Court Of Appeal

Judges

THE HON. CHIEF JUSTICE JOSEPH AZZOPARDI
THE HON. MR. JUSTICE JOSEPH R MICALLEF
THE HON. MR JUSTICE TONIO MALLIA

Sitting of Friday, 27th March, 2020.

Number: 30

Application Number: 1078/11 SM

Irina Sedova

v.

Pavel Eliashevich

The Court:

Having seen the sworn application brought forward by the plaintiff, Irina Sedova,

on the 2nd November, 2011, whereby it was claimed that:

> "1. That the parties in this case had agreed to do business together where part of this business consisted in that the company Ruspel Company Limited of which the applicant is a shareholder and a director takes the necessary funding so that she can enter into this business;

"2. That after various transactions between the parties, inter alia, transfer of money, the parties came to an agreement as per the public deed in the acts of Notary Public E. Farrugia dated 22-9-2010 (Dok. 'EF1') where the applicant in her personal capacity declared that before the publication of such deed she had received the sum of two hundred and thirty thousand Euro (EUR230,000) from the defendant without interest;

"3. That despite such declaration from the applicant's part, she had entered into such an agreement with the defendant in good faith and that subsequently it resulted that the bank transfers made by the defendant in the account of the company Ruspel Company Limited did not amount to the sum indicated in such public deed but the resulting sum was of one hundred and seventy five thousand Euro (Eur 175,000) and this can be proven by documentary evidence relating to the bank transfers and which will also be proven by the same applicant during the hearing of the case;

"4. That as a result of this the applicant immediately made it clear to the defendant that she was ready to pay him the amount of one hundred and seventy five thousand Euro (EUR 175,000) without interest as that was the sum which was still due and not that indicated in the above mentioned public deed;

"5. That the defendant did not accept this and filed a judicial letter (Dok. 'EF2') to render his claim by means of executive title according to Art 256(2) of Chapter 12 of the Laws of Malta when he knew well enough that the money due to him and the money that he effectively transferred to the applicant was of a lesser amount;

"6. That the applicant answered to such a judicial letter by the defendant by means of a judicial letter dated 16th of February 2011 (Dok. 'EF3');

"7. That notwithstanding such a reply, the defendant continued with a blatant violation of the procedure by attempting to execute a garnishee order (Dok 'EF4') and also a warrant of seizure (Dok EF5) against the application for the amount of two hundred and thirty thousand Euro (EUR230,000);

"8. That apart from this, the applicant was sued in Russia by the same defendant for the amount of one hundred and seventy five thousand (EUR175,000) when here in Malta, as resulting from the judicial acts submitted by him, he is requesting the sum of two hundred and thirty thousand Euro (EUR230,000) (vide Dok 'EF6' till 'EF8') and when at the same time the defendant submitted the garnishee order above-indicated in Malta for the sum of two hundred and thirty thousand Euro (EUR230,000);

"9. That for this reason the applicant had no other option but to file the present case;

"Therefore the applicant respectfully requests that this Honorable Court:

"1. Revokes the executive title obtained by the defendant by means of the judicial letter dated 7-2-2011
"2. Revoked any judicial act and warrant obtained by the same defendant subsequent to the judicial letter;
"3. Declares that the applicant is a debtor in respect of the defendant of the amount of one hundred and seventy five thousand Euro (EUR175,000) only and without interest;

"Saving any other order which the Court may order and the plaintiff is reserving the right for any further action for damages against the defendant."

Having seen the sworn reply brought forward by the defendant, Pavel Eliashevich, of the 14th December, 2011, whereby it was pleaded that:

"(1) That by way of a preliminary plea, it is being indicated that the action that is being brought by the plaintiff cannot be acceded to, since as such, it cannot be proposed, in the sense that it is demanding that the court '*Revokes the executive title obtained by the defendant by means of the judicial letter dated 7-2-2011*', when in fact, the executive title that has been obtained by the defendant consists of the public deed of constitution of debt, dated twenty-second (22nd) of September of the year two thousand and ten (2010) enrolled in the acts of Notary Dr. Elena Farrugia, and the judicial letter referred to by the plaintiff is a letter made, *inter alia*, in terms of Article 256(2) of Chapter 12 of the Laws of Malta, and consequently it is intended to render enforceable an executive title that would have already been obtained by the person presenting such judicial act.

