– CONTRACT OF WORKS –
– PAYMENT OF BALANCE FOR WORKS DONE AND FOR MATERIAL PROVIDED –
– PRESCRIPTIONS: ART. 2148(A) AND ART. 2149(A) OF THE CIVIL CODE –

SMALL CLAIMS TRIBUNAL

ADJUDICATOR
ADV. DR. KEVIN CAMILLERI XUEREB

Sitting of Thursday, 31st of October, 2019

Notice of Claim number: **264/2018**

RADO LIMITED
[COMPANY REG. NO. C-51559]

VERSUS

STEELSHAPE LIMITED
[COMPANY REG. NO. C-14412]

By means of Notice of Claim filed on the 14th June, 2018 plaintiff company requested this Tribunal to condemn defendant company to pay the amount of four thousand, seven hundred, seventy six euros and twenty three cents (€4,776.23c) representing the balance of the price for material supplied and services rendered by plaintiff company to defendant company, as better explained in the said Notice of Claim. Plaintiff company also demanded judicial costs of the present proceedings and legal interest.

By means of a Reply dated 3rd July, 2018 defendant company raised the following pleas:

1. In the first place, plaintiff's claim is time-barred by virtue of Art. 2149(a) of the Civil Code [2-year prescription] and/or by virtue of Art. 2148(a) of the Civil Code [18-months prescription];

2. Without prejudice to the foregoing, plaintiff's claim is also time barred by virtue of Art. 2156(f) of the Civil Code [5-year prescription]

3. Without prejudice to the above pleas, defendant company is not a debtor of plaintiff company since the latter company did not execute its obligations in line with the stipulated terms and conditions, as shall be shown during the course of the proceedings

In the sitting dated 4th October, 2018 (*fol.* 50) the parties, through their respective legal counsel, agreed that the proceedings be held in the English language due to the fact that the director of plaintiff company (Branko Radojevic) did not understand the Maltese language. Thus, as duly registered in the minutes of the said sitting, the Tribunal ordered that from that stage onwards, the proceedings be held in English.

After the parties produced certain evidence, it was agreed in the sitting dated 6th February, 2019 (*fol.* 56) that "*at this stage of the proceeding the Tribunal eventually delivers a preliminary judgment on the pleas of prescription.*"

Therefore, the present judgment shall solely and exclusively concentrate on the pleas of prescription raised and specified by defendant company in its Reply. Thus, the present decision is a preliminary one and shall not delve into the merits of the case.

Having examined all the evidence so far produced, having examined all the relative acts of the proceedings and also having weighed respective counsels' submissions on the subject of prescription (*foll.* 73–77), the Tribunal considers as follows.

First and foremost, the Tribunal deems imperative the following preliminary description and observation.

As a matter of fact, plaintiff company was engaged by defendant company for the former to deliver material and execute works for the benefit of the latter. The acts show that plaintiff company was engaged to execute "*works related to casting and finishing of internal floor*" of the AFM Hangar at the Malta International Airport by defendant company by means of a contract of works dated 8th August, 2012 (a copy thereof exhibited at *foll.* 15–17). From the said written agreement, plaintiff company was "*responsible for casting of concrete floor to a tickhness of 150mm*" and it was stipulated, among other things, that plaintiff company had to ensure the "*Final cleaning of surface*",

the "*Laying of plastic with adequate laps at joints, to ensure correct functioning of water proof barrier*", the "*Laying of steel mesh on spacers as per desgin*" and the "*Preparation of temporary shuttering around existing steel columns*". The said contract also states that defendant company "*shall supply all materials related to the casting of the floor. These shall include plastic sheeting to be used as underlay, spacers, reinforcing steel mesh and concrete mix as specified by the AIC*" and "*Steelshape shall provide all concrete for casting of floor. All issues related to the grade of concrete and eventual strength of floor shall form part of the responsibilities of Steelshape as supplier.*" (*fol.* 16) However, the same agreement also makes provision for the supply of material on the part of plaintiff company since it also states that "*All issues related to the preparation and treatment of concrete floor to receive resin top coat shall for part of responsibilities of Rado systems.*" (*ibid.*).

