CIVIL COURT – FIRST HALL

THE HON. MADAME JUSTICE MIRIAM HAYMAN

Sworn Application Number: 747/2014 MH

Today, 4th November, 2020

Ivan Azzopardi (ID 362059M) on behalf of Cresta Property Services Limited (C38091) in its capacity as Administrator of Madliena Village Owners Association which was substitued by William England by virtue of decree dated 26th April 2017

vs

Madliena International Limited (C34987)

The Court:

Having seen the **sworn application of plaintiff noe of the 28th August 2014** by virtue of which he stated:

"1. Illi s-socjeta' rikorrenti, debitament rapprezentata mir-rikorrenti, giet mahtura bhala Amministratur ta' Madliena Village Owners Association u dan kif jirrizulta mill-minuti tal-laqgha generali annwali li nzammet fil-5 ta' Dicembru 2013; u

2. Illi s-socjeta' intimata hija proprjetarja ta' diversi appartamenti u units f' dan il-kumpless ta' bini maghruf bhala Madliena Village, u aktar specifikament ta' appartamenti numru 502, 504, 702, 704 u 709/710, kif ukoll Garage No. 5005; u

3. Illi l-kontribuzzjonijiet ghall-amministrazzjoni tal-partijiet komuni ta' dan il-kumpless ta' appartamenti huwa dovut mis-socjeta' intimata f' dak li jirrigwarda l-appartamenti msemmija. Illi s-socjeta' intimata naqset milli twettaq hlas ta tali kontribuzzjonijiet ghas-snin 2011/2012, 2012/2013, kif ukoll 2013/2014; illi l-ammont dovut mis-socjeta' intimata intimata in linea ta' kontribuzzjonijiet jammonta kumplessivament ghal dsatax-il elf seba' mija tmienja u disghin Euro u disa' u ghoxrin centezmu (€19,798.29), liema ammont jirraprezenta in kwantu ghal elfejn tliet mija u seba' Euro u erbgha u hamsin centezmu (€2,307.54) bilanc minn somma ikbar ghas-snin 2011/2012, in kwantu ghal ghaxart elef mija sitta u tletin Ewro u hamsa u sebghin centezmu (€10,136.75) bhala arretrati ghas-snin 2012/2013, u in kwantu ghal sebat elef tliet mija erbgha u hamsin ewro (€7,354) il-kontribuzzjonijiet ghas-snin 2013/2014; u

4. Illi s-socjeta' intimata, ghalkemm interpellata sabiex twettaq il-hlas tal-ammont imsemmi, baqghet inadempjenti, u l-ammont mitlub ghadu dovut fl-intier tieghu; u

Ghaldaqstant, l-esponenti umilment titlob lil din l-Onorabbli Qorti joghgobha:

1. *Tiddikjara illi s-socjeta' intimata ghandha thallas lir-rikorrenti, fil-kwalita' taghha ta' amministratur ta' Madliena Village Owners Association, is-somma ta' dsatax-il elf seba' mija tmienja u disghin ewro u disgha u ghoxrin centezmu (€19,798.29), jew somma verjuri li tigi likwidata minn din l-Onorabbli Qorti, in linea ta' kontribuzzjonijiet ghall-amministrazzjoni tal-partijiet komuni tal-kumpless ta' appartamenti msemmi.*

2. *Tordna u tikkundanna lis-socjeta' intimata thallas lis-socjeta' rikorrenti, fil-kwalita' taghha premessa, is-somma ta' dsatax-il elf seba' mija tmienja u disghin ewro u disgha u ghoxrin centezmu (€19,798.29), jew somma verjuri li tigi likwidata minn din l-Onorabbli Qorti rapprezentanti kontribuzzjonijiet u arretrati, u dan kif premess,*

Bl-ispejjez, u bl-imghax legali mid-data tal-prezenti, kontra s-socjeta' intimata, ngunta ghas-subizzjoni."

Having seen the list of witnesses and the documents annexed to the sworn application.

