Civili bin-numru elf mitejn wiehed u disghin tas-sena elfejn u sittax (1291/2016) hija nulla, invalida u minghajr ebda effett fil-ligi,*

u dan previa kull provvediment iehor opportun.

Bl-ispejjez, inkluz dawk ta` l-ittra ufficcjali bin-numru elfejn disa` mija sitta u erbghin tas-sena elfejn u sittax (2946/2016), kontra l-konvenuta, li hija minn issa ngunta in subizzjoni.

B`riserva wkoll ghal kull azzjoni ohra spettanti lill-attrici skont il-ligi.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti li kienu prezentati mar-rikors guramentat.

Rat ir-risposta guramentata pprezentata fis-27 ta` April 2017 li taqra hekk :-

1. Illi huwa minnu li fit-22 ta` Lulju 2016 gie ppubblikat l-att ta` bejgh imsemmi fir-rikors guramentat.

2. Illi l-fatti elenkati fit-tieni paragrafu tad-dikjarazzjoni attrici fir-rikors guramentat m`humiex kontestati fis-sens illi huwa minnu li l-esponenti ezercitat id-dritt ta` rkupru ai termini tal-Artikolu 912 tal-Kap.16 tal-Ligijiet ta` Malta permezz ta` cedola numru 1291/2016.

3. Illi t-tielet paragrafu tad-dikjarazzjoni attrici huwa kompletament ikkontestat l-ewwel nett billi l-attrici lanqas tindika ebda raguni ghalfejn l-irkupru skond l-istess attrici huwa null, u fit-tieni lok u minghajr pregudizzju ghall-premess, billi c-cedola appena msemmija numru 1291/2016 hija kompletament valida u ma hemm xejn fiha li jista` jirrendiha nulla u minghajr effett, u Michelle Corinne Minter – li tigi bint il-mejjet Hugh Sant Fournier u li kienet ko-eredi ta` missierha flimkien ma` huha Robert Sant Fournier – kellha kull dritt li tezercita d-dritt ta` rkupru.

4. Illi kwantu ghar-raba` u l-hames paragrafu tad-dikjarazzjoni attrici, b`risposta ghall-ittra ufficjali numru 2946/2016 l-intimata Michelle Corinne Minter intavolat ittra ufficjali hija stess kontra s-socjeta` Olive Gardens Investments Limited fejn sahqet li l-irkupru minnha ezercitat huwa validu u zammet lill-attrici responsabbli ghad-danni, kif jirrizulta mill-annessa kopja tal-imsemmija ittra ufficjali, immarkata bhala Dokument `MCM1`.

5. Illi ghalhekk din il-kawza hija minghajr fundament.

Ghaldaqstant, in vista tas-suespost, l-eccipjenti ghandha s-segweni eccezzjonijiet xi tressaq kontra t-talbiet attrici :

1. Illi qabel xejn l-esponenti jeccepixxu n-nullita` tar-rikors promotur billi la hemm fih ir-raguni tat-talba u lanqas tifsira cara u sewwa tar-raguni ghalfejn l-attrici ssostni li l-irkupru ezercitat mill-eccipjenti huwa null u invalidu, u billi ma tistax issir kawza minghajr kawzali, u dan kollu ipoggi lill-eccipjenti fi zvantagg u pregudizzju serju billi ma tistax tilqa` adegwatament ghat-talbiet attrici.

2. Illi kompletament minghajr pregudizzju ghas-suespost ma kien hemm xejn irregolari fl-irkupru in kwistjoni billi l-eccipjenti kellha kull dritt tezercita tali rkupru u billi c-cedola numru 1291/2016 hija kompletament valida u effikaci.

3. Illi kompletament minghajr pregudizzju ghall-ewwel eccezzjoni, it-talbiet attrici huma kompletament infondati fil-fatt u fid-dritt.

4. Salv eccezzjonijiet ulterjuri fil-fatt u fid-dritt.

Bl-ispejjez u b`rizerva ta` kwalsijasi azzjoni spettanti lill-esponenti kontra s-socjeta` attrici b`rabta mal-imsemmi rkupru, inkluz ghad-danni.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti li kienu prezentati mar-risposta guramentata.

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

Rat in-noti ta` osservazzjonijiet li pprezentaw il-partijiet.

Semghet is-sottomissjonijiet tal-ahhar bil-fomm li ghamlu d-difensuri fl-udjenza tal-14 ta` Mejju 2019.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Xiehda

Janice Baldacchino direttur ts-socjeta` attrici xehdet illi l-kawza fl-ismijiet *Olive Gardens Investments Limited vs Dottor Mark Busuttil et noe* kienet giet deciza favur taghhom mill-Prim Awla tal-Qorti Civili fit-30 ta` Jannar 2015. Il-kuntratt skont is-sentenza sar fit-22 ta` Jannar 2016 u kien ippubblikat min-Nutar Pubbliku Ritienne Bugeja Fenech.

Stqarret illi waqt il-qari tal-kuntratt, in-Nutar irrimarkat li wara li ghamlet ricerki kien irrizulta li l-venditur Robert Sant Fournier kien wiret minghand n-Nobbli Hugh Sant Fournier aktar immobbli mil-lista li kienet elenkata fil-konvenju, li tieghu kienet ordnat l-esekuzzjoni bis-sentenza tal-Qorti. Dak il-mument l-avukati li kienu prezenti ghall-kuntratt qablu li l-kuntratt kellu jsir dwar il-proprjeta` li kienet espressament elenkata fil-konvenju tat-23 ta` Mejju 2003.

Fil-kontroezami, ikkonfermat illi fil-konvenju kien hemm klawsola li tghid li jekk thalliet barra xi proprjeta` tal-wirt, din il-proprjeta` kellha titqies bhala nkluza fil-konvenju. Mistoqsija x` kienet r-raguni ghaliex din il-klawsola thalliet barra mill-kuntratt finali, wiegbet illi ma kenitx hi li lestiet il-kuntratt izda kienet in-Nutar li hadet hsieb. Spjegat li qabel sar il-kuntratt ma kenitx taf b`dik il-klawsola. Hi kemm rat li fil-kuntratt kien hemm il-lista tal-proprjeta` kollha li kienet elenkata fil-konvenju u waqfet hemm. Meta sar il-kuntratt, halliet kollox f`idejn l-avukat.

Xehdet illi ma kenitx involuta meta sar il-konvenju. Ma kenitx is-socjeta` attrici li hejjiet il-lista tal-proprjeta`. Meta sar il-konvenju, missierha (illum mejjet) kellu r-rappreżentanza tas-socjeta` attrici. Hi dahlet fil-kumpannija attrici wara l-mewt ta` missierha. Kien l-2010 jew l-2011. Hija qatt ma rat stima ta` l-proprjetajiet jew kif waslu ghall-prezz. Ma rat notamenti jew minuti tal-bord tad-diretturi ghaliex dak z-zmien missierha kien *sole director*. Hija qatt ma tkellmet ma` Robert Sant Fournier.

Mistoqsija jekk effettivament dak li kienet nnegozjat s-socjeta` attrici kien sabiex tixtri sehem mill-wirt u mhux sehem mill-proprjetajiet individwali, wiegbet li mhux hekk kien il-kaz, ghaliex kieku gara kif kien qed jigi suggerit lilha ma jitnizzlu l-proprjetajiet wahda wahda.

