



MALTA

**Court of Magistrates (Malta)
Magistrate
Dr. Gabriella Vella B.A., LL.D.**

Application No. 93/11VG

Simon Estates (Naxxar) Limited

Vs

Jose Manuel Da Silva and Stella Maris Da Silva

Today, 20th February 2020

The Court,

After having taken cognisance of the Application filed by Simon Estates (Naxxar) Limited on the 22nd March 2011 by means of which it requests the Court to condemn Jose Manuel Da Silva and Stella Maris Da Silva, *in solidum* between them, to pay it the total sum of ten thousand nine hundred eighty euros and ninety cents (€10,980.90), consisting of the sum of nine thousand three hundred and five euros and eighty five cents (€9,305.85) representing agency commission pertinent to the sale of the premises No.28 “Old Mill” in Garden Street, Naxxar, and of the sum of one thousand six hundred seventy five euros and five cents (€1,675.05) representing VAT, and this in terms of the private writing dated 11th February 2008, with interests from the date of filing of the Application and with costs, including those pertinent to the Garnishee Order in the names “Simon Estates (Naxxar) Limited v. Jose Manuel Dal Silva et” filed contemporaneously with the Application, against Jose Manuel Da Silva and Stella Maris Da Silva;

After having taken cognisance of the Reply by the Defendants by means of which they object to the Plaintiff Company’s claim and plead that the same be rejected, with costs against the Plaintiff Company, on the following grounds: (i) the action by the Plaintiff Company is time-barred in terms of Section 2148(e) of the Civil Code; (ii) the claims by the Plaintiff Company are unfounded in fact and at law; (iii) no agency commission is due by them to the Plaintiff Company since their agreement with the Company was not a sole agency agreement and therefore other estate agencies were entrusted with the sale of their premises and in fact the premises was sold through the services of one such other estate agency; (iv) the Plaintiff Company is not entitled to any agency commission since it was not the estate agency which led to the conclusion of the sale of their premises; (v) the Plaintiff Company’s claim is excessive since the price for

which their premises were sold was far lower than that claimed by the said Plaintiff Company;

After having heard testimony by Simon Debono during the sittings held on the 14th November 2011¹, 5th March 2012² and on the 21st January 2014³ and after having taken cognisance of the documents marked Dok. “SD1” to Dok. “SD9” submitted by Simon Debono at folios 13 to 28 of the records of the proceedings, after having heard testimony by John Degiorgio during the sitting held on the 17th January 2012⁴ and after having taken cognisance of the documents marked Doc. “SD10” to Doc. “SD12” submitted by the Plaintiff Company by means of a Note filed on the 11th June 2012 at folios 42 to 48 of the records of the proceedings, after having heard testimony by the Defendant Jose Manuel Da Silva during the sittings held on the 18th February 2013⁵, 24th June 2013⁶ and on the 6th October 2014⁷ and after taking cognisance of the document submitted by him at folios 53 to 60 of the records of the proceedings, after having heard testimony by the Defendant Stella Maris Da Silva during the sitting held on the 15th April 2013⁸ and testimony by Christian Micallef during the sitting held on the 22nd July 2014⁹;

After having taken cognisance of the Note of Submissions by the Plaintiff Company at folios 104 to 112 of the records of the proceedings and after having taken cognisance of the Reply by the Defendants at folios 117 to 123 of the records of the proceedings;

After having heard final oral submissions;

After having taken cognisance of all the records of the proceedings;

Considers:

By means of these proceedings the Plaintiff Company requests that the Defendants be condemned, *in solidum* between them, to pay it the total sum of €10,980.90, consisting of the sum of €9,305.85 representing agency commission pertinent to the sale of the premises No.28 “Old Mill” in Garden Street, Naxxar, and of the sum of €1,675.05 representing VAT, and this in terms of the private writing dated 11th February 2008. The Defendants object to the claims by the Plaintiff Company and plead that the same be rejected on the grounds that: (i) the action by the Plaintiff Company is time-barred in terms of Section 2148(e) of the Civil Code; (ii) the claims by the Plaintiff Company are unfounded in fact and at law; (iii) no agency commission is due by them to the Plaintiff Company since their agreement with the Plaintiff Company was not a sole agency agreement and therefore other estate agencies were entrusted with the sale of their premises and in fact the premises were sold through the services of one such other estate agency; (iv) the Plaintiff Company is not entitled

¹ Folio 29 to 31 of the records of the proceedings.