Having seen the sworn reply of **Madliena International Limited of the 1st December 2014**[1] by virtue of which the following pleas were raised -

"1. Illi t-talbiet tas-soċjeta' rikorrenti Cresta Property Services Limited fil-kwalita' tagħha ta' Amministratur ta' Madliena Village Owners Association

[1] Fol 74 et seq

huma infondati fil-fatt u fid-dritt u għandhom jiġu respinti bl-ispejjeż kontra l-istess soċjeta' rikorrenti, u dan għas-segwenti raġunijiet;

2. *Illi fl-ewwel lok, il-proprjeta' numru 504 fil-kumpless ta' bini magħruf bħala Madliena Village mhijiex proprjeta' tas-soċjeta' ntimata Madliena International Limited;*

3. *Illi l-ammont mitlub mis-soċjeta' rikorrenti bħala Amministratur ta' Madliena Village Owners Association mhuwiex dovut mis-soċjeta' intimata;*

4. *Illi s-soċjeta' rikorrenti naqset milli twettaq l-obbligi tagħha bħala amministratur li tipprovdi lill-condomini b'rendikonti aġġornati tal-ispejjeż inkorsi minnha bħala amministratur;*

5. *Illi s-soċjeta' intimata għamlet pagament akkont tal-kontribuzzjonijiet għall-amministrazzjoni tal-partijiet komuni fl-ammont ta' tlettax-il elf ewro (€13,000) lill-Madliena Village Owners Assocation, u qatt ma ngħatat rendikont tax-xogħolijiet imwettqa u li tagħhom l-Owners Association tħallset l-imsemmi ammont jew li tagħhom qed tippretendi ħlasijiet oltre mingħand is-soċjeta' intimata;*

6. *Illi inoltre, kwalunkwe kontribuzzjonijiet dovuti fir-rigward tal-appartamenti numru 709/710, kif ukoll l-appartament numru 502 kienu jitħallsu regolarment minn terzi li kienu jokkupaw l-fondi imsemmija.*

7. *Illi ebda ammont ma huwa dovut mis-soċjeta' intimata fir-rigward tal-appartamenti numru 702 u 704 fil-kumpless ta' bini Madliena Village u dana peress li l-imsemmija appartamenti għadhom fi stat ta' ġebel u saqaf u għaldaqstant l-imsemmija units ma jgawdux il-partijiet komuni tal-kumpless u m'għandhomx jikkontribwixxu għall-ispejjeż tal-amministrazzjoni tal-istess partijiet komuni."*

8. *Salv eċċezzjonijiet ulterjuri."*

Having seen the list of witnesses annexed to the sworn reply.

Having seen its decree dated 1st December 2014[2] by virtue of which, upon agreement between parties, the Court ordered that the proceedings continue in the English language.

Having seen all the evidence brought forward by the parties and the Notes of Submissions exchanged between them.

Having seen that the case was adjourned for judgement for today.

Having seen all the other acts of the case.

Considered:

Plaintiff noe, in his capacity of Administrator of the Madliena Village Owners' Association, is requesting the Court to order defendant company to pay the sum

[2] Fol 68

of €19,798.29 or other sum to be liquidated by the Court in respect of contributions of the administration of the common parts of the apartment complex known as Madliena Village. In addition, arrears with costs and legal interest are being requested.

Thus the action is based on the provisions of the Condominium Act (Chapter 398 of the Laws of Malta and its subsidiary legislation.

Plaintiff is requesting the payment of condominium fees for the following years: 2011/2012, 2012/2013, 2013/2014 and this in connection with the following units forming part of Madliena Village: apartments numbers 502, 504, 702, 704, 709, 710 and garage number 5005.

Below is a detailed breakdown submitted by plaintiff which represents the amount claimed[3] according to the respective years in question, that is:

Apartments	**2011/12**	**2012/13**	**2013/14**
502		€1379.80	€1395
504		€1379.80	€1395
702	€1154	€2415.81	€1504
704	€1154	€2415.81	€1504
709/710		€2415.81	€1504

[3] Fol 603

Garage

5005	€129.76	€52

Total amount claimed: €19,798.79

On the other hand, defendant company is rejecting all claims as unfounded in fact and at law. It is substantially opposing this claim on the grounds that[4]: (i) it is not the owner of all the units for which the payment of condominium fees is being sought; (ii) the administrators failed to present the condomini with proper audited accounts as required by the Madliena Condominium Rules and Regulations; and (iii) there are a number of inaccuracies and inconsistencies in the amounts claimed.