Qalet ukoll li fl-istess zmien, is-socjeta` attrici kienet ghamlet konvenju anke ma` James u Charles Sant Fournier li jigu l-kugini tal-konvenuta. Anke dwar dan il-konvenju hemm kawza pendenti. Mistoqsija jekk jistax jkun li xi darba ltaqghu wkoll ma` Milica Micovic, wiegeb li jista` jkun li gara hekk ghaliex jista` jkun li riedu jixtru s-sehem taghha wkoll biex hekk ikunu xtraw s-sehem kollu li kien gej minn dan l-wirt.

Fissret illi meta sar il-kuntratt finali, in-Nutar kienet spjegat li kien hemm xi proprjeta` li baqghet barra minn dik il-lista, izda l-Avukat li kien qed jidher ghal Robert Sant Fournier kien qal biex jimxu ma` dak li kien hemm miktub fil-konvenju u hekk sar.

Qalet li m`ghandhiex ir-ricerki ta` Hugh Sant Fournier.

Qabel ma sar il-kuntratt kienu gabu l-pjanti mir-Registru tal-Artijiet.

Milica Micovic xehdet illi hija tigi l-prim kugina tal-konvenuta. In-Nobbli Hugh Sant Fournier kien z-ziju taghha.

Xehdet illi hija direttur ta` B. Tagliaferro Limited. Bhala azzjonisti, hemm dawk li ghandhom "A" shares ; dawn huma hi, Michelle Junker, Maria Attard Montalto, l-eredi ta` Charles Sant Fournier jnr., James Sant Fournier, Monica Vassallo Cesari, Michael Micovic, Anthea Vassallo Cesari, Mark Vassallo Cesari u Roberta Gabarretta. Imbaghad hemm l-azzjonisti li ghandhom "B" shares ; dawn huma Maria Attard Montalto, Anthony Sant Fournier, u l-eredi tal-Conti Sant Fournier li huma Stephen Sant Fournier, Shaun Sant Fournier, Silvana Psaila, Sarah Psaila, Silvana Sant Fournier u Eileen Busietta.

Stqarret illi l-konvenuta saret azzjonista ta` B. Tagliaferro Limited, ghaliex kienet xtrat l-ishma ta` missierha fis-snin disghin.

Missierha kien Hugh Sant Fournier li telaq minn Malta fis-snin sebghin. Dan kellu zewg avukati : Professur Joseph Micallef u, ghal xi zmien, Dr Victor Ragonesi.

Minn dak li tiftakar, il-wirt kien maghmul minn proprjetajiet u ishma. Kellu shares f`socjatjiet barranin. Meta miet il-Bank of Valletta kien ghamel distribuzzjoni ta` flus mir-rikavat tal-bejgh ta` ishma barranin.

Fil-kontrozami, xehdet illi Charles Sant Fournier, li jigi n-nannu taghha, kellu xi ishma barranin. Miet fid-9 ta` Marzu 1957. Hi kugina tal-konvenuta. Hugh Sant Fournier, missier il-konvenuta, kien bieghilha xi ishma ta` B. Tagliaferro Limited. Hugh Sant Fournier kellu terz tal-wirt ta` Charles Sant Fournier. Hi u hutha ghandhom terz iehor. L-ahhar terz kien ta` Guido Sant Fournier. It-tfal tieghu, Charles u James, ghamlu konvenju dwar dan it-terz mas-socjeta` attrici. Dwar dan l-konvenju hemm kawza pendent. Mistoqsija jekk qattx kienet avvicinata mis-socjeta` attrici sabiex tbiegh it-terz taghha u tal-familja taghha, wiegbet illi huma ma riedux ibieghu.

Johanna Bartolo mill-Bank of Valletta plc kienet domandata x` informazzjoni ghandu l-bank dwar il-wirt ta` Hugh Sant Fournier. Xehdet illi kien hemm kont intestat : "Heirs of the late Hugh Sant Fournier" : fl-Isterlina li kellu bilanc ta` £6,263.56. Il-kont kien intefah fil-5 ta` Ottubru 2000 u kien ghadu miftuh.

Ipprezentat *legal ruling* dwar il-bejgh ta` ishma u sabiex ir-rikavat tal-bejgh jigi depozitat fil-kont.

Ipprezentat ukoll ittra li turi n-numru ta` ishma li kellu Hugh Sant Fournier. Wara li dawn inbieghu, ir-rikavat kien trasferit ghal kont ta` Advocates Micallef – Clients` Account – f` Lombard Bank skont struzzjonijiet li kellu l-bank b` ittra tal-21 ta` Awissu 2006 li kien baghat Dr Anton Micallef.

Stqarret li fl-2011 il-bank inghata struzzjonijiet kemm mill-konvenuta Michelle Corinne Minter kif ukoll minn Robert Sant Fournier sabiex il-fondi jigu trasferiti lil kull wiehed minnhom. Ghalhekk ipprezentat ittra datata 18 ta` Ottobru 2011 li l-bank ircieva minghand AVMT Advocates.

Fil-kontroezami, xehdet illi Hugh Sant Fournier miet fl-1 ta` Gunju 1997. Fid-data tal-mewt ma kellux kontijiet mal-Bank of Valletta. Ma kienx irnexxielha ssib l-opening of account form ghal kont numru 40010043567.

Michelle Corinne Minter xehdet illi l-genituri taghha kienu Hugh Sant Fournier u Gwendolyn Lorraine Sant Fournier.

Qalet li Robert Charles Sant Fournier jigi huha.

Stqarret illi meta miet missierha, ommha rrinunzjat ghall-wirt. Hi u huha wirtu lil missierhom.

Fissret illi ma kienet taf xejn dwar il-konsistenza tal-wirt ta` missierha. Lanqas kienet taf li l-wirt ta` n-nannu taghha kien ghadu ndiviz. Taf li hi u huha wirt terz tal-wirt tan-nannu taghhom.

Kompliet tghid illi huha ma riedx jistenna. Lanqas ma ried li jkollu x`jaqsam ma` dak il-wirt. Qalilha sabiex tiehu kollox hi. In segwitu saret taf illi huha kien se jbiegh sehmu. Qaltlu li kienet lesta thallsu l-istess prezz li kien offra haddiehor. Huwa izda qabad u biegh lit-terz ; dan akkwista wiehed minn sitta (1/6) tal-eredita`.

Stqarret li hija bdiet tghid lil huha li kellha *right of first refusal* u li kien messu taha c-cans li tixtri s-sehem tieghu hi, izda hu nnegozja mas-socjeta` attrici. Spicca li s-socjeta` attrici xtrat is-sehem tieghu. Ghalhekk hija ezercitat il-jedd tal-irkupru.

Fil-kontroezami, xehdet illi l-inkwiet ta` huha kien li fl-Istati Uniti, fejn kien residenti, kienu sejrin jesigu minnu hlas ta` taxxa fuq immobbli li kellu Malta.

Qalet li l-ishma barranin kienu gew mibjugha madwar hames, sitt snin qabel ma sar il-kuntratt mas-socjeta` attrici.

Dwar il-kont tal-Bank of Valletta, stqarret illi saru jafu bih erba` jew hames xhur qabel. Anzi qalet li saret taf bih fil-kors ta` din il-kawza. Ma kenitx taf mnejn kien gew dawk il-flus.