² Folio 38 and 40 of the records of the proceedings.

³ Folio 82 to 87 of the proceedings.

⁴ Folio 33 to 36 of the records of the proceedings.

⁵ Folio 61 to 65 of the records of the proceedings.

⁶ Folio 72 and 73 of the records of the proceedings.

⁷ Fol. 97 to 101 of the records of the proceedings.

⁸ Folio 67 to 70 of the records of the proceedings.

⁹ Folio 91 to 95 of the records of the proceedings.

to any agency commission since it was not the estate agency which led to the conclusion of the sale of their premises; and (v) the Plaintiff Company's claim is excessive since the price for which their premises were sold was far lower than that claimed by the said Plaintiff Company.

The Court is of the opinion that the first issue which must be dealt with is the preliminary plea raised by the Defendants to the effect that the action by the Plaintiff Company is time-barred in terms of Section 2148(e) of the Civil Code, Chapter 16 of the Laws of Malta. The said section of the law provides that actions of brokers for brokerage fees are barred by the lapse of eighteen months. In terms of local jurisprudence this prescriptive period starts to run from the date when the final deed of sale is published and therefore the action for payment brokerage fees must be instituted within eighteen months from such date¹⁰.

From the records of the proceedings and from evidence submitted by the parties it transpires that the deed of sale by virtue of which the Defendants sold their premises No.28 "Old Mill" in Garden Street, Naxxar, was published on the **6th August 2009**¹¹ and the Plaintiff Company instituted the present action against the Defendants on the **22nd March 2011**¹². Even though these proceedings were instituted after the lapse of eighteen months from the date of the final deed of sale, the Court deems that it cannot uphold the preliminary plea raised by the Defendants in terms of Section 2148(e) of Chapter 16 of the Laws of Malta since by virtue of their fifth plea, being a plea on the merits, they plead that the claim by the Plaintiff Company is excessive since the price for which their premises were sold was lower than that claimed by the said Company. Such a plea is clearly incompatible with the plea that the Plaintiff Company's action is time-barred since in itself it constitutes an acknowledgment on the part of the Defendants of the Plaintiff Company's claim to a credit against them.

This observation is founded on the principle, various times referred to in local jurisprudence, that *fejn debitur ma jicħadx id-dejn imma semplicement jikkontesta il-quantum ta' l-ammont dovut allegat mill-kreditur, id-debitur ikun qiegħed jinterrompi u tačitament jirrinunzja għall-preskrizzjoni li tkun qed tiddekorri. ... La rinunzia tacita della prescrizione onda il debitore, senza negare di essere tale, si limita a discutere o impugnare l'ammontare dovuto e l'espressione come è stata usata dal convenuto (li ma kellux jagħti daqshekk), dimostra che egli ammetteva di essere debitore verso l'attore o non riconosceva come esatta la somma di costui pretesa (Vol. XXVL.I.441)*¹³.

In the light of the above the Court deems that the action by the Plaintiff Company is not time-barred in terms of Section 2148(e) of Chapter 16 of the Laws of Malta and therefore the preliminary plea raised by the Defendants cannot be upheld but must be rejected.

¹⁰ K.B. Real Estate Limited v. P&JC Company Limited, Writ No. 2329/96 delivered by the Civil Court First Hall on the 9th January 2004.

¹¹ Folio 17 to 24 of the records of the proceedings.