It is pertinent to first deal with the second plea raised by defendant company by virtue of which it is alleging that it is not the owner of unit numbered 504 in the Madliena Village complex.

The director of defendant company Michael James Bennett states as follows[5] -

"....Apartment 504 and garage 5005, previously number 501 are not owned nor have they ever been owned by Madliena International Limited. The said apartment and garage were the property of Susan Linda Everson who acquired the property on the 17th December 2010."

Susan Linda Everson is Michael James Bennett's wife.

[4] Affidavit Michael James Bennett, director of defendant company at fol 257 et seq
[5] Fol 257 et seq

The relative deed of sale was indeed filed in the acts of the case as part of the evidence[6].

It is to be noted at the outset that the plea of defendant company refers only to the apartment and no mention was made of the ownership of the garage except in Bennett's affidavit during evidence brought forward by the defence.

Having said that however, this evidence has clear legal implications on plaintiff's claims with respect to these two properties in question. Plaintiff noe filed its case only and exclusively against Madliena International Ltd as owner of several apartments and units including apartment 504 and garage 5005 which according to the said evidence is clearly not the case.

Plaintiff noe complains in his submissions[7] that defendant company did not act n good faith since during meetings of the meetings of the Condominium Association he regularly appeared and voted as though he were the owner of apartment 504.

This however is not a valid opposition at law to overrule the plea raised. What happened in Association meetings does not legally impact on the claims as raised by plaintiff noe in this court case. Once clear evidence was brought by defendant company as to the ownership of the apartment and garage in question, then it was plaintiff's duty to regularise his position to that effect. As a matter of fact it turns out that plaintiff noe did not even request the calling into the case of the owner in question. There was a point in time towards the end of the proceedings when legal counsel to plaintiff noe indicated to the court that she was considering the

[6] Fol 261 et seq
[7] Fol 617

reduction of the claim in respect of apartment 504 and garage 5005 in the light of the evidence brought by defendant company[8] but this never materialised.

For the above reasons, since it has been shown to the satisfaction of the court that defendant company is neither the owner of apartment 504 nor of garage 5005, it should not be made to answer at law to plaintiff's claims for payment with regard to these two immovables.

The second plea of defendant company is therefore going to be upheld.

The Court will consequently continue to examine plaintiff noe's claims with respect to the remaing units, that is, units number 502, 702, 704 and 709/710.

In support of its claim, plaintiff company brought forward the evidence given by the administrators who were responsible for collecting the condominium fees over the years together with substantial documentary evidence.

First of all it is pertinent to note that the complex called Madliena Village was bought by Fairview Company Ltd on the 7th December 2010. At that time there was no administrator in charge. The first administrator of the owners association to be appointed in June 2011 was Peter Engerer [9]. Then, Max Homes Services Ltd took over the administrator of Madliena Village from August 2011 till 2013 after which Cresta Property Service Ltd stated that this company was appointed as the new administrator of Madliena Village on the 5th December 2013 for a period of two years[10].

[8] Sitting of the 13th March 2009 at fol 601
[9] AGM of the Association at fol 26 et seq – item 2
[10] Fol 4 et seq

Ivan Azzopardi on behalf of Cresta Property Service Ltd stated that[11] upon appointment he was given a list of unit holders who had not paid their yearly contribution, among which contributions until the financial year ending 31st August 2013. After organising an Annual General Meeting to establish the amount of contribution to be paid by each unit and garage space owner for the financial year starting 1st September 2013 until 31st August 2014, the amounts subsequently claimed in the following case remained outstanding.

Emanuel Saliba, representative of Max Homes Services Ltd, stated among other things that[12] the contributions to be paid by each owner is decided during Annual General Meetings (AGMs). Emanuel Saliba also filed a list of contributions received by some owners of units and pending contributions by the remaining ones for the year 2012/2013, which list shows the pending dues owed to plaintiff by defendant company[13].