"(2) That also by way of a preliminary plea, and without prejudice to the first reply, with respect to the content of the second and third premises, the plaintiff cannot, after first having entered into a public deed that has been received by a Notary Public by means of which she would have constituted herself a true, certain and liquid debtor of the defendant, attempt to go directly against that which she would have already have committed herself to, and in any case, if the plaintiff wanted to do this, she could always have put forth such action that has been provided purposely by the law.

"(3) That without premises to the above on the merits, in so far as regards the content of the first premise of the sworn application, the defendant denies strongly that he had ever reached any agreements with the plaintiff in order for them to be able to conduct some kind of business.

"(4) That in so far as regards the content of the second and third premises, the defendant denies that he advanced to the plaintiff just the sum of one

hundred and seventy-five thousand euro (€175,000), because in fact he has also forwarded to her the sum to two hundred and thirty thousand euro (€230,000) as has been agreed on the abovementioned public deed.

"(5) That with respect to the fourth premise, it is being stated that such premise is not in line with the truth and that in fact the plaintiff had not only accepted to pay the entire sum of two hundred and thirty thousand euro (€230,000) that had been advance to her, but she had also made external acts in order to give the impression that she was going to pay the amount in full, as will be proved during the hearing of the case.

"(6) That in line with the first preliminary plea, the fifth premise is totally unfounded at law, and furthermore, the defendant insists that it is not true that he advanced to the defendant even one cent less that two hundred and thirty thousand euro (€230,000) to the plaintiff, and consequently it is also factually unfounded.

"(7) That it is not true that the defendant attempted to abuse legal procedure, and this is being stated because all the measures taken by the plaintiff in order for him to safeguard his interests and enforce his rights were taken according to the dispositions of the Laws of Malta.

"(8) That the calling upon that is being referred to in the eighth (8th) premise is with respect to a loan that the defendant had previously taken from the defendant and another third party, which loan is totally different and distinct from that forming the merits of the public deed of the twenty-second (22nd) of September of the year two thousand and ten (2010) enrolled in the acts of the Notary Dr. Elena Farrugia.

"(9) That the second demand cannot be acceded to by His Honourable Court since the judicial letter dated 406/2011 was issued in terms of Article 256(2) of Chapter 12 of the Laws of Malta, consequent to a public deed of constitution of debt, which public deed is still valid and applicable, and in the present proceedings there is no demand for the revocation of such deed.

"(10) That the third demand cannot be acceded to by this Honourable Court since from the documents presented by the plaintiff with the sworn application, it is already apparent even at this stage, that the plaintiff is already a debtor of the defendant in the amount of two hundred and thirty thousand euro (€230,000) as well as a debtor of the defendant and a third party in the amount of one hundred and seventy five thousand euro (€175,000).

"(11) That the demands of the plaintiff are unfounded both in fact and at law and consequently they should not be acceded to and the plaintiff should also be condemned to pay all judicial expenses.

"(12) Saving the right to present further replies as permitted by law."

By means of a judgement dated the 12th of November, 2014, the First Hall of the Civil Court delivered its decision, by means of which the case was determined in the sense that, whereas it accepted the pleas raised by the defendant, the plaintiff's claims were rejected, in that it was held that she failed to prove her case according to law, with all costs of the proceedings to be borne by the plaintiff.

The First Court delivered its judgement after making the following considerations reproduced hereunder:

> "9.0. That the applicant's case may be duly synthesised in the following manner:
>
> "9.1. That the contending parties are family friends residing in the same building complex in St Julians;
>
> "9.2 That the defendant granted a loan to Ruspel Company Limited, of which the applicant is a director;
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> "9.3. That the contending parties started entering into commercial relationships with each other since 2009, (see folio 66);
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> "9.4. That the contending parties eventually also concluded a loan contract amongst themselves, dated the 22nd September, 2010, (see folio 6), whereby:
>
> "9.4.1. Ruspel Company Limited received from the defendant the sum of two hundred and thirty thousand Euros, (€230,000.00);
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> "9.4.2. The sum referred to in the previous paragraph was divided as follows:
>
> 9.4.2.i. One hundred and seventy five thousand Euros (€175,000.00), was owed to the defendant from a previous agreement, (see

folio 73 which is truely illeligible and cannot be relied upon);