¹² Folio 1 of the records of the proceedings.

¹³ Victor Calleja noe v. Nazzareno Vassallo noe, delivered by the Court of Appeal on the 5th October 1998 Vol. LXXXII.II.620; Pace Associates Limited v. Drawing Techniques Limited, Appeal No. 148/03 delivered by the Court of Appeal (Inferior Jurisdiction) on the 7th December 2005.

Having dealt with the preliminary plea raised by the Defendants, the Court shall now proceed to deal with the merits of the action by the Plaintiff Company in the light of further pleas raised by the Defendants.

From evidence put forth by the parties there result the following facts:

- The Defendants were the owners of a maisonette No. 28 “Old Mill” in Garden Street, Naxxar¹⁴;
- In the year 2007 the Defendants put up their home for sale and this by they themselves putting up a “For Sale” sign and also listing the property with a number of estate agencies¹⁵;
- On the 11th February 2008, the Defendants entered into an open agency agreement with the Plaintiff Company pertinent to the sale of the above-mentioned maisonette¹⁶;
- The asking price listed with the Plaintiff Company was for the sum of Lm89,000 and the Defendants agreed that in the event of a willing purchaser/lessee being introduced to the property or Customer by the Company, commission on the selling/leasing price including movable or goodwill is due by the Customer, as per commission Schedule [in this particular case a 5% commission on the selling price] is payable on final contract. The Customer binds him/herself by the General Provisions (1 to 7 at the bottom of this agreement);
- Around the 4th August 2008, Christian and Dulcinea Micallef contacted the Plaintiff Company to enquire about any properties listed with it for sale. John Degiorgio, engaged by the Plaintiff Company, showed a number of properties to Christian and Dulcinea Micallef in the Mosta/Naxxar area, amongst which there was the Defendant’s maisonette¹⁷;
- Christian and Dulcinea Micallef showed great interest in the Defendant’s property and viewed the same twice, once on the 6th August 2008 and again on the 7th August 2008¹⁸;
- Initial discussions as to the price were held and the same was capped, inclusive of certain movable items, at Lm85,000, with Lm81,000 being paid directly to the Defendants¹⁹;
- Before proceeding further and committing themselves to the purchase of the maisonette, Christian and Dulcinea Micallef wanted to confirm availability of a bank loan and also wanted assurances regarding permits on property underlying the Defendant’s property;
- On the 11th August 2008 Christian and Dulcinea Micallef informed John Degiorgio for Plaintiff Company that they weren’t able to obtain financing for the purchase of the property at the price asked for by the Defendants and that they were directed by the Bank to opt for property in shell form rather than in a finished state²⁰;

¹⁴ Testimony by the Defendant Jose Manuel Da Silva during the sitting held on the 18th February 2013, folio 61 to 65 of the records of the proceedings.

¹⁵ *Ibid.*

¹⁶ Folio 13 of the records of the proceedings.

¹⁷ Testimony by John Degiorgio during the sitting held on the 17th January 2012, fol. 33 to 36 of the records of the proceedings and also documents marked Doc. “SD10” to Doc. “SD12” a folios 42 to 48 of the records of the proceedings.

¹⁸ *Ibid.*

¹⁹ Testimony by John Degiorgio during the sitting held on the 17th January 2012, fol. 33 to 36 of the records of the proceedings and also documents marked Doc. “SD10” to Doc. “SD12” a folios 42 to 48 of the records of the proceedings.