In addition the witness filed the income and expenditure of the condominium for the period 2011, 2012, 2013[14]. He explained that the income and expenditure reports were prepared by the company's office and audited by a firm of auditors (he referred to a certain Tonna). According to the witness all the invoices pertaining to those payments were handed over when Cresta Property Services Ltd took over the administration of the condominium. The witness filed also a list of amounts due for past creditors and payments that were made to them[15]

Evidence was also given by Neville Agius on behalf Fairview Company Ltd[16]. He stated that at the time there as no administrator and the complex was in

[11] Fol 113 et seq, fol 202 et seq
[12] Fol 202 et seq
[13] Fol 128
[14] Evidence Emanuel Saliba at fol 242 et seq and docs at fol 207 et seq
[15] Fol 451 et seq
[16] Fol 434

shambles. There was a total mess and even services from Enemalta were suspended. He said that his company paid the sum of €13,800 mainly to cover the ARMS Bill. When specifically asked how much they paid as maintenance contribution towards the condominium, he explained that the company did not pay maintenance per apartment but saw what the debts were and they were paid, whatever they were.

Another witness was Conrad Gatt, administrator of the Complex for a short period of circa ten months 2016[17]. He said that during that time, defendant Company had paid the sum of €4200 on account. He also explained that from discussions he had with Michael Bennett, it resulted to him that defendant company was objecting to the payment of the pending claims because it bought apartments that were still in shell form so it expected not to pay for condominium fees.

Transcripts of the minutes of the AGMs between June 2011 and January 2014 were filed and they indicate that budget proposals were discussed and approved by those present, including defendant company as represented by proxy by Michael Bennett. The budgets approved for the apartments subject to this court case for the years in question were also filed[18].

On the other hand, defendant company brought forward its evidence to rebut these claims.

Michael Bennett, director of defendant company stated in his evidence[19] that contrary to its obligations in terms of clause 5.6.2. of the Madliena Condominium Rules and Regulations[20] plaintiff company never presented the condomini with a

[17] Fol 431
[18] Fol 134 et seq
[19] Affidavit at fol 257 et seq
[20] Fol 81 et seq

copy of the audited accounts and neither did he do so in court. So defendant could not determine how the contributions were being spent. He mentioned examples such as a request for payment of expenses in connection with a block which did not have an internal common area and also a request for payment of expenses regarding apartments 702 and 704 which were not only paid, but actually payment was made in duplicate[21].

Defendant company therefore argues that plaintiff is claiming payment of amounts that are not supported by audited accounts, and hence its claim should be dismissed on that basis.

Moreover, witness Bennett said that when Madliena Village was sold to Fairview Properties Ltd in 2010 it was agreed between the parties that no common area maintenance costs would be paid with respect to properties 709/710, 502, 702 and 704 due to the fact that there were a number of pending court cases with respect to these properties, and this until the conclusion of such cases.

Defendant company also refers to the payment of €13,883 paid by Fairview Properties Ltd to cover contributions for the administration of the common parts. It refers to the minutes of the AGM held on the 21st June 2011[22] during which there was an agreement that Fairview will be paying that sum for the director of Madliena Village Limited, Mr Andrew Cross's dues and any of his associated companies. Moreover, entries from the Madiena Village Common Areas Accounts register a total of €21,282 as payments in arrears on behalf of Andrew Cross and Madliena Village Limited.

[21] Fol 358
[22] Fol 27 et seq

Michael Bennett adds that[23] between 2005 and 2009 all maintenance and improvements in the common areas were being subsidized by Madliena Village Ltd and condomini were paying Lm400. So according to him, there should have been no arrears for maintenance costs prior to 2009 and plaintiff company fell short of explaining towards which expenses the amount of €13,883 stated in the minutes, and the amount of €21,282 in arrears, was applied.

Defendant company also noted that according to the above mentioned AGM meeting, the administrator was freed from the responsibility to sue defaulting condomini for any arrears of maintenance due to date.