9.4.2.ii Fifty five thousand Euros, (€55,000.00), which the defendant was to invest in the project;

"9.5. That as the applicant trusted the defendant she affirms that she had no problem in declaring that the payment involved had already been affected before the contract was finalised, (see folio 65);

"9.6. That as the business enterprise conducted in Malta was not doing well, the defendant decided to break all relationships with the applicant and started judicial proceedings against her both locally and in Russia;

"9.7. That by undertaking these proceedings the defendant is trying to make an illegtimate profit of one hundred and seventy five thousand Euros, (€175,000.00), in Russia and fifty five thousand Euros, (€55,000.00), in Malta, for a total of two hundred and thirty thousand Euros, (€230,000.00);

"9.8. That the defendant is only owed one hundred and seventy five thousand Euros, (€175,000.00), from Ruspel Company Limited, which the same said applicant declares, even on oath, that she is "willing to pay", (see folio 65 abd folio 145);

"Considers:

"10.0. That the defendant's case may be duly synthesised in the following manner:

"10.1. That the original casual acquaintance that happened to start because both parties lived within the same complex in St Julians eventually flourished into several loans, (see folio 154 – 158);

"10.2. That once the applicant's relationship with Luciano Bellia, whom she described as being her husband, was under turmoil, her financial situation suddenly deteriorated and, applicant found herself in dire need of hard cash, (see folio 157);

"10.3. That the parties agreed that the only way in which the applicant could pay the defendant all her previous loans was by entering into a public deed where all the amount due by her to the defendant would be clearly indicated, (see folio 158);

"10.4. That at this stage "... the money had already been transferred to Irina Sedova before we appeared before the Notary", (see folio 158);

"10.5. That the public deed dated the 22nd September, 2010, was only a mere reflection of the true state of affairs that then existed between the parties;

"10.6. That by means of the said deed referred to in the previous paragraph the applicant solemnly declared that she owed the defendant the amount of two hundred and thirty thousand Euros (€230,000.00), as a debt which was certain, liquidated and due, (see folio 6 and 158);

"10.7. That furthermore, the same said amount referred to in the previous paragraph was to be paid by the applicant to the defendant by the 18th January, 2011, (see folio 6 and 158);

"10.8. That applicant further assured the defendant that she had enough assets to repay the said loan, even if necessary, to cede all her rights against her now estranged husband in favour of the defendant, (see folio 158 and 159);

"10.9. That a few days before maturity, the applicant drew up five (5) cheques all dated the 18th January, 2011, together amounting to the sum of two hundred and thirty thousand Euros, (€230,000.00), (see folio 174 and 175);

"10.10. That notwithstanding that the defendant was always dealing with the applicant in her personal capacity, said cheques were issued by Ruspel Company Limited, (see folio 174 and 175);

"10.11. That when the defendant attempted to deposit the said cheques this was refused as there were no funds available, (see folio 176 and 180);

"10.12. That at this point, after the applicant had made up with her partner, she ensured the defendant that she would now pay all her dues owed to him, (see folio 159);

"10.13. That all communication between the contending parties was disrupted with the applicant seemingly even subtly hinting at some Mafia involvement in the issue to the detriment of the defendant, (see folio 159);

"10.14. That following this not so veiled threat, the defendant had no other alternative to retrieve the amount given to the applicant but to resort to judicial proceedings;

"Considers:

"11. That before entering into the merits of the case it is imperative for the court to address an issue concerning the identity of the applicant as her given identity is not so clear;

"12.0. That in this regard it is imperative to recall the following discrepancies;

"12.1. That the applicant is identified by four (4) different Italian identity card numbers namely:

"12.1.1. AR8982815 (see folio 1);

"12.1.2. 8821447 (see folio 6 and 172);

"12.1.3. AS8788086 (see folio 64);

"12.1.4. AN8821447 (see folio 118,127,128,136,138,142 and 166);

"12.2. That however as the defendant did not raise any issue in this regard, succumbed to the jurisdiction of this court and did not in any way challenge the identity of the applicant, the court declares that notwithstanding the aforementioned discrepancies, will still retain jurisdiction of the proceedings;