Fil-kontroezami, xehdet illi l-kont probabilment kien miftuh bi struzzjonijiet tal-avukat. Ghalkemm hi ma tat ebda struzzjonijiet lill-avukat, dan dejjem ha hsieb l-affarijiet ta` missierha, anke wara li miet. Qalet li ma rceviet ebda xi assi minghand l-Av. Micallef. Huma hallew kollox f` idejn l-avukati, ghaliex kienu msiefrin. Kollox kien mizmum fil-kont tal-bank tal-avukati.

Av. Dr. Anton Micallef xehed illi xi 15-il sena qabel, kien inkarikat mill-konvenuta u minn huha Robert Sant Fournier sabiex jaghti istruzzjonijiet lil Bank of Valletta ghall-fini ta` likwidazzjoni ta` stocks and securities li kienu wirtu minghand missierhom Hugh Sant Fournier. Dawn kienu nbieghu mill-bank. Huwa hallas lill-klijenti separatament skont is-sehem li kellhom mill-wirt ta` missierhom. Is-sehem dovut lil Robert Sant Fournier thallas fl-2013 waqt li dak dovut lill-konvenuta thallas fl-2015.

Av. Dr. Peter Borg Costanzi xehed illi huwa deher bhala kuratur ta` Robert Sant Fournier fuq kuntratt li sar fit-22 ta` Lulju 20126 fl-atti tan-Nutar Ritienne Bugeja Fenech. Bis-sahha ta` dak il-kuntratt kien esegwit konvenju bejn l-istess Sant Fournier u s-socjeta` attrici, wara sentenza li tat il-Prim`Awla tal-Qorti Civili fl-14 ta` Gunju 2015.

Xehed illi meta sar il-kuntratt, l-intenzjoni tal-partijiet kienet li jigi trasferit lis-socjeta` attrici dak kollu li Robert Sant Fournier kellu u li seta` jittrasferixxi mill-wirt ta` missieru. Minn dak li jaf, l-proprjeta` li giet msemija fil-kuntratt kienet tkopri l-assi kollha rimanenti li kellu Robert Sant Fournier mill-wirt. Huwa jiftakar li kien ppresta attenzjoni akkurata ghal-lista tal-proprjeta` biex jara li dak kollu li kien inkluz fil-konvenju kien inkluz ukoll fil-kuntratt. Dan sar anke minhabba l-fatt li kien infurmat li l-Perit Henri Portelli, li kien gie inkarigat mis-socjeta` attrici, kien sab diffikultajiet dwar proprjeta` l-Isla.

Sahaq illi l-intenzjoni kienet li ma tithalla barra l-ebda proprjeta` li kellu Robert Sant Fournier. Li kieku kellu hjiel li kien hemm xi proprjeta` li thalliet barra, kien jinsisti li din tigi nkluza fil-kuntratt.

Stqarr illi ghalkemm sar jaf li n-Nutar kienet semmiet li kien hemm xi proprjeta` ohra li ma kenitx inkluzi fil-bejgh, hu ma jiftakarx dan d-diskors.

Qal li jekk verament kien hemm proprjeta` ohra li thalliet barra, din kellha tigi nkluzi fil-kuntratt, u ghalhekk il-kuntratt kellu jkun korrett.

Fil-kontroezami, kien mistoqsi jekk jiftakarx li dakinhar li sar il-kuntratt, in-Nutar Bugeja Fenech kienet semmiet li kien hemm sehem indiviz ta` xi proprjeta` mmobbli Santa Venera, wiegeb li ma kienx jaf b` dik il-proprjeta`.

Stqarr illi dak li jiftakar dwar dakinhar kien illi fil-konvenju kien hemm klawsola fil-forma ta` *blanket clause* li jekk kien hemm xi proprjeta` ohra kellha tigi nkluzi fil-bejgh, imma din il-klawsola ma gietx riprodotta fil-kuntratt. Kien hemm diskussjoni dwar dan dakinhar tal-kuntratt. Meta sar l-kuntratt huwa kien qed isegwi mal-konvenju biex jara li l-proprjetajiet kollha gew inkluzi u kien issemma li din il-klawsola ma gietx inkluzi fil-kuntratt. Ma tax wisq importanza lil din il-klawsola ghaliex kien minghalih li l-proprjeta` kollha kienet inkluzi. Dik kienet l-intenzjoni tal-klijent tieghu. Ghal Robert Sant Fournier, fil-konvenju kien hemm miktub l-proprjeta` kollha li kienet tieghu. L-intenzjoni tieghu kienet li jbiegh kollox.

III. Sottomissjonijiet bil-miktub

a) Is-socjeta` attrici

Dwar l-ewwel eccezzjoni, is-socjeta` attrici tissottometti li n-nullita` tal-atti gudizzjarji hija regolata bl-Art 789 tal-Kap 12. Tirreferi ghas-sentenzi fil-kawzi : "**Katie Vella vs Joseph Farrugia et**" : Qorti ta` l-Appell (Sede Inferjuri) : 21 ta` Gunju 2006 ; "**Diane Vella et vs Medserv Operations Limited**" : PA : 31 ta` Ottobru 2008 ; u "**Webcraft Limited vs Evan Cumbo**" : PA : 10 ta` Gunju 2015. Fl-isfond ta` din il-gurisprudenza, skont l-attrici, m`ghandux ikun hemm dubju li l-ewwel eccezzjoni ghandha tigi michuda ghaliex huwa evidenti mir-rikors promotur li l-pretensjoni taghha dwar in-nullita` tac-cedola hija bbazata fuq il-premessa li l-

konvenuta m`ghandhiex dritt ta` rkupru. Tant fehmet il-kawzali x`kienet illi marret ghat-tieni eccezzjoni, apparti li rressqet provi in sostenn tal-posizzjoni taghha.

Is-socjeta` attrici taghti l-isfond guridiku tal-istitut tal-irkupru successorju. Ticcita mill-Code Napoleon, mill-awtur Laurent ("Principii di Diritto Civile, Vol X, para. 364) u l-awtur Zachariae. Tirreferi wkoll ghal sentenzi li nghataw mill-Qrati Francizi ("**Pillin vs Lafontaine**" u "**Fournier vs D`Acquin**"). L-istitut kien introdott fil-Kodici Civili tar-Regno Delle Due Sicilie : Art 760. Fil-Kodici Civili taghna, l-istitut huwa regolat bl-Art 912. Dwar l-interpretazzjoni tad-disposizzjoni, l-attrici tirreferi ghas-sentenzi fil-kawzi : "**Emanuel Schembri noe vs Paul Camilleri et**" : Qorti ta` l-Appell 12 ta` Gunju 2001; "**Mario Micallef et vs Joseph Difesa**" : Qorti ta` l-Appell : 26 ta` Mejju 2006 ; "**Abraham Bonnici et vs Joero Limited**" : Qorti ta` l-Appell : 3 ta` Frar 2009 ; "**Maria Buttigieg et vs George Galea et**" : Qorti tal-Magistrati (Ghawdex) Superjuri : 20 ta` Mejju 2004 ; "**Carmen Grech et vs Francis Cutajar et**" : PA : 6 ta` Novembru 2009 ; "**Emanuela Gerada et vs Joseph Abela et**" : 7 ta` Novembru 2002 ; u "**Vincent Camilleri et vs Helen Pavia**" : PA : 26 ta` Marzu 2002.