²⁰ *Ibid.*

- The Defendants were informed about all this by John Degiorgio²¹;
- Meanwhile John Degiorgio on behalf of Plaintiff Company took Christian and Dulcinea Micallef to view properties in shell form²²;
- After several months, namely in June 2009 the Defendants contacted Plaintiff Company to inform them to remove their premises from their listings since the same was sold²³;
- By virtue of a deed of sale in the records of Notary Dr. Katya Bezzina dated 6th August 2009, the Defendants sold the maisonette No.28, Old Mill, Garden Street, Naxxar, including certain movable items, to Christian and Dulcinea Micallef for the price of €186,117, equivalent to Lm79,900²⁴;
- Christian and Dulcinea Micallef were the same persons whom John Degiorgio on behalf of the Plaintiff Company had introduced to the Defendants and with whom discussions concerning the sale of the property were held until the same fell through when Christian and Dulcinea Micallef did not manage to obtain financing for the purchase of the property;
- Once the Plaintiff Company found out that Christian and Dulcinea Micallef purchased the Defendants' property, it claimed payment from the Defendants of the agency commission due to it in terms of the Agency Agreement dated 11th February 2008, amounting to €9,305.85²⁵, together with a further €1,675.05²⁶ representing VAT²⁷;
- The Defendants refused to pay this amount since *the sale of this indicated premises was not done through your intervention and besides you did not enjoy the exclusivity to sell the premises that belonged to my clients. Other agents also enjoyed the same privilege to bring promising buyers as in fact did. They were also exposed signs with the building that the property was for sale*²⁸;
- The Plaintiff Company proceeded to institute these proceedings against the Defendants by means of which it is insisting on and requesting payment from them of the agency commission and Vat amounting in total to €10,980.90, due to it in terms of the Agency Agreement dated 11th February 2008.

It is an established principle at law that the right to payment of an agency commission does not automatically arise simply because it is shown that the sale of the property concerned ultimately went through and was concluded. It is established by local jurisprudence that an agency commission is due only when the agent claiming payment proves to the satisfaction of the Court that he was material to the ultimate agreement reached, both in so far as concerns the substantial and incidental elements, between the contracting parties.

This observation is founded on the principle various times referred to by local jurisprudence that: *huwa ferm logiku illi l-intitolat għall-kummissjoni ma tiskattax awtomatikament għax sempliċement jiġi dimostrati illi l-ftehim negozjali ġie*

²¹ Doc. "JD1" at folios 53 to 58 of the records of the proceedings.

²² Testimony by John Degiorgio during the sitting held on the 17th January 2012.

²³ Testimony by the Defendant Jose Manuel Da Silva given during the sitting held on the 18th February 2013, folio 61 to 65 of the records of the proceedings and Doc. "JD1" at folios 53 to 58 of the records of the proceedings.

²⁴ Folio 17 to 24 of the records of the proceedings.

²⁵ 5% of €186,117.

²⁶ 18% of €9,305.85.

²⁷ Letter dated 21st June 2010, folio 27 of the records of the proceedings.

²⁸ Letter dated 13th July 2010, folio 28 of the records of the proceedings.

finalizzat. Kif tgħallem il-ġurisprudenza, biex medjatur ikollu dritt għal senserija jew il-kummissjoni appattwita hu jeħtiegħ juri għas-sodisfazzjon tal-Qorti illi kien hu li wassal il-partijiet għall-ftehim definittiv fuq il-kondizzjonijiet kollha sostanzjali u aċċidentali, ta' l-operazzjoni²⁹. In fact for an agency commission to be due the following three elements must all subsist together: (1) illi il-konklużjoni tan-negozju prospettat; (2) illi l-intromissjoni tas-sensar tkun giet rikjesta jew almenu aċċettata miż-żewġ kontraenti; u (3) illi l-attività tas-sensal tkun wasslet lill-partijiet għal in idem placitum consensus. Fin-nuqqas ta' wieħed minn dawn l-ingredjenti ma tistax tiġi sostnuta talba għal ħlas ta' senserija, imma jista' biss 'per equipollens' jingħata kumpens għax-xogħol magħmul, fuq il-massima legali li omnia labor optat premium. ... Jekk is-sensal ikun ikkonċilja l-partijiet dwar is-sostanzjali w aċċidentali ta' l-operazzjoni, b'mod li n-negozju ġuridiku jiġi konkjuż, allura, jekk ix-xogħol tiegħu ma jkunx koronat bl-esekuzzjoni effettiva għal xi raġuni, li ma tkunx it-tort jew il-fatt tiegħu, hu għandu dejjem dritt għall-ħlas, iżda mhux għas-senserija piena, imma għal kumpens in baži għal mandat jew lokazzjoni d'opera fissabbli diskrezzjonalment mill-Qorti. ... Fejn imbagħad ma sseħħx il-vera u proprja senserija t-temperament tal-kumpens, introdott fil-ġurisprudenza lokali, biex isehh jrid jippresupponi inkarigu espress jew taċitu, u xi xogħol u mhux li bniedem semplicement jagħti informazzjoni bla ma jagħmel xejn aktar, cioè bla ma jadopera ruħu bl-ebda mod ieħor³⁰.