"Considers:

"13. That the court has before it two contrasting versions of the reality at hand together with the documents duly submitted by the very same parties involved;

"14. That these documents primarily consist of a public deed, (that dated the 22nd September, 2010, (see folio 6), and copies of the five signed cheques, (see folio 175 and 176);

"15.0. That the above mentioned documents inequivocally show and establish the following:

"15.1. That by means of said public deed – which is in itself proof of its content – the applicant is declared as debtor of the defendant to the amount therein specifically indicated, (see folio 6);

"15.2. That by means of this same said public deed, the defendant also obliged herself to pay the said amount by the 18th January, 2011, (see folio 6);

"15.3. That the applicant drew up five relative cheques with which to settle the amount due to the defendant and that when these were presented to the bank in question, they were "referred to drawer", (see folio 176 to 180);

"Considers:

"16. That furthermore, notwithstanding the present action, the applicant had assured the defendant that she would repay him the amount due, (see folio 159);

"Considers:

"17. That it is a settled principle of law that "pacta sunt servanda";

"18. That when the applicant committed herself to be a debtor to the defendant in a public deed dated the 22nd September, 2010, she was binding herself to satisfy the said obligation in terms of the conditions therein entered into;

"19. That the applicant did not submit any plausible or legally valid reason which would contribute to her dissolving the obligations she solemnly undertook to uphold by means of the said public deed;

"Considers:

"20. That although both versions of the saga that emerged seem credible, yet, the documents referred to above all militate in favour of the defendant;

"21.0. That however, the documents referred to above, namely:

"21.1. The public deed dated 22nd September, 2010, and

"21.2. The copies of the five (5) cheques addressed to the defendant and signed by the applicant, (see folio 174 and 175), both militate in favour of the defendant's thesis;

"22. That indeed, the Latin maxim referred to by the defendant in his written note of submissions that:

"contra testimonium scriptum, testimonium non scriptum non fertur",

is truely applicable in this case;

"Considers:

"23. That on the basis of the above this court is duely satisfied that the applicant did not prove her case according to law…"

Having seen the application of appeal filed by the plaintiff Irina Sedova requesting that for the reasons contained therein, this Court cancels and

revokes the judgement delivered by the First Hall Civil Court, in the names Irina Sedova v. Pavel Eliashevich of the 12th November, 2014, and consequently to uphold her appeal application, as well as the requests put forward by Irina Sedova in her case brought before the Court and this with costs against the defendant, in both instances.

Having seen the reply by the defendant Pavel Eliashevich, by means of which and for the reasons contained therein, while making a reference to all the evidence produced before the First Hall of the Civil Court and whilst reserving the right to produce all other evidence that this Court may allow him to produce in terms of the law, requested this Court to reject the appeal of the appellant and to confirm the appealed judgement, and to order that the costs of both instances be paid by the appellant.

Having seen that during the sitting of the 14th of January, 2020, it was submitted by the respective counsels, that the case can be adjourned for the purpose of this Court to deliver its judgement after taking due consideration of the parties' written pleas.

Having seen all the acts of the case and the documents exhibited thereat;

Considers:

That in this case plaintiff is seeking (i) a revocation of the executive title obtained by the defendant by means of the judicial letter dated 7th February, 2011; (ii) the revocation of any judicial act and warrant obtained by the defendant subsequent to the said judicial letter; and (iii) a declaration that the applicant is a debtor in respect of the defendant for the amount of €175,000 only and without interest; whereas she reserved the right for any further action for damages against the defendant.

On the other hand the defendant contends that the plaintiff's claims cannot be acceded to since by way of preliminary pleas, it was submitted that (a) the executive title obtained by the defendant was by virtue of a public deed of constitution of debt of the 22nd September, 2010, in the acts of Notary Elena Farrugia and the judicial letter referred to by the plaintiff served the purpose of making such executive title enforceable; and (b) the plaintiff cannot first enter into a public deed constituting herself as a true, certain and liquid debtor and then attempt to go directly against what she would have already committed herself to. The defendant also rejected the merits of the plaintiffs' demands as being unfounded both in fact and at law. He consequently submitted that, the plaintiff's demands should not be acceded to and plaintiff should be condemned to pay all judicial expenses.