Therefore, undoubtedly, the inter-relationship enveloping the parties is one of a contractual nature, specifically as defined under Art. 1633 of the Civil Code which states that "*In a contract to execute a certain work it can be agreed that the person undertaking the work shall bestow only his labour or skill, or that he shall also supply the materials.*"[1] In the present case it appears that plaintiff company had to bestow its labour and/or skill and also supply certain materials (if not all) to enable it to finish the flooring works. Moreover, plaintiff company's present claim is based on the payment of labour and material as certain acts of the proceedings clearly indicate.

Having established a brief depiction of the factual scenario, the Tribunal now proceeds to delve into the matter whether plaintiff company's demand for payment of the balance of the price is time barred in line with any one of the specific prescriptions here-above cited.

The Tribunal considers;

According to Art. 7(1) of Chapter 380 of the Laws of Malta, notwithstanding that, "*The Tribunal shall determine any claim or counter-claim before it principally in accordance with equity*", it is an imperative requirement in the same provision of the Law that "*in any case, any question of prescription shall be determined according to law*." Now, Art. 730 of Chapter 12 of the Laws of Malta provides that, "*Any plea to the jurisdiction of the court or to the capacityof the parties, and any plea of compromise, arbitration, res*

[1] On the definition of this specific contract and inter-relationship this Tribunal makes reference to the relevant parts in its judgment *in re* **Charles Seisun v. Joseph Vancell et** delivered on the 2nd July, 2018.

judicata, prescription, or nullity of acts, shall be determined undera separate head, either before, or together with the decision on the merits." As stated earlier, this judgment shall restrict itself to an examination of the pleas of prescription and not upon the merits of the case.

Defendant company contests plaintiff company's case and resists the same by asserting that the same is time barred by virtue of paragraph (a) of Art. 2148 of the Civil Code, or by paragraph (a) of Art. 2149 of the Civil Code or by paragraph (f) of Art. 2156 of the Civil Code. By doing so, it is up to the defendant company to substantiate and prove that the prescriptive time-periods, or any one of them, raised by it – so to neutralise plaintiff's claim – are applicable to the prevailing circumstances. Thus, by raising such line of defense, the *onus probandi* is shifted onto the defendant who procedurally becomes, in such a scenario, an *ad hoc* temporary plaintiff. As stated *in re* **Pasquale Bonello v. Matteo Grech** (Commercial Court, 9th January, 1875), "*la prescrizione è una eccezione opposta alla azione, ed è regola invariabile che il convenuto in questo caso diventa attore, spettando a lui di provare ciò che serve di fondamento alle sue eccezione – (Chardon, 'Del Dolo e delle Frode', Vol, I, Toullier, Vol. IV para. §612)*."

Moreover, reference is made to the judgment, among several others, *in re* **Vincent Buttigieg v. Qala St. Joseph Football Club** (Court of Magistrates [Gozo] Superior Jurisdiction, 14th December, 2007) wherein it was affirmed that, "*il-konvenut li jecepixxi l-preskrizzjoni estintiva tal-azzjoni ma jehtieglu jipprova xejn hlief li l-preskrizzjoni eccepieta hi dik li tapplika ghall-kaz u li ddekorra t-terminu preskrittiv. Dan stabbilit, sta ghall-attur kreditur li jghazel it-triq kif irid jiddefendi ruhu kontra din l-eccezzjoni bil-mezzi li tghatih il-ligi. Hu l-attur li jrid jipprova s-sospensjoni jew l-interruzzjoni tal-perjodu preskrittiv jew l-ammissjoni tal-kreditu mill-konvenut jew alternattivament li jsejjahlu ghall-gurament decizjorju*."

But before delving into an examination of the said prescriptive time-frames and verify whether any is applicable and, if so, whether they are founded or otherwise in connection with the established facts, it is important to recall the following point.