Tghid illi t-trasferiment ta` sehem indiviz ta` attiv determinat li gej minn wirt, u mhux sehem minn dak il-wirt, ma jaghtix lok ghad-dritt ta` rkupru, ghaliex dak li jakkwista sehem indiviz f`beni partikolari, u mhux kwota ta` eredita` m`ghandux id-dritt, li jippartecipa fl-*actio familiae erciscundae*. Dak li jakkwista sehem indiviz fil-beni partikolari jista` biss iwettaq l-*actio communi dividundo* fil-konfront tal-werrieta l-ohrajn li wara l-qasma tal-wirt, ikunu gew assenjati l-ishma indivizi rimanenti f`dawk il-beni partikolari. Meta ko-eredi jittrasferixxi sehem indiviz f`immobbli lil terz, qabel ma tkun saret il-qasma, dak t-trasferiment mhuwiex soggett ghad-dritt ta` irkupru, izda huwa soggett ghal dak li jipprovdi l-Art 946 tal-Kap 16. Ghalhekk meta jitqiesu l-fatti u cirkostanzi ta` dan il-kaz, it-talbiet attrici ghandhom jigu milqugha. Il-kuntratt tat-22 ta` Lulju 2016 kellu bhala oggett ishma indivizi f`diversi proprejtajiet immobbli li huma dettaljatament deskritti u specificati. Id-dicitura tal-kuntratt hija cara. Mill-provi rrizulta li kien hemm attiv iehor tal-wirt li ma kienx inkluz fil-bejgh u cioe` :-

i) fond deskritt bhala : "*The terraced house at number ninety eight (98) formerly number forty (40) Msida Road, Santa Venera, let at sixty Malta Liri (Lm 60) per annum, having a value the said undivided third share ...*"

ii) ishma u investimenti li ggeneraw frottijiet u qligh, u li eventwalment gew ukoll likwidati.

It-tezi tal-konvenuta tikkozza mar-realta` tal-fatti.

b) Il-konvenuta

Dwar l-ewwel eccezzjoni tissottometti illi a tenur tal-Art 156 tal-Kap 12 hemm numru ta` elementi li huma necessarji sabiex rikors guramentat ikun validu. Fost dawn l-elementi hemm illi r-rikors guramentat ghandu jkun fih : i) dikjarazzjoni ta` x` inhu l-oggett tal-kawza, liema oggett irid ikun imfisser b`mod car u sewwa b) ir-raguni tat-talba ; u c) li ghandu jkun fih t-talba nnifisha.

Dan premiss, wara li ghamlet referenza ghaz-zewg talbiet li ghamlet l-attrici, il-konvenuta tirrimarka li l-attrici ma tatx ir-raguni ghala ghamlet iz-zewg talbiet. Skont il-konvenuta, din il-mankanza tal-attrici ppregudikataha fid-difiza tant illi fit-tieni eccezzjoni hija laqghet ghat-talbiet attrici b`mod wiesa` kemm jista` jkun. Dan il-pregudizzju fid-difiza kompla matul il-kawza ghaliex is-socjeta` attrici baqghet ma tatx ir-raguni ghala c-cedola kienet nulla. Kien biss fl-istadju tan-nota ta` sottomissjonijiet illi c-cedola hija nulla ghaliex fil-kuntratt in kwistjoni ma sarx t-trasferiment ta` sehem ta` eredita` ghaliex kienet thalliet barra proprjeta` partikolari. Inoltre kien biss fin-nota li l-attrici ndikat liema kienet il-propjeta` li thalliet barra. Il-konvenuta tirreferi ghas-sentenzi fil-kawzi : "**AIC Carmelo Falzon vs William Galea et**" : Qorti ta` l-Appell : 14 ta` Dicembru 1956 ; "**Joseph Vassallo et vs Avv. Victor R. Sammut et noe**" : Qorti ta` l-Appell : 21 ta` April 1950 ; u "**Joseph Demicoli vs Fix Limited**" : Qorti tal-Magistrati (Malta) : 4 ta` Gunju 2014.

Il-konvenuta tkompli tissottometti li mkien fir-rikors guramentat ma nghad li l-irkupru ma kienx validu ghaliex il-kuntratt ma kienx jikkostitwixxi trasferiment ta` jeddijiet fuq wirt. Ghalhekk l-eccezzjoni kellha tkun milqugha stante li r-rikors promotur jivvjola l-forma li jridu l-Art 789(1) u l-Art 156(1) tal-Kap 12.

Dwar il-mertu, il-konvenuta tosserva li dak li huwa zgur fl-istitut tal-irkupru successorju huwa li dan huwa intiz biex jiprotegi

lill-werrieta mill-intromissjoni ta` terzi fil-wirt biex b`hekk il-proprjeta` tal-wirt tibqa f`idejn il-ko-werrieta u tigi facilitata d-divizjoni. Mhijiex kopjuza l-gurisprudenza dwar dan l-istitut fis-sistema guridiku taghna. Man-nota kienet prezentata kopja ta` sentenza moghtija mill-qrati fl-Italja fid-19 ta` Jannar 2012.

Tirreferi ghas-sentenza "**Micallef vs Difesa**" (op. cit.). Ticcita wkoll mis-sentenza fil-kawza fl-ismijiet "**Carmel sive Charles Aquilina et vs Gorg Micallef et**" li kienet deciza mill-Qorti ta` l-Appell fis-26 ta` Jannar 2018. Hekk kien ritenut illi jekk kuntratt ikun intiz sabiex jittrasferixxi sehem minn wirt, avolja l-kuntratt kien gie redatt bhala trasferiment ta` beni singoli, xorta wahda ghandu jitqies bhala trasferiment ta` kwota ereditarja.

Dwar il-fatt tal-kaz odjern, il-konvenuta tissottometti li mill-konvenju jirrizulta li l-intenzjoni tal-partijiet kienet li tigi trasferita l-kwota ereditarja li Robert Sant Fournier kellu fil-wirt ta` missieru. Jirrizulta wkoll mill-konvenju illi l-partijiet kienu qed jifhmu li l-beni elenkati kienu jikkomprenđu t-totalita` tal-beni li kellu d-decujus. Dan jirrizulta wkoll minn numru ta` emails li kienu ezebiti u li kienu skambjati bejn Robert Sant Fournier u l-avukat tieghu. Skont dawn l-emails jirrizulta li Robert Sant Fournier kien avviciant biex ibiegh s-sehem tieghu mill-wirt ta` missieru. Dan il-fatt jirrizulta wkoll mix-xiehda li kien ta l-mejjet Joseph Baldacchino, fil-kawza dwar il-konvenju, li kienet tittratta l-konvenju, mnejn jirrizulta li s-socjeta` attrici dejjem riedet tixtri s-sehem li kellu Robert Sant Fournier mill-wirt. Hekk jirrizulta kkonfermat mid-deposizzjoni ta` Dr Peter borg Costanzi.

Is-socjeta` attrici ma gabet l-ebda prova dwar il-konsistenza tal-assi tal-wirt fil-mument li sar t-trasferiment. Kien biss fl-istadju tan-nota ta` sottomissjonijiet fejn issemma s-sehem li Sant Fournier kellu minn fond go Santa Venera.