As already observed above, from the evidence submitted by the parties it clearly results that even though it was John Degiorgio on behalf of the Plaintiff Company who in 2008 first introduced Christian and Dulcinea Micallef to the Defendants and their property, and that through his services two viewings of the property were held and the parties discussed the purchase price between them, no promise of sale agreement was entered into, let alone a final deed of sale, because Christian and Dulcinea Micallef hadn't managed to secure a bank loan for the purchase of the property. The property was ultimately purchased by Christian and Dulcinea Micallef from the Defendants about a year later through the intervention of another estate agent, a certain Gilbert Mock, for the price of Lm79,900 (€186,117), which included certain furniture.

The issue which much must therefore be determined by the Court in this case is whether in such circumstances the Plaintiff Company is entitled to any form of compensation. In this regard the Court refers to the judgement in the names **Joe Attard v. Anthony Bonanno et, Appeal No. 2674/02** delivered by the Court of Appeal (Inferior Jurisdiction) on the 9th February 2005, wherein the said Court in answer to the observation *ma jinsabx disputat illi l-kuntratt finali tal-bejgħ ma sarx bl-intervent ta' l-attur iżda bl-involvement ta' l-agenzija suddetta. Għandu dan però jeskludi lill-attur mid-dritt tas-senserija, jew aħjar tal-ħlas tal-medjazzjoni għall-attività minnu kompjuta?* reiterated that: *hi ġurisprudenza paċifika illi f'każ li sensal ilaqqat lill-partijiet u jiġi diskuss u jsir il-ftehim, u dan għal xi raġuni jew oħra, mhux tort tas-sensal, ma jiġix eżegwit u t-trasferiment ma jsirx, mhix dovuta provviżjoni għal medjazzjoni vera u proprja imma fil-każijiet kongruwi meta dan*

²⁹ Anthony Degiorgio v. Stephen Degiorgio, Appeal No. 110/03, delivered by the Court of Appeal (Inferior Jurisdiction) on the 23rd November 2005.

³⁰ Legend Real Estate Limited v. Paul Pisani, Writ No. 781/01 delivered by the Civil Court, First Hall on the 29th October 2004 and confirmed by the Court of Appeal on the 25th May 2007.