Nowadays, a defendant who raises particular prescriptive time-periods is required to satisfy the procedural ingredient enshrined in the amended Art. 2160(1) of the Civil Code. This provision states that, "*The prescriptions established in articles 2147, 2148, 2149, 2156 and 2157 shall not be effectual if the parties pleading them, do not of their own accord declare on oath, during the cause, that they are not debtors, or that they do*

not remember whether the thing has been paid." This provision of the Law was amended by Act I of 2017 and came *in vigore* on the 13th January, 2017. Before the said date, the provision contemplated the inverse situation, namely that it was the duty of the plaintiff to give the said oath upon defendant. By means of the said amendment the legislator divested the plaintiff party from such an *onus* and shifted it onto the defendant party.[2] If the defendant fails to conform to that specifically prescribed under Art. 2160(1) as amended, he is legally precluded from benefitting from the specified short-term prescriptions.[3]

If the defendant manages to address the above-illustrated requirements and satisfy the relative procedural burdens, the pendulum of the *onus probandi* oscillates back onto the plaintiff so for him to demonstrate that the relative prescription is not applicable or, if applicable, whether the same was suspended or interrupted or, alternatively, to show whether his debtor (i.e., the defendant) expressly admitted or tacitly confessed that the amount being claimed was partially or entirely due.

At this stage, therefore, the Tribunal is required to see whether the defendant company can avail itself of the cited prescriptive time-frames and verify if the same conformed itself with that stated under Art. 2160(1) of the Civil Code, namely whether in the course of the present proceedings defendant company, of its own accord declared on oath that it is not a debtor, or that it does not remember whether the thing has been paid.

In this case, Iomar Vella, sole director of defendant company, bluntly stated in his affidavit that, "*With reference to the claim brought forward by Rado Limited in these proceedings, I am hereby confirming that Steelshape Limited is not a debtor of Rado*

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[2] Very recently, it was held *in re* **Direttur tar-Registru Pubbliku v. HSBC Bank Malta plc** (Superior Appeal, 27th September, 2019), «*Kif inhi l-liġi llum, wara dawk l-emendi, il-ġurament jittieħed "minn jeddhom" minn min iressaq l-eċċezzjoni waqt li, kif kienet fiż-żmien relevanti, il-liġi kienet tghid illi hija l-parti li kontra tagħha titressaq l-eċezzjoni li setgħet tfittex li twaqqa' l-eċċezzjoni billi tagħti l-ġurament lill-parti l-oħra*.»

[3] In this regard see decision *in re* **Bottega del Marmista Ltd v. Paul Mifsud et** (Inferior Appeal, 26th January, 2018). See also judgment *in re* **Automated Revenue Management Limited pro et noe v. Topcar Limited** (Court of Magistrates [Malta], 17th January, 2018) wherein it was stated thus: "*Il-liġi għalhekk daret ċirku tond ghal dak li kienet oriġinarjament – jew kważi; ghaliex ix-xelta ghall-ghoti tal-gurament* [...] *tnehhiet minn idejn il-kreditur u saret tassattiva. Din hija bidla radikali. Billi huwa l-debitur-konvenut li jrid jixhed, din il-Qorti hija tal-fehma li dan ghandu jsir biss wara li jintemmu l-provi tal-kreditur-attur li allura jkollu kull opportunità jressaq il-provi dwar l-ezistenza tal-kreditu, u kwalunkwe sospensjoni jew interruzzjoni tal-perjodu tal-preskrizzjoni. Il-Qorti hija tal-fehma li l-gurament baqa' deciżorju fis-sens biss li jimpunja l-kreditu pretiż iżda mhux ukoll is-sospensjoni jew l-interruzzjoni tal-perjodu tal-preskrizzjoni. Altrimenti jkun ippregudikat il-kreditur li ebda prova ma jkollu disponibbli jekk id-debitur jagħżel li jifruwixxi ruhu mill-gurament. Din żgur ma kinitx l-intenzjoni tal-leġislatur. Bir-rispett kollu lejn il-Leġislatur, kien ikun hafna ahjar li kieku l-gurament deciżorju baqa' jigi deferit lid-debitur a xelta tal-kreditur, kif kienet il-ligi originarjament u ghal sekli shah*."