The First Court upheld the defendant's pleas in that it was held that the plaintiff did not prove her case according to law and therefore rejected the plaintiff's claims, with the costs of the proceedings to be borne by the said plaintiff.

The plaintiff felt aggrieved by the decision of the First Court and filed the appeal under examination, having put forward as her main grievance the fact that the First Court interpreted the facts of the case and evaluated the evidence produced before it incorrectly. The plaintiff sustains her grievance by referring to her declaration, the documentation submitted before the Court and the final note of submissions.

Whereas the plaintiff concedes that witnesses diametrically contradicted each other on the actual transactions that effectively took place between the parties, the Court can still realize that what was declared in the deed signed before Notary Elena Farrugia, was not in accordance with the payments actually made. This is being stated in view of the documentary evidence which shows the exact money trail that confirms her version of events, as well as the transactions which were also confirmed by the representative of HSBC Bank Malta plc.

The appellant criticizes the First Court in basing its decision on the principle *"contra testimonium scriptum, testimonium non scriptum non fertur*", and argues that this principle is not absolute, as there are a number of exceptions to it. The appellant contends that this rule is not applicable whenever there is proof

explaining better the parties' intentions, which might be obscure or presented ambiguously or whenever there is an explanation to an incidental matter to be reconciled with the act. She insists on having given a clear explanation of the actual transaction and how it took place in different stages, which explanation was always confirmed by bank representatives and the documents presented.

Appellant contends that she had trusted the defendant completely, which trust was the reason why she appeared before the Notary and declared that she had received the sum of €230,000, when in fact she had not received such an amount. She argues that defendant broke this trust and betrayed her once he filed a garnishee order against her for €230,000, when in fact she owed €175,000. Subsequently he filed another judicial letter for €175,000. Appellant submits that defendant deceived her and wants to make a non-legitimate profit.

Citing case-law relating to the credibility and appreciation of facts by the Courts, an adjudicating body should adopt the criterion whether an explanation given is possible, rather than believing an explanation in an absolute manner. She insists that her explanation was given in a strong and clear manner and was supported by documents presented and confirmed by relative witnesses as to why the amount declared in the deed was not in fact the amount due. Whereas she sustains that the witnesses presented by the defendant were either simply relying on what was declared in the deed in question or else rebutting without

giving plausible explanations as to why a lot of cash was passed between the parties.

The appellant concludes that she strongly feels that this Court should examine the evidence brought before the court of first instance in more depth and revise the judgement pronounced by the First Hall of the Civil Court, since there definitely exist reasons grave enough for this Court to do so.

It should be stated right from the outset that, in so far as the main grievance of the appellant is based on the alleged wrong interpretation and erroneous evaluation of the facts by the First Court, this Court, being one of review, does not disturb the assessment carried out by the First Court lightly, especially if it is deemed that the First Court could legally and reasonably come to the conclusion it reached. It has constantly been reiterated by this Court that it will only intervene, if it is convinced that the assessment carried out by the First Court is manifestly wrong and if there exist reasons which are serious enough that the conclusion reached constitutes an injustice with respect to one of the parties. (Vide for example judgement of this Court of the 28th April, 2017, in the names **Terres Co. Limited v. L-Ghajn Construction Company Limited.**) However, this Court is still duty bound to go through the evidence to see whether a proper evaluation has been carried out and whether the conclusion reached is in accordance with the law.

Whereas it is normal for judges to be confronted with contrasting views and contradictory evidence, this does not mean that such a scenario leaves them perplexed when the time comes for them to deliver their judgement, in that they rely on a number of principles which help them determine the way forward. Although the level of proof required in civil cases is of a lesser kind than that required in criminal procedures, this does not mean that a plaintiff is exonerated from bringing forward the best possible evidence. The evidence brought forward should not be conjectural or speculative in nature, but should be convincing enough to help the judge decide on the claims being made. It is in fact provided for in our law of procedure (Chapter 12 of the Laws of Malta) that the burden of proving a fact, shall, in all cases, rest on the party alleging it (Article 562) and that in all cases the court shall require the best evidence that the party may be able to produce (Article 559).