Il-konvenuta tishaq illi l-lista tal-proprjetajiet kienet wahda twila. Ghalhekk tenut kont tal-portata ta` dan l-wirt, jekk thalliet barra xi proprjeta, certament li din ma kellhiex xi valur sinjifikanti meta kkomparata mal-bqija tal-proprjeta`. Minbarra dan, meta sar il-kuntratt tal-2016, ma kienx ghad hemm assi mobbli. Jekk kien hemm xi ishma barranin, dawn kienu f`ammonti nsinjifikanti, li uhud minnhom lanqas biss kienu ghadhom jezistu. Fi kwalunkwe kaz dawn gew likwidati qabel ma sar it-trasferiment. Irrizulta wkoll li l-kont bankarju li hemm f`isem l-eredi ta` Hugh Sant Fournier,

infetah wara li hu kien miet. Ghalhekk l-frottijiet li jidhlu wara l-mewt ma jappartjenux lill-wirt izda jappertjenu lill-werrieta individwali. Ghaldaqstant lanqas dan l-kont ma huwa ta` xkiel sabiex ikun hemm l-ezercizzju tal-irkupru.

Dwar l-allegazzjoni tas-socjeta` attrici li saret fin-nota taghha li l-irkupru kienet biss azzjoni tal-konvenuta sabiex tfixkel lis-socjeta` attrici milli tidhol fil-pussess tal-proprjetajiet, dan mhuwiex minnu, il-konvenuta ssostni li mill-bidunett hija wissiet lis-socjeta` attrici li jekk kienet sejra tipprocedi bil-bejgh kienet sejra tmur ghall-irkupru. Fil-fatt il-konvenuta pprezentat ittra ufficjali qabel ma kien finalizzat il-kuntratt.

IV. Sottomissjonijiet bil-fomm

a) Is-socjeta` attrici

Taghmel referenza ghan-nota ta` sottomissjonijiet tal-konvenuta. Tirrileva li l-Art 737 tal-Kodici Civili Taljan huwa ferm differenti mid-disposizzjoni li tirrizulta fil-kodici taghna, li kien infassal fuq il-Kodici Franciz tal-1802. Fil-ligi taghna, fejn it-trasferiment ikun qed jirreferi ghal beni singoli, u mhux ghal sehem minn wirt, id-dritt ta` rkupru mhuwiex ezercitabbli. Minbarra dan, fil-kaz tal-lum, il-kuntratt kien ordnat mill-qorti. Kien frott ta` sentenza li ghaddiet in gudikat. Ghalhekk ma setax jigi mpunjat kif qeghda tippretendi l-konvenuta. Kompla jinghad li l-kuntratt jirreferi ghat-trasferiment ta` oggetti singoli. Meta wiehed jitkellem dwar sehem minn wirt, ikun qed jitkellem dwar universalita` ta` oggetti u mhux dwar beni partikolari. Fil-kuntratt in kwistjoni ma kienx hemm trtrasferiment ta` universalita`.

b) Il-konvenuta

Mistoqsija mill-qorti x` ghandha xi tghid dwar is-sottomissjoni tas-socjeta` attrici li sabiex tezercita d-dritt ta` irkupru irid ikun hemm universalita tal-oggetti u mhux oggetti individwali, il-konvenuta tirrileva illi tassew li hemm gurisprudenza li tghid hekk izda s-sottomissjoni taghha tmur ben oltre minn hekk. Tishaq illi Joseph Baldacchino kien xehed li l-intenzjoni tieghu kienet li jixtri sehem mill-wirt li principalment kien jikkonsisti minn hwejjeg immobbli. Dwar l-proprjeta` ta` Santa Venera, din issemmiet biss

fin-nota ta` sottomissjonijiet u s-socjeta` attrici ma gabet ebda prova tal-ezistenza ta` din il-propjeta`. Il-Qorti kienet laqgħet it-talba sabiex jigi ppubblikat il-kuntratt skont il-konvenju, u fil-konvenju kien hemm klawsola li tghid illi jekk kien hemm proprjetajiet ohra mhux inkluzi dawn kellu jitqiesu bhala komprizi fil-bejgh.

V. Konsiderazzjonijiet ta` l-Qorti

1. L-ewwel eccezzjoni

L-Art.156(1) tal-Kap.12 jitlob li r-rikors guramentat għandu jkun fih :

- a) dikjarazzjoni li tfisser b`mod car u sewwa l-oggett tal-kawza.
- b) ir-raguni tat-talba.

Billi bl-ewwel eccezzjoni nghatat in-nullita` tar-rikors guramentat, trid issir referenza għall-**Art. 789 tal-Kap. 12** fejn jingħad :-

(1) L-eccezzjoni ta` nullità tal-atti gudizzjarji tista` tingħata -

- (a) jekk in-nullità hija iddikjarata mil-ligi espressament;*
- (b) jekk l-att jinhareg minn qorti mhux kompetenti;*
- (c) jekk fl-att ikun hemm vjolazzjoni tal-forma mehtiega mil-ligi, ukoll jekk mhux taht piena ta` nullità, kemm-il darba dik il-vjolazzjoni tkun giebet, lill-parti li titlob in-nullità, pregudizzju illi ma jistax jissewwa xort`ohra hlief billi l-att jigi annullat;*
- (d) jekk l-att ikun nieqes minn xi partikolarità essenzjali espressament mehtiega mil-ligi :*

Izda dik l-eccezzjoni ta` nullità kif mahsuba fil-paragrafi(a), (c), u (d) ma tkunx tista` tingħata jekk dak in-nuqqas jew vjolazzjoni jkunu jistghu jissewwew taht kull dispozizzjoni ohra tal-ligi.

(2) *L-eccezzjoni ta` nullità ta` att, taht is-subartikolu (1)(c), ma tistax tinghata, meta l-parti li taghtiha tkun baqghat taghmel jew, ghad li tkun taf biha, tkun halliet li jibqghu jsiru atti ohra wara, minghajr ma teccepixxi dik in-nullità.*

Il-gurisprudenza taghna enuncjat principji jew linji gwida, li kienu jghoddu ghac-citazzjoni u li llum *mutatis mutandis* japplikaw ghar-rikors guramentat.

Huwa principju inderogabbli li l-azzjoni hija migbura fil-premessi li ghandhom iwasslu ghat-talbiet. Ghalhekk ghandu jirrizulta ness guridiku bejn il-premessi u t-talbiet sabiex jigi sodisfatt dak li qed jesigi l-Art.156 tal-Kap.12. Mhux biss izda huwa mehtieg li mill-mod kif huwa redatt ir-rikors guramentat, l-azzjoni tkun wahda kjarment identifikabbli fil-ligi. L-Art.156 jimponi fuq l-attur li jidentifika l-oggett tal-kawza, jaghti r-raguni ghala qed jitlob dak l-oggett u jfisser car u sewwa kemm l-oggett kif ukoll ir-raguni ("**Galea vs Galea**" – Qorti tal-Appell – 30 ta` Marzu 1998 u "**Camilleri et vs Galea**" – Prim`Awla tal-Qorti Civili - 6 ta` Gunju 1991)

Dan isir ghaliex *il citato deve conoscere quanto da lui si richiede dai termini delle domande e non dai documenti che vanno uniti alla citazione da altro mezzo di prova che in sostegno delle domande potrebbero essere predati e non a lui notificati* ("**Zammit vs Cassar noe**" – Prim`Awla tal-Qorti Civili – 6 ta` Novembru 1930 u "**Mizzi vs Chapman et**" – Prim`Awla tal-Qorti Civili – 26 ta` April 1951).

Pero` irid jinghad li l-Art.156 *ircieva fil-gurisprudenza taghna interpretazzjoni larga fis-sens li ma giex adottat fir-rigur li donnhom iridu jfissru l-kliem stess tad-disposizzjoni* (**Vol. XXIX.I.431 ; XXXII.I.228 u XXXIV.II.502**).