Limited." (*fol*. 53). For this Tribunal, this assertion, under oath, meets the requirement under the cited Art. 2160(1). As a corollary, the time-periods expressed in defendant company's Reply are validly triggered and need to be investigated.

Having surmounted this procedural hurdle, the Tribunal now turns its attention to examine whether any one of the prescriptive periods raised by defendant company, within the framework of the case, is applicable and/or founded.

The Tribunal further considers;

Art. 2148(a) of the Civil Code provides that "*actions of tailors, shoemakers, carpenters, masons, whitewashers, locksmiths, goldsmiths, watch-makers, and other persons exercising any trade or mechanical art, for the price of their work or labour or the materials supplied by them*" are "*barred by the lapse of eighteen months.*"

According to the judgment *in re* **David Cilia noe v. Hal Mann Limited** (First Hall, Civil Court, 2nd June, 2011) this specific provision, "*jirreferi ghall-krediti ta' artefici li jipprestaw l-opera taghhom u mhux ghall-appaltatur ta' l-opra li ghaliha l-materjali jkunu servew (Kollezz. Vol XLI.I.347)*." This train of thought is in fact the reasoning given in an earlier judgment, that is published in the collection of Maltese decisions in **Vol. XXXVIII-III-710**, wherein there was held the following: "*Il-preskrizzjoni ta' tmintax-il xahar li tolqot l-azzjonijiet tal-hajjata, skrapan, mastrudaxxi, bennejja, bajjada, haddieda, argentiera, arluggara, u persuni ohra li jahdmu sengha jew arti mekkanika, ghall-prezz ta' l-opri taghhom jew tax-xoghlijiet taghhom, jew tal-materjal li jfornu, tirriferixxi ghal-lokazzjoni ta' opera li biha dawk il-persuni jkunu obbligaw ruhhom li jaghtu x-xoghol taghhom, u mhux ghal-locatio operis li biha l-imprenditur jobbliga ruhu li jaghti, mhux ix-xoghol, izda l-prodott tax-xoghol – meta l-lokazzjoni d'opera tkun konnessa ma' organizzazzjoni ta' mezzi teknici li timprimi lil-lokazzjoni l-karattru ta' att oggettivament kummercjali*."

Undoubtedly, in the case under examination, the work that had to be carried out by plaintiff company was that resulting from a contract of works and thus Art. 2148(a) of the Civil Code is not applicable and consequently, this specific prescriptive period is being rejected.

The Tribunal considers further;

Art. 2149(a) of the Civil Code provides that "*actions of builders of ships or other vessels, and of contractors in respect of constructions or other works made of wood,*

stone or other material, for the works carried out by them or for the materials supplied by them" are "*barred by the lapse of two years.*"

This provision has been interpreted by our Courts on several occasions. The following is a brief list of the prevalent judgments in no particular chronological order:

(i) In the decision *in re* **Langdale Limited v. Jon David Limited** (Inferior Appeal, 3rd November, 2004) the Court distinguished this particular form of prescription from that contemplated under Art. 2148(a), already discussed *supra*, and stated as follows: "*Kif spjegat mill-Qorti tal-Kummerc fis-sentenza riportata a Vol. XLII P III p 1151, il-preskrizzjoni stabbilita fl-Artikolu 2148 (a) tapplika ghal krediti ta' artifici li jipprestaw l-opra taghhom, filwaqt li fil-kaz ta' l-Artikolu 2149 (a) il-preskrizzjoni tirriferixxi ghall-krediti ta' dawk li fihom tkun prevalenti l-karattru ta' spekulaturi, u li, aktar minn opra, jipprestaw xoghol – opus – minghajr distinzjoni in rigward tan-natura tax-xoghlijiet u minghajr qies ta' l-importanza tas-somministrazzjonijiet*."