These principles are also embodied in the legal maxim *actore non probante reus absolvitur,* which has often featured in a number of judgements. In the judgement of the First Hall of the Civil Court of the 26th September, 2013, in the case **Chef Choice Limited v. Raymond Galea et**, which was also confirmed on appeal by this Court on the 27th October, 2017, it was stated:

> *"Illi l-Qorti tqis li, izda, bhalma jigri f`kazijiet bhal dawn, il-verzjonijiet tal-partijiet u ta` dawk li setghu nvoluti maghhom ikunu tabilfors mizghuda b`doza qawwija ta` apprezzament suggettiv ta` dak li jkun gara. Il-Qorti tifhem li kull parti jkollha t-tendenza li tpingi lilha nnifisha bhala l-vittma u l-parti l-ohra bhala l-hatja, u dan jghodd ukoll ghall-verzjonijiet li jaghtu dawk il-persuni l-ohrajn li jkunu b`xi mod involuti fl-episodju. Huwa d-dmir tal-Qorti li tgharbel minn fost dawn il-verzjonijiet kollha u minn provi indipendenti li jistghu jirrizultaw il-fatti essenzjali li*

> *jistghu jghinuha tasal biex issib x`kien li tassew gara u kif imxew l-affarijiet;*
>
> *"Illi l-Qorti tifhem li, fil-kamp civili, il-piz probatorju m`huwiex dak ta` provi lil hinn mid-dubju ragonevoli (App. Inf. PS 7.5.2010 fil-kawza fl-ismijiet Emanuel Ellul et vs Anthony Busuttil). Izda fejn ikun hemm verzjonijiet li dijametrikament ma jaqblux, u li t-tnejn jistghu jkunu plawsibbli, il-principju ghandu jkun li tkun favorita t-tezi tal-parti li kontra taghha tkun saret l-allegazzjoni (P.A. NC 28.4.2004 fil-kawza fl-ismijiet Frank Giordmaina Medici et vs William Rizzo et) Ladarba min kellu l-obbligu li jipprova dak li jallega ma jsehhlux iwettaq dan, il-parti l-ohra m`ghandhiex tbati tali nuqqas u dan bi qbil mal-principju li actore non probante reus absolvitur (P.A. LFS 18.5.2009 fil-kawza fl-ismijiet Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd. Min-naha l-ohra, mhux kull konflitt ta` prova jew kontradizzjoni ghandha twassal lil Qorti biex ma tasalx ghal decizjoni jew li jkollha ddur fuq il-principju li ghadu kemm issemma. Dan ghaliex, fil-qasam tal-azzjoni civili, l-kriterju li jwassal ghall-konvinciment tal-gudikant ghandu jkun li l-verzjoni tinstab li tkun wahda li l-Qorti tista` toqghod fuqha u li tkun tirrizulta bis-sahha ta` xi wahda mill-ghodda procedurali li l-ligi tippermetti fil-process probatorju (App. Civ. 19.6.2006 fil-kawza fl-ismijiet Emanuel Ciantar vs David Curmi noe). Fit-twettiq ta` ezercizzju bhal dak, il-Qorti hija marbuta biss li taghti motivazzjoni kongruwa li tixhed ir-ragunijiet u l-kriterju tal-hsieb li hija tkun haddmet biex tasal ghall-fehmiet taghha ta` gudizzju fuq il-kwestjoni mressqa quddiemha (App. Inf. 9.1.2008 fil-kawza fl-ismijiet Anthony Mifsud et vs Victor Calleja et)*

While the Court endorses the principles mentioned above, in applying them to the situation at hand, it finds that the appellant's case cannot succeed. It is uncontested between the parties to the lawsuit that there was a good relationship between them which started off as neighbours and later ended up with a series of loan arrangements. The appellant contends that the situation relating to the parties was not correctly reflected in the public deed of constitution of debt, in the acts of Notary Elena Farrugia of the 22nd September, 2010, and it is, therefore, up to her to bring forward the necessary evidence to sustain such a claim.