Il-Qrati taghna sostnew li l-ligi ma tirrikjedix kliem partikolari ghal kif ghandha ssir ic-citazzjoni (illum ir-rikors guramentat). Bizzejjed jiftiehem x` ikun qieghed jitlob l-attur, b` mod li l-kawzali tista` tkun espressa lakonikament, u jekk ma tkunx cara daqstant, ikun bizzejjed jekk tkun spjegata fid-dikjarazzjoni relattiva, stante li ghandha tigi kunsidrata bhala haga wahda mal-att promotur, u ghandha konsegwentement tghin biex ticcara l-kawzali ("**Moore**

noe vs Fiteni” – Prim`Awla tal-Qorti Civili – 15 ta` Dicembru 1955 ; **Vol. XLIII.II.748** ; **XXX.I.228** ; **”Frendo noe vs Attard”** – Prim`Awla tal-Qorti Civili – 19 ta` Gunju 1989 ; **LXXIV.II.406**).

Fis-sentenza **”Scicluna vs Xuereb et”** deciza fit-22 ta` Mejju 1967, il-Qorti tal-Appell osservat li ghalkemm fic-citazzjoni l-kawzali tista` tkun dedotta b` mod lakoniku, ic-citazzjoni ma tkunx nulla jekk il-kawzali tkun imfissra tajjeb, u sakemm ma tkunx talment difettuza li minhabba f` hekk il-konvenut jigi pregudikat ghaliex ma jkunx jista` jiddefendi ruhu.

Madankollu l-prassi tal-Qrati taghna, *anke* minhabba l-emendi introdotti fil-ligi fil-Kap.12 bl-Att XXIV tal-1995, hija li l-*formalizmu esagerat* ghandu kemm jista` jkun ridott u arginat (**”Fino vs Fabri noe”** – Qorti tal-Appell – 28 ta` Frar 1997) bil-konsegwenza li l-*atti ghandhom jigu salvati anziche` annullati jew dikjarati nulli* (**”Ellul vs Coleiro”** – Qorti tal-Appell – 24 ta` Jannar 1964 ; **”Urso vs Cini”** – Prim`Awla tal-Qorti Civili – 19 ta` Jannar 1999)

Il-premess iwassal biex jigi riaffermat il-principju li n-nullita` ta` att gudizzjarju hija sanzjoni estrema li ghandha tkun imposta biss meta n-nuqqas fl-att – sostanzjali jew formali – ma jkunx jista` jigi tollerat minghajr hsara ghal xi principju ta` gustizzja procedurali.

Ghalhekk l-att ghandu jigi annullat biss ghal ragunijiet gravi (**”Vella et vs Camilleri”** – Prim`Awla tal-Qorti Civili – Vol.LXXXI.III.31)

Fil-kaz tal-lum, il-konvenuta tilmenta li garrbet pregudizzju ghad-difiza taghha ghaliex tghid illi ma setghetx tifhem ir-raguni u allura abbazi ta` liema kawzali s-socjeta` attrici kienet qeghda titlob in-nullita tac-cedola li biha l-konvenuta ezercitat id-dritt ta` rkupru.

Din il-pretensjoni tal-konvenuta mhijjex sostenibbli.

Jirrizulta kemm mir-risposta guramentata, kemm mill-provi li gabet, kif ukoll mis-sottomissjonijiet li ressqet illi l-konvenuta kienet

taf *senza mezzi termini* n-natura tal-azzjoni u kif kellha tilqa` ghall-azzjoni fil-mertu.

Mill-atti jirrizulta li fl-20 ta` Gunju 2003, jigifieri lanqas wara xahar li kien iffirmit l-konvenju bejn is-socjeta` attrici u Robert Sant Fournier, il-konvenuta pprezentat ittra uffijjali, fejn iddikjarat li jekk isehh t-trasferiment kif patwit fil-konvenju, kienet sejra tezercita d-drittijiet taghha nkluz l-irkupru. L-azzjoni attrici kienet prevista u ma setghetx tkun ghajr dik kif intavolata.

L-eccezzjoni qeghda tkun respinta.

2. Mertu

L-attrici mexxiet bl-azzjoni odjerna ghaliex tikkontendi li l-konvenuta ma setghetx tinvoka l-irkupru successorju bis-sahha ta-cedola ta` depozitat de qua. Ghalhekk indirizzat it-talbiet taghha sabiex dak id-depozitu li sar mill-konvenuta jkun dikjarat null u bla effett.

Fil-ligi taghna l-istitut tal-irkupru successorju huwa regolat bl-**Art 912 tal-Kap 16** li jghid :-

(1) Jekk wiehed mill-werrieta jkun ceda, b` titolu oneruz, il-jeddijiet tieghu fuq il-wirt lil xi hadd li ma jkunx ukoll werriet, il-werrieta l-ohra jew wiehed jew izjed minnhom jistghu jeskludu lic-cessjonarju, allavolja dan ikun qarib tal-mejjet, mill-qasma, billi jhallsu lilu l-prezz ta-cessjoni, l-ispejjez li jkun ghamel ghal dik ic-cessjoni, u l-imghaxijiet fuq il-prezz minn dak in-nhar li dak il-prezz ikun gie mhallas minnu lic-cedent.

(2) Il-jedd li ghandhom il-werrieta l-ohra kif jinghad hawn fuq, jispicca wara xahar min-notifika li ssir lilhom ta` dik ic-cessjoni, kemm-il darba f`dak iz-zmien huma ma jiddikjarawx li jridu jezercitaw dak il-jedd.

(3) Meta wiehed mill-werrieta jkun ezercita dak il-jedd, il-werrieta l-ohra jistghu jinghaqdu mieghu, basta li jiddikjaraw dan fi zmien hmistax-il gurnata min-notifika maghmula lilhom.

(4) Dawn in-notifiki u dikjarazzjonijiet ghandhom isiru b`att gudizzjarju.

Fil-kors ta` din il-kawza, il-partijiet ghamlu referenza ghas-sentenza fil-kawza fl-ismijiet : "**Mario Micallef et vs Joseph Difesa u martu Rita**" : li kienet deciza fl-ewwel istanza mill-Prim Awla tal-Qorti Civili fit-2 ta` Frar 2005 ; u fit-tieni istanza mill-Qorti tal-Appell fis-26 ta` Mejju 2006 li kkonfermat is-sentenza fl-ewwel istanza.