(ii) In the case *in re* **Paul Sapienza v. Walter Antignolo** (Commercial Court, 5th December, 1935; published in Vol. XXIX-III-187) it was held that, "*meta r-relazzjoni bejn il-partijiet tirreferi ghall-fornitura ta' bicca xoghol, il-preskrizzjoni applikabbli hija dik ta' l-artikolu 2149 (a) tal-Kap. 16 u mhux dik taht l-artikolu 2148 (a) li tirreferi ghal xoghol maghmul ghal haddiehor bl-imnut. Hekk l-art. 2149 (a) jippresupponi l-ezistenza ta' kuntrattur u kuntratt bejn il-partijiet ghall-fornitura tal-materjal jew it-twettieq ta' bicca xoghol. Ghalhekk mastrudaxxa jkun regolat bl-artikolu 2148 (a) meta jitlob il-prezz tax-xoghol tieghu, imma jekk jassumi kuntratt definit ta' provvista, l-azzjoni tieghu tkun regolata bl-art. 2149(a).*"

(iii) On the same identical lines, the judgment *in re* **A.F. Ellis Limited v. Michael Said** (Court of Magistrates [Malta], 8th February, 2001) adopted the aforementioned quotation and applied it in the case of the provision and installation of granite stairs. It held, *inter alia*, that, "*il-konvenut ma marx ghand id-ditta attrici biss biex jordna l-granit, hadu mieghu u qeghdu hu jew haddiehor ghalieh, imma ordna l-granit, li gie maqtugh fuq qisien specifici u mqieghed ghandu mill-impjegati ta' A.F. Ellis, u dan huwa appuntu dak li nifhmu b'kuntratt ta' appalt*."

(iv) In the judgment *in re* **Salvu Attard v. Mark u Georgeann Meilak** (First Hall, Civil Court, 1st July, 2007) it was stated that, "*L-artikolu 2149(a) jipprovdi li l-azzjonijiet tal-kuntratturi ta' bini jew ta' xogholijiet ohra ta' njam, jew materjal iehor ghall-opri mahdumin minnhom jew ghall-materjal li jfornu jaqghu bi preskrizzjoni ta' l-gheluq ta' sentejn. Jiddependi hafna mill-agir u l-intenzjoni tal-partijiet u jekk l-intenzjoni kienetx wahda di dare l-kuntratt ghandu jitqies bhala bejgh waqt li jekk l-intenzjoni kienet di fare japplikaw il-principji ta' l-appalt [*Qorti Kummercjali, *George Camilleri vs Joseph Mamo noe, 28/08/1951, Kollez. Vol. XXV.iii.639), u George Vassallo vs Lawrence Fenech et noe, 26/04/1988, u Appell Inferjuri Civili, Frederick Micallef noe et vs May Sullivan, 22/11/2002]. Hu sufficjenti li wiehed ihares lejn in-natura tax-xogholijiet li gew esegwiti mill-attur fejn minbarra li sar xoghol tal-konkos, l-attur ipprovda wkoll il-materjal u l-armar* [. . .] *Illi sabiex tigi determinata liema hija l-preskrizzjoni applikabbli ghall-azzjoni partikolari wiehed irid jezamina d-dispozizzjonijiet partikolari tal-kuntratt li minnu titwieled l-azzjoni, u fl-ewwel lok jistabilixxi s-sustanza tar-relazzjoni guridika ezistenti bejn il-partijiet. Id-dispozizzjoni taht l-artikolu 2149(a) ma tikkontemplax il-kaz ta' fornituri ta' materjal in genere, izda tal-forrnituri li jsiru minn appaltaturi ta' xogholijiet, li flimkien mal-opra taghhom ikunu in konnessjoni mal-istess opera fornew ukoll il-materjali mehtiega (Ara A.M.C. Marketing Ltd vs Pletz Holdings Ltd, deciza mill-Prim'Awla Qorti Civili fit-22 ta' Frar, 2002). Hekk gie ribadit ukoll fis-sentenza deciza mill-Qorti ta' l-Appell fl-ismijiet Paul Formosa vs Salvu Debono deciza fil-5 ta' Ottubru 2001*."