ikun ġustifikat fil-fattispeċje jista' jkun dovut kumpens li jiġi f'fissat mill-Qorti arbitrio boni viri, u in bazi għaċ-ċirkostanzi kollha tal-każ għall-opra minnu prestata, u ġie wkoll ritenut, għalkemm mhux f'bosta każijiet, li l-ammont ta' kumpens hekk likwidabbli jista' f'ċerti każi partikolari jasal ukoll għall-ekwivalenza tas-somma li kienet tkun dovuta bhala senserija vera u propria and ultimately concluded that: jinsab deċiż ukoll illi 'is-sensal għandu dritt għall-kumpens tax-xogħol li jagħmel ukoll jekk in-negozju jitkompla u jiġi mitmum minn sensal ieħor fuq l-istess bazi bejn wieħed u ieħor'. Din tidher li hi wkoll il-fehma tal-Qorti Taljana ta' Kassazzjoni (Nru.2136, 25 ta' Frar 2000): "Il diritto del mediatore alla provvigione sorge quando la conclusione dell'affare sia in rapporto causale con l'opera dallo stesso svolta, senza che sia necessario il suo intervento in tutte le fasi delle trattative, fino all'accordo definitivo, con la conseguenza che anche la semplice attività consistente nel reperimento e nell'indicazione dell'altro contraente, o nella segnalazione dell'affare, legittima il diritto alla provvigione, sempre che la descritta attività costituisce il risultato utile di una ricerca fatta dal mediatore, poi valorizzata dalle parti. Nè, una volta concluso l'affare, assume rilevanza, sotto il profilo della incidenza sulla efficienza causale esclusiva o concorrente dell'opera di detto mediatore, la assoluta identità delle condizioni alle quali la trattativa sia stata portata a termine solo successivamente, e con l'intervento di altro mediatore, non essendo un unico elemento di parziale differenziazione, da solo, idoneo ad interrompere il nesso eziologico tra l'attività originariamente svolta dal soggetto che per primo aveva messo le parti in relazione tra loro e l'affare tra le stesso concluso.

The above quoted principles clearly show that the Defendants' plea that no payment is due to the Plaintiff Company because their agreement with the said company was an open agency agreement, thus allowing other estate agents and also themselves to market the property for sale, is totally unfounded and cannot be upheld. Even though the deal between the Defendants and Christian and Dulcinea Micallef was concluded through the intervention and services of another estate agent, the Plaintiff Company could very well be entitled to compensation - as opposed to full agency commission - for services rendered if it manages to satisfactorily prove that its services did indeed aid or somehow facilitate negotiations between the contracting parties.

In this regard the Court also makes reference to the judgement in the names **Joseph Galea et v. Sebastian Briffa et, Writ No. 684/98** delivered by the Civil Court, First Hall on the 15th October 2002, wherein the said Court stated and observed that: *fil-fehma tal-Qorti, il-fatt illi l-konvenuti qabdu aktar minn sensal wieħed ma jfissirx bilfors illi s-senserija għandha tinqasam bejn is-sensala kollha fis-sens illi l-konvenuti ma jkollhom iħallsu aktar minn tnejn fil-mija (2%) tal-prezz b'kollox, għax jista' jkun illi lil sensal minnhom tkun tmiss is-senserija kollha u lil ieħor ikun imiss kumpens għas-servizzi jekk mhux senserija għax ma jkunx hu li jkun wassalhom għal ftehim għalkemm ikun għamlilhom serviġi li jkunu jiswewlhom.* The Court points out that even though this judgement dealt with brokerage fees in terms of Section 1362 of Chapter 16 of the Laws of Malta, the principles set out therein apply also in the case of agency commissions.

In the light of all the above, the Court is of the opinion that in this case the Plaintiff Company, whilst not entitled to an agency commission of 5% of the selling price as

set out in the Agency Agreement dated 11th February 2008, it is still entitled to compensation for services rendered to the Defendants. The Court deems that the introduction by John Degiorgio on behalf of the Plaintiff Company of Christian and Dulcinea Micallef to the Defendants and their premises and also discussions held at the time of viewing of the premises, particularly during the second viewing when the purchase price was discussed too, undoubtedly helped when several months later the parties met again and negotiated the terms for the sale of the premises. From testimony by Christian Micallef it clearly results that he and Dulcinea Micallef had immediately liked the Defendants' property when they went to view it with John Degiorgio and they were very much interested in purchasing it, an interest which however did not materialise into something more concrete due to the fact that at the time they hadn't secured financing from the bank. What they saw and liked during their viewings with John Degiorgio indeed prompted Christian and Dulcinea Micallef to view the property again when they were taken there by a different estate agent, which subsequent viewing ultimately led to the purchase by them of the said property.