Appellant's contestation revolves around the fact that whereas the deed states that appellant constituted herself as "*debtor for the debt true certain and liquid in favour of the Creditor who accepts in the sum of two hundred and thirty thousand Euro (€230,000)*", she had in actual fact received €175,000 only. She argues that her version of events is sustained by the money trail provided by the bank. However, it is held by this Court that this trail of money is not conclusive, not only because defendant sustains that he also lent money to the plaintiff on a personal basis, by way of cash, but also because the Bank transactions are between Ruspel Company Limited and Pavel Eliashevich. The defendant also sustains that whereas previous loan arrangements were made by means of a private writing, this time round, defendant requested some form of additional security, considering that the request for this loan was in cash, which explanation is very plausible. It was the plaintiff who chose the Notary.

Moreover, the appellant under cross-examination stated that the deed was done in a short time and there wasn't time to re-examine the contract and that the money was supposed to be transferred to a company (Ruspel) implying there was a problem in translating her intentions. This matter was strongly rebutted by the notary in question, who specified that she was assisted by an interpreter in drawing up the deed, that the deed was not carried out in an abrupt manner and that she stipulated in the deed what was expressly the will of the parties, which deed was duly read to the parties appearing thereon. Thus, the evidence does not corroborate the appellant's version of events.

If anything, the evidence in the acts of the case reflect another two maxims cited by the First Court, in the sense that "*pacta sunt servanda",* that is that contracts are taken to reflect the will of the parties and that there is no room for interpretation whenever contracts are clear. Interpretation and further evidence would be relevant only in those instances where contracts are ambiguous in nature. The other relevant maxim is "*contra testimonium scriptum, testimonium non scriptum non fertur",* that is when parties to an agreement decide to incorporate their agreement into a written form, it is presumed that the parties' intentions are actually written down. This maxim was also the subject of another judgement of this Court of the 26th March, 2010, in the names **Dr. Raymond Pace nomine v. Salvatore Xuereb et.** wherein it was stated that:

> *"Kif sewwa qalet il-Prim Awla fis-sentenza hawn fuq citata d-drittijiet tal-kontraenti jirrizultaw minn dak li hemm miktub fil-kuntratt u mhux minn xi hsieb ta' parti jew ohra mill-kontraenti, u meta dak li hemm fil-kuntratt jirrizulta car mhux lecitu li l-Qorti tapplika r-regoli ta' interpretazzjoni billi dawn huma eccezzjoni ghar-regola enuncjata fl-Artikolu 1002 u cioe` li meta l-kliem ta' konvenzjoni, mehud fis-sens li ghandu skond l-uzu fiz-zmien tal-kuntratt, hu car, ma hemmx lok ghall-interpretazzjoni."*

In applying the same principles to the case at hand, it is held that the deed of constitution of debt is very clear and given its clarity there is no room for interpretation. As mentioned by the defendant in his reply, our law of procedure, by virtue of Article 629(c) of Chapter 12 of the Laws of Malta, provides that unless the contrary is proved, acts of notaries shall be taken as evidence of their content, provided their authenticity be proved. In this case there was no

contestation about the authenticity of the deed and the Court is satisfied that the contents of the deed reflected the parties' intentions.

Furthermore, as observed by the First Court, five cheques had been drawn up in favour of the defendant, (copies of which are also exhibited in the acts of the case) which in total are equivalent to the amount mentioned in the deed of constitution of debt. This fact militates in favour of the defendant, since if there truly had been a misunderstanding during the drawing up of the deed, surely the appellant would have safeguarded herself in writing out the cheques and limit them to the amount actually transferred to her.

Thus, after this Court went through the documents and evidence brought forward in this case, it finds the decision by the First Court to be rational and that there results no valid reason for it to be revoked or varied.

It is worth noting that the defendant was also correct in stating that the executive title held by him does not result from the judicial letter cited by the plaintiff, but is one in terms of Article 253(b) of Chapter 12 of the Laws of Malta and that the judicial letter served the purpose of rendering the contract of the 22nd September, 2010, drawn up by Notary Elena Farrugia enforceable in terms of Article 256(2) of Chapter 12.

Therefore, for the reasons explained above, the Court disposes of the appeal filed by the plaintiff, in that it rejects the appellant's requests and confirms the appealed judgement of the First Hall Civil Court of the 12th November, 2014, in the abovementioned names.

All costs for the proceedings in both instances are to be borne by the plaintiff, Irina Sedova.

Joseph Azzopardi Chief Justice	Joseph R Micallef Judge	Tonio Mallia Judge

Deputy Registrar
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