Tajjeb li ssir ampja referenza ghal dak li kien deciz f` dik il-kawza ghaliex il-Qorti jidhrilha li dak li jirrizulta minn dik is-sentenza ghandu rilevanza ghall-fini tal-kawza tal-lum :-

"Mill-premessi fatti jidher li l-punt involut huwa essenzjalment legali u li r-risoluzzjoni tieghu tiddependi mill-interpretazzjoni li trid tigi akkordata lill-Artikolu 912 tal- Kodici Civili. Jinsab provvdut fis-subinciz (1) tieghu illi: `jekk wiehed mill-verrieta jkun ceda, b` titolu oneruz, il-jeddijiet tieghu fuq il-wirt lil xi hadd li ma jkunx ukoll verriet, il-verrieta l-ohra jew wiehed jew izjed minnhom jistghu jeskludu lic-cessjonarju, allavolja dan ikun qarib tal-mejjet, mill-qasma, billi jhallsu lilu l-prezz tac-cessjoni, l-ispejjez li jkun ghamel ghal dik ic-cessjoni, u l-imghaxijiet fuq il-prezz minn dakinhar li dak il-prezz ikun gie mhallas minnu lic-cedent` ;

"Bhala fonti storika jinghad li l-precitat dispost tal-ligi hu mehud minn dak ta` l-Artikolu 1064 tal-Kodici ta` Sardegna, minn dak ta` l-Artikolu 975 tal-Kodici ta` Parma, Piacenza u Guastella, u minn dak ta` l-Artikolu 841 tal- Kodici Franciz, bid-differenza li l-ligi taghna meta titkellem fuq il-persuna li tista` tigi eskluza mid-divizjoni, tqieghed il-kondizzjoni li dik il-persuna ma tkunx `koeredi`, mentri l- Kodici Franciz ighid `non sia succesibile`. Ara Kollez. Vol. XXX P I p 481. Dejjem f` din l-istess sentenza jinghad li l- fundament principali tad-disposizzjoni huwa l-eskluzjoni ta` l-estraneji fil-hwejjeg tal-familja. `L`articolo 615 della detta Ordinanza (korrispondenti ghall-Artikolu 912) dà il diritto ad un coerede di escludere dalla divisione l`acquirente estraneo` (Kollez. Vol. XX P I p 24);

"Dan affermat, il-gurisprudenza taghna in subjecta materia tissokta tippreciza illi `è principio universalmente riconosciuto in materia di retratto legale che le leggi o le consuetudini che lo permettono, essendo esse contrarie alla libertà della disponibilità dei beni, sono di stretta interpretazione` (Kollez. Vol. XXV P I p

99);

"Tali principju hu rikonoxxut ukoll f`materja ta` rkupru successorju tant li anke hawn hu accettat illi `il diritto codesto è di stretta applicazione` (Kollez. Vol. XXVI P II p 353) u ma huwiex suxxettibbli ta` interpretazzjoni estensiva billi huwa kuntrarju ghall-libertà tad-disponibilità tal-beni u eccezzjoni ghad-dritt komuni (Angelo Grech et - v. - Luigi Vella, Appell Civili, 19 ta` Novembru 1973);

"Is-suesposti principji jsegwu t-tagħlim dottrinali ta` bosta awturi affermati. Fost ohrajn, l-Laurent jsostni illi `la proprietà certamente è di ordine pubblico, poiche è la base dell`ordine sociale; ora il diritto di retratto viola la proprietà. Esso deroga alla libertà ... Che il diritto di retratto sia eccezionale non può presentare alcun dubbio` - `Principii di Diritto Civile`, Vol. X para. 342 u 343). Konsegwentement, fil-fehma tat-trattisti, b`mod generali, id-dritt ta` l-irkupru ma jistax jigi konsagrat b`interpretazzjoni estensiva in kwantu mhux ammessi eccezzjonijiet ghar-regola komuni tal-libertà li wiehed jiddisponi mill-hwejjeg proprji tieghu;

"Cio nonostante dak li għadu kif gja` kummentat, gie deciz ukoll li `sebbene la legge abbia stabilito che ciascun consorte si ritenga avere piena proprietà della sua quota, e dei relativi utili e frutti, permettendone l`alienazione, e la cessione, e l`ipoteca; tuttavia ha limitato l`effetto dell`alienazione e dell`ipoteca a quella porzione, che venga a spettargli nella divisione - articolo 191 (illum Artikolu 495, Kodici Civili). Anzi, disponendo in un modo equitativo, nel caso un coerede si volesse valere della facoltà accordategli, ha fornito i mezzi di escludere i non eredi dalla divisione - articolo 615 (illum Artikolu 912, Kodici Civili).` Kollez. Vol. IX pagna 643;

"Korrettement intiz, l-Artikolu 912(1) hu cirkoskritt unikament għall-kaz ta` cessjoni tal-kwota ereditarja ossia `tal-jeddijiet fuq il-wirt` da parti tal-koeredi. M`hemmx dubbju illi l-fond meritu ta` l-azzjoni jiffirma parti mill-assi ta` l-awtur ta` l-atturi. Huwa indubitat ukoll illi l-aljenazzjoni li għamlu whud mill-koeredi bil-kuntratt tas-26 ta` Settembru 1994 ma kienetx tal-kwota ereditarja tagħhom izda tas-sehem indiviz li kull wiehed u wahda minnhom kellhom ta` l-immobbli determinat. Il-fatt li fost l-assi ta` Bartolomeo Debono kien għad baqa` biss dik l-għalqa specifika ma jgibx għal daqshekk illi allura l-koeredi kienu qegħdin jittrasferixxu

I-kwota ereditarja taghhom ghax kien baqa` biss dik il-proprjeta`;

"Huwa car mill-kontenut tal-kuntratt illi dak li kienu qeghdin jakkwistaw il-konvenuti ma kienetx xi kwota ereditarja integra, intiza din bhala porzjoni ta` unita` attiva u passiva li tikkomponi l-eredita` tad-decujus. Fil-fatt il-kuntratt espressament jipprovdli li l-konvenuti akkwirenti kienu qed jixtru ishma mill-ghalqa ad eccezzjoni ta` dawk il-porzjonijiet konsistenti fi kwart minn sest indiviz appartenenti lil kull wiehed u wahda mill-persuni hemm indikati, u cjoè, Luigi Camilleri, Grazia Micallef, u l-eredi ta` Joseph Micallef, ossija l-atturi prezenti;

"Vizwalizzata minn din l-ottika, u b` applikazzjoni tal- principji suddetti, ma jistax ragonevolment jinghad illi dak pretiz mill-atturi bhala rkupru successorju jirrientra fid- dispost ta` l-Artikolu 912 fuq espress;

"Fuq din it-tema, ghall-kwezit minnu stess sollevat, jigifieri jekk ir-retratt successorju jistax jigi ezercitat meta c-cessjoni tabbraccja oggett determinat ta` l-eredita`, il-Laurent, filwaqt li jirrikonoxxi li l-kwestjoni hi wahda kontroversa, iwiegeb hekk: `Noi non esitiamo a deciderla negativamente. Il testo è formale: perche si faccia luogo al retratto occorre che il coerede abbia ceduto il suo diritto alla successione.` Ic-cessjoni li jaghmel koeredi ta` dritt tieghu f`immobbli specifiku mhix cessjoni tad-dritt successorju tieghu (`Principii di Diritto Civile`, Vol. X para 364).

"Kaz analogu ghal dak hawn trattat hu dak deciz fl-ismijiet Emanuel Schembri nomine – v. – Paul Camilleri, Appell, 12 ta` Gunju 2001, ben familjari ghall-gudikant sedenti li kien jippatrocina l-interessi fil-gudizzju tal-konvenut akkwirent. Din il-Qorti taghmel espressa referenza ghal konsiderandi fiha kontenuti";

Ferm il-premess, il-Qorti tirrileva li l-kwistjoni rat il-bidu taghha meta kien iffirmit il-konvenju tat-23 ta` Mejju 2003 bejn is-socjeta` attrici u Robert Sant Fournier.

Fil-konvenju Robert Sant Fournier obbliga ruhu li biegh a favur tas-socjeta` attrici parti minn sitta (1/6) ta` sehem indiviz ta` lista shiha ta` proprjeta` mmobbli u ta` cnus.