In the case under examination plaintiff company is asking this Tribunal to condemn defendant company to pay the sum of €4,776.23c as indicated in its Notice of Claim which sum represents the balance from a larger amount representing "*materjali fornuti u servizzi ezegwiti mis-socjetà rikorrenti lis-socjetà konvenuta*" as detailed in the statement attached thereto which lists, among other things, the provision of goods and services (see *fol*. 2) and as also evidenced from the Method Statement exhibited by plaintiff company (see *fol*. 27) which indicates the supply of material for the eventual execution of the works, consisting, as said earlier, "*to carry out specialised flooring works and coating in resin of the floor of the AFM Hangar at the Malta International Airport.*" (see *fol*. 13).

Therefore, this is really the prescriptive period that applies to the case at hand – namely the two-year period envisaged under Art. 2149(a) – since plaintiff company was engaged by defendant company to execute certain works (an *opus*) in accordance with certain prescribed instructions as listed and delineated in the contract of works of 8th

August, 2012 and in so doing plaintiff company had also provided materials as implicitly shown in the Notice of Claim and in its judicial letter dated 1st March, 2018 which also bases payment on the premise of "*materjali forniti u servizzi ezegwiti*" (see *fol.* 28).

Now, it is presumed that plaintiff company commenced carrying out the relative works contemplated in the 8th August, 2012 agreement almost immediately. This is inferred from the fact that on the 18th October, 2012 plaintiff company already had issued an invoice to demand compensation for «Goods/Services» in the amount of €12,132.03 (*fol.* 2), which amount was duly settled by defendant company as held by plaintiff company's director, Branko Radojevic, in his affidavit (see para. §4 at *fol.* 13). Moreover, in November, 2012 defendant company paid €25,901.00c to plaintiff company and this is also admitted by plaintiff company's director in his affidavit (*fol.* 13). From the evidence submitted, particularly the statement at *fol.* 2, it appears that plaintiff company stopped working on the project around the month of December, 2012 and that defendant company had paid €9,751.00c on account on the 14th December, 2012 (see *fol.* 2 and also *fol.* 62). This was the last payment effected by defendant company.

Thus, it is from the month of December, 2012, particularly from the 15th December, 2012, that the two-year prescriptive period applies. This is so for two reasons:

(a) as stated under Art. 2134 of the Civil Code, "*Prescription is also interrupted by a payment on account of the debt, made by the debtor himself or by a person acting in his behalf.*" Therefore, at that stage, by means of the payment on account of the sum of €9,751.00c defendant company interrupted (and not suspended) any prescriptive period that had already elapsed, which also signifies that the applicable prescriptive period commenced anew as recognised under Art. 2136 of the Civil Code.[4]

(b) as stated under Art. 2137 of the Civil Code, "*the prescription of an action commences to run from the day on which such action can be exercised,*

[4] It is important to note that the said payment of account of the sum of €9,751.00c does not affect the entire claim of plaintiff company but is limited to that particular payment made on the 14th December, 2012. In fact, as held *in re* **Joseph Ronald Galea pro et noe v. Uniservices Limited** (First Hall, Civil Court, 30th March, 2001), "*Meta hallset fis-7 ta' Novembru 1997, izda, il-konvenuta ma kinitx qieghda thallas akkont tad-dejn kollu mitlub fic-citazzjoni; kienet qieghda thallas biss akkont ta' dejn partikolari li ma hix qieghda tichad li ghandha taghti. Ghalhekk, il-hlas ma jistax jitqies bhala gharfien tad-dejn kollu, u bhala ksur tal-preskrizzjoni tad-dejn kollu, izda biss ta' dik il-parti li l-konvenuta espressament qieghda tistqarr li tassew ghandha taghti*."