For the purposes of determining the compensation due to the Plaintiff Company the Court once again makes reference to the above-mentioned judgement in the names **Attard v. Bonanno**, wherein the Court of Appeal (Inferior Jurisdiction) stated and observed the following: *x'għandu jkun l-entità tal-kumpens f'kazijiet analogi għal dak appena ravviżat?* (when the final deed is concluded through the intervention of an estate agent who was not the same agent who had originally introduced that parties to each other and led to the start of discussions between them) *It-Tribunal sab fuq l-apprezzament tiegħu tas-servizzi reżi mill-attur u tal-valur tal-proprjetà illi bil-ħlas ta' mija u ħamin lira l-attur irċieva kumpens xieraq. Dan l-apprezzament mhux kondiviz minn din il-Qorti. Dan mhux biss b'riflessjoni tal-ġurisprudenza lokali w estera fuq citata iżda wkoll, kif awtorevolment affermat fis-sentenza a Vol. XL PI p463 illi "hu ċert li ma jkunx ekwu jekk jitqies biss it-taħbit materjali tad-domandant". F'din l-istess sentenza fl-ismijiet "Carmelo Bezzina v. Carmelo Debono et" Appell Kummerċjali 9 ta' Jannar 1956, issokta jiġi enunċjat illi "hu aktar ġust li jitqiesu ċ-ċirkostanzi kollha tal-każ"... inter alia, fir-regolament tal-kumpens, l-entità ta' l-operazzjoni ... ossija "l-importanza tal-kuntratt li għalih ħadem is-sensal". Element ieħor hu l-istadju, avanzat jew le, li fih ikunu waslu l-operazzjonijiet attinenti għan-negozju de quo. Għandu koll jittieħed in konsiderazzjoni l-fatt (fil-każ li jkun hekk) li n-negozju ma jkunx sfratta bi ħtija tas-sensal.*

When all the above-mentioned elements are considered in the light of the circumstances of this case, and these as already set out above, the Court deems that for services rendered by the Plaintiff Company to the Defendants in relation to the sale of the maisonette No.28 "Old Mill" Garden Street, Naxxar, the said Plaintiff Company is entitled to a compensation of **€2,000**. Together with this amount the Defendants must also pay the further sum of **€360** representing VAT.

For the above reasons the Court decides and determines that:

1. The preliminary plea raised by the Defendants in terms of Section 2148(e) of Chapter 16 of the Laws of Malta is unfounded and therefore whilst declaring that

the action by the Plaintiff Company is not time-barred by the lapse of eighteen months, rejects the said preliminary plea;

2. In so far as concerns the merits of the case, whilst declaring that the Plaintiff Company is not entitled to payment of the agency commission in terms of the Agency Agreement dated 11th February 2008, and therefore upholds the Defendants' pleas to this effect, declares that the Plaintiff Company is however entitled to compensation for services rendered to the Defendants in connection with the sale of the maisonette No.28, "Old Mill", Garden Street, Naxxar, thus rejecting the Defendants' pleas to the effect that absolutely no payment is due to the Plaintiff Company;
3. The compensation due by the Defendants to the Plaintiff Company for services rendered in connection with the sale of the maisonette No.28, "Old Mill", Garden Street, Naxxar, is being liquidated in the total sum of €2,360, inclusive of VAT; and consequently
4. Upholds the Plaintiff Company's claim only up to the amount of €2,360 and condemns the Defendants, *in solidum* between them, to pay the Plaintiff Company the total sum of €2,360, with interests running from date of this judgement till the date of payment.

The costs pertinent to these proceedings and to the precautionary Garnishee Order in the names "Simon Estates (Naxxar) Limited v. Jose Manuel Da Silva et" are to be borne as to 4/5 by the Plaintiff Company and 1/5 by the Defendants.

MAGISTRATE

DEPUTY REGISTRAR