Rilevanti minn dan il-konvenju huma l-klawsoli 5 u 6.

Klawsola 5 tghid :-

"This promise of sale is subject to the condition that the Purchaser acquires all the undivided portions of the immovable above described belonging to the heirs of the Vendor`s uncle (Guido Sant Fournier), the Vendor`s aunt (Mary Micovic nee Sant Fournier) and the Vendor`s sister Michelle Corinne Minter. The Purchaser may renounce to this condition. The final deed shall be published within two months from when the Purchaser acquires the aforementioned undivided portions or within two months when he notifies the Vendor in writing that he has renounced to the said condition."

Klawsola 6 tghid :-

"For all intents and purposes the Vendor declares that the immovable property described above consists of all the immovable property which he still has from the inheritance of his father. The parties agree that any other immovable property in Malta which the Vendor inherited from his father and which he still owes today is included in this promise of sale and shall be included in the final deed without any change to the price mentioned in clause 1 above and the sale of such immovable property shall be governed by the terms and conditions agreed to in this preliminary agreement mutatis mutandis."

Jirrizulta li għall-fini ta` dak previst mill-Art 912(2) tal-Kap 16, precizament fl-20 ta` Gunju 2003, il-konvenuta pprezentat ittra ufficjali, fejn iddikjarat li jekk iseħh t-trasferiment kif kien patwit fil-konvenju, hija kienet sejra teżercita d-drittijiet tagħha bħala ko-eredi nkluz dak tal-irkupru.

In segwitu saret il-kawza fl-ismijiet : *Olive Gardens Investments Limited vs L-Av. Dottor Mark Busuttil pro et noe.*

Hemm is-socjeta` attrici talbet sabiex jigi ddikjarat li l-bejgh bejn l-ahwa Robert Sant Fournier u Michelle Corinne Minter kien sar

b` qerq, li tkun ordnata r-rexxissjoni tal-kuntratt ; u sabiex Robert Sant Fournier jaddivjeni ghall-kuntratt ta` trasferiment favur is-socjeta` attrici b` referenza ghal konvenju datat 23 ta` Mejju 2003.

Il-kawza kienet deciza minn din il-Qorti diversament presjeduta fit-30 ta` Jannar 2015.

Hemm kien deciz illi l-kuntratt ta` bejgh bejn l-ahwa kien sar b` qerq.

Barra minn hekk, Robert Sant Fournier kien ordnat sabiex jersaq ghall-kuntratt ta` bejgh favur is-socjeta` attrici :

“b` dan li taghmilha cara li kif inghad hawn fuq il-kundizzjoni komtemplata fi klawsola numru 5 tal-konvenju hi meqjusa li get rinunzjata mis-socjeta` attrici”.

Bhala konsegwenza ta` dik is-sentenza (li ma rrizultax li sar appell minnha) kien ippubblikat il-kuntratt ta` bejgh bejn is-socjeta` attrici u Robert Sant Fournier fit-22 ta` Lulju 2016 fl-atti tan-Nutar Ritienne Bugeja Fenech fit-22 ta` Lulju 2016.

Fil-kuntratt jirrizulta li kienet riprodotta l-lista tal-proprjetajiet li kienet inkluzja fil-konvenju.

Bhala konsegwenza tas-sentenza, il-klawsola nru. 5 kienet giet rinunzjata.

Fil-kuntratt ma saret l-ebda referenza ghall-klawsola nru. 6.

Xahar wara li sar il-kuntratt, il-konvenuta pprezentat cedola ta` irkupru fit-22 ta` Awissu 2016.

Fis-7 ta` Settembru 2016, is-socjeta` attrici pprezentata ittra ufficjali nru. 2946/16, li biha nformat lill-konvenuta li kienet qed tikkontesta c-cedola. Il-konvenuta pprezentat ittra ufficjali nru. 176/2017 b` risposta.

Din il-Qorti taccetta li l-lista tal-proprjeta` kienet denunzjata ghall-fini tal-procediment *causa mortis* a fol 68 et seq tal-process.

Hija l-lista tal-proprjeta` li hemm fil-kuntratt ta` bejgh.

Il-lista taqbel f` kollox hlief ghall-fond wiehed.

Dan il-fond thalla barra. Huwa ndikat bhala nru. 2 fil-lista li hemm a fol 70, ossia –

"The terraced house at number ninety eight (98) formerly number (40) Msida Road Santa Venera, let at sixty Malta liri (Lm 60) per annum, having a value the said undivided third share of three thousand three hundred and thiry three Maltese liri (Lm 3,333)"

Din kienet l-unika proprjeta` li fil-fatt thalliet barra mill-kuntratt.

Jirrizulta x`kien dikjarat bhala proprjeta` tal-wirt ta` Hugh Sant Fournier.

Meta tqis dak li nghad fil-gurisprudenza, b`referenza ghall-Art. 912(1) tal-Kodici Civili, din il-Qorti tirriaferma li d-dritt tal-irkupru huwa ezercitabbli, meta jkun hemm cessjoni ta` kwota ereditarja, mhux meta jkun hemm cessjoni ta` sehem indiviz ta` mmobbli determinati.

Dan premiss, tesprimi l-konvinzjoni taghha, ibbazata fuq fatti accertati u ppruvati, li meta sar il-konvenju de quo, l-intenzjoni tal-kontraenti kienet illi min-naha wahda s-socjeta` attrici takkwista l-kwota kollha ereditarja ta` Robert Sant Fournier, u min-naha l-ohra l-intenzjoni ta` Robert Sant Fournier kienet li jbiegh l-kwota kollha tieghu.

Dwar dan il-Qorti m`ghandhiex xrara wahda ta` dubju wara li qieset l-assjem tal-provi.

Din il-Qorti tkompli tghid dan kollu :

Abbazi tal-klawsola nru. 6 tal-konvenju, li ghal xi raguni thalliet barra mill-kuntratt. Stante li kienet ordnata li ssir il-pubblikazzjoni tal-att finali skont il-konvenju, eskluza biss il-klawsola nru. hamsa (5), meta sar dan l-kuntratt, il-klawsola nru. sitta (6) kellha tigi riprodotta wkoll ghaliex kienet parti integrali minn dak l-konvenju.

Ic-certezza morali tal-qorti tkompli tkun riaffermata bix-xieha ta` Joseph Baldacchino f`kawza ohra li ghaliha saret referenza billi x-xhud huwa defunt.

Bhala uniku direttur tas-socjeta` attrici, huwa kien xehed li l-intenzjoni tieghu kienet li jakkwista l-ishma **kollha** li kienu jiffurmaw l-wirt ta` Hugh Sant Fournier.

Anke dan il-fatt huwa kkonfermat mix-xieha tal-Av. Peter Borg Costanzi li stqarr illi l-intenzjoni ta` Robert Sant Fournier kienet li tigi inkluzo l-proprjeta` kollha.

Ghal din il-Qorti, l-assjem ta` fatti u cirkostanzi tal-kaz jaghmlu l-prova fuq bilanc ta` probabilitajiet illi Robert Sant Fournier kien qed ibigh il-kwota ereditarja tieghu u mhux biss sehem mill-immobbli ad eccezzjoni ta` ishma ohrjan.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tichad l-ewwel eccezzjoni.

Tilqa` l-eccezzjonijiet l-ohra.

Tichad it-talbiet attrici.

Tordna lill-attrici sabiex thallas l-ispejjez kollha ta` din il-kawza.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registratur**