irrespective of the state or condition of the person to whom the action is competent." This is a legislative reflection of the legal maxim of "actio nata".[5]

Therefore, plaintiff company's right to demand payment of any balance due commenced anew on the 15th December, 2012. Plaintiff company filed the present proceedings on 14th June, 2018 but previously it had filed a judicial letter on the 1st March, 2018 (see *fol*. 28 or *fol*. 45) which was notified to the defendant company on the 6th March, 2018 (see *tergo* of *fol*. 28 or of *fol*. 45). It results, therefore, that the said judicial letter was filed and notified manifestly after the lapse of the two-year applicable prescriptive period (almost five years and two months). This means that plaintiff company's present claim is time barred as stated under paragraph (a) of Art. 2149 of the Civil Code.

For obvious reasons, and in the light of the above considerations, any argument relative to the credit note dated 11th October, 2017 exhibited by plaintiff company (see *fol*. 64) is, in the circumstances, immaterial.

As to the meetings and discussions held in 2017 between the parties as mentioned by the director of plaintiff company, Branko Radojevic, in the sitting of the 6th February, 2019, the same were held on a «without prejudice basis». As stated *in re* **Martin Mizzi v. Joseph Camilleri** (Inferior Appeal, 20th October, 2004), "*L-offerti li jsiru in linea ta' transazzjoni ma ghandhomx l-effikacja ta' rikonoxximent tad-dejn, ghaliex proposti simili jsiru minghajr pregudizzju tad-drittijiet rispettivi tal-kontendenti. In-negozjati jew trattivi li jsiru bejn iz-zewg kontraenti waqt id-dekors taz-zmien biex jirrangaw jew jirrizolvu l-kwestjoni ma jistghax ikollhom effikacja interruttiva. Wiehed ma jkunx qed jammetti d-debitu tieghu jekk huwa jghid jew juri li huwa lest li jelimina l-kwistjonijiet reciproci b'xi transazzjoni jew b'mod bonarju. Huwa notorju li t-trattattivi li jsiru bejn il-partijiet biex tigi esplorata l-possibilita` ta' xi ftehim huma dejjem minghajr pregudizzju*." Moreover, as rightly asserted *in re* **Josephine Micallef v. Louis Zammit et** (First Hall, Civil Court, 28th April, 2004), "*Il-fatt li jkunu saru diversi laqghat bejn il-partijiet bil-ghan li l-vertenza tigi rizolta ma jfissirx li b'daqshekk il-preskrizzjoni giet interrotta ghaliex tali rinunzja da parti tal-konvenut trid tkun cara. Barra minn hekk jekk jigi argumentat dan, il-partijiet ikunu propensi ma jaghmlux laqghat simili minhabba l-biza li jkunu qed jirrinunzjaw ghall-preskrizzjoni u laqghat simili jsiru dejjem minghajr pregudizzju ghad-drittijiet tal-partijiet*."

[5] On this matter see this Tribunal's decision *in re* **Mario Farrugia v. Jonathan Pellegrini** decided on the 31st October, 2019 [ref. no. 356/2016].

Having established that plaintiff company's action is time barred as *per* paragraph (a) of Art. 2149 of the Civil Code, it becomes superfluous for this Tribunal to examine the other plea of defendant company relative to the prescription of the action under paragraph (f) of Art. 2156 of the Civil Code (i.e., the five-year prescription). It also becomes redundant and unnecessary to delve into the merits of the case since the action is being declared time barred.

Therefore, this Tribunal, in the light of the above stated considerations and consistently with the same, decides this case, in the first place by rejecting defendant company's plea of prescription as *per* Art. 2148(a) of the Civil Code, but accepts and upholds defendant company's plea of prescription on the basis of Art. 2149(a) of the Civil Code and, as a corollary, declares plaintiff company's action time barred.

The judicial costs connected with these proceedings are to be entirely borne by plaintiff company.

sgnd. **ADV. DR. KEVIN CAMILLERI XUEREB**
Adjudicator

sgnd. **ADRIAN PACE**
Deputy Registrar