Another argument raised by defendant company is that contributions due in connection with units number 709/710 and 502 were paid regularly by third parties who were occupying them. In this respect, Michael Bennett explained in his evidence that the Dutch Embassy was occupying units 709/710 under a lease agreeement from November 2010 up to August 2013 and the contributions were regularly paid[24]. Defence company referred to the schedules of deposits filed in court[25] and observes that the sums deposited included both rent and contribution fee. Also, entries on the accounts register of the association for the years 2011-2012 indicate payments made by the Dutch Embassy[26].

Moreover, defedant company via the evidence of Michael Bennett[27] argued that unit no. 502 was occupied by Hadrian Busietta under tolerance during the period of time for which plaintiffs are requesting payment in this court case and that he is *"informed that Hadrian Busietta paid all contributions which were due during*

[23] Fol 258 et seq
[24] Fol 259
[25] Fol 103 et seq
[26] Fol 105
[27] Fol 259

the time he occupied the premises, while I have settled all other contributions claimed with respect to this property."

Also defendant company alleges that since units 702 and 704 are in shell form, then, on the basis of article 11 (2) of the Condominium Act, it should not be obliged to pay for expenses which such apartments don't benefit from.

Finally, since administrator Conrad Gatt confirmed in court that the sum of €4,200 was paid on account by defendant company, should the court uphold plaintiff's claims, this sum should in any case be deducted from the sum awarded.

Considers that:

In the case **Chef Choice Limited vs Raymond Galea et decided on the 26th September 2013**[28] the Court said the following -

"Illi l-Qorti tifhem li, fil-kamp ċivili, il-piż probatorju m'huwiex dak ta' provi lil hinn mid-dubju raġonevoli[29] *Iżda fejn ikun hemm verżjonijiet li dijametrikament ma jaqblux, u li t-tnejn jistgħu jkunu plawsibbli, il-prinċipju għandu jkun li tkun favorita t-teżi tal-parti li kontra tagħha tkun saret l-allegazzjoni. Ladarba min kellu l-obbligu li jipprova dak li jallega ma jseħħlux iwettaq dan, il-parti l-oħra m'għandhiex tbati tali nuqqas u dan bi qbil mal-prinċipju li actore non probante reus absolvitur. Min-naħa l-oħra, mhux kull konflitt ta' prova jew kontradizzjoni għandha twassal lil Qorti biex ma tasalx għal deċiżjoni jew li jkollha ddur fuq il-prinċipju li għadu kemm issemma. Dan għaliex, fil-qasam tal-azzjoni ċivili, l-kriterju li jwassal għall-konvinċiment tal-ġudikant għandu jkun li l-verżjoni tinstab li tkun waħda li l-Qorti tista' toqgħod fuqha u li tkun tirriżulta bis-saħħa*

[2828] Ċitazz. Nru 2590/1999/1JRM deċiża 26 ta' Settembru, 2013

[29] App.Inferjuri PS 7.5.2010 fil-kawża fl-ismijiet **Emmanuel Ellul et. vs Anthony Busutill**

ta' xi waħda mill-għodda proċedurali li l-liġi tippermetti fil-proċess probatorju. Fit-twettiq ta' eżerċizzju bħal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruwa li tixhed ir-raġunijiet u l-kriterju tal-ħsieb li hija tkun ħaddmet biex tasal għall-fehmiet tagħha ta' ġudizzju fuq il-kwestjoni mressqa quddiemha;"

In the light of the above principles of jurisprudence, the Court makes the following observations on the merits of the case:

1. The role of the Court in the case is to assess whether the claim for payment put forward by plaintiff, totally and in particular to each unit, is justified and proven on a basis of probability. Contrary to what defendant company is arguing, even if no audited accounts were presented by plaintiff, it is not a valid reason at law to simply discard the claim *a priori*. On this point it is to be stressed that if plaintiff company failed to strictly abide by the Madliena Condominium Rules and Regulations - specifically clause 5.6.2 which requires the administrator to render to the condomini annual audited accounts in relation to all monies spent and received relating to the management and administration of the condominium – the course of action for defendant company is specified in the Rules and Regulations themselves. Clause 11.2 in fact refers any issues which arise to arbitration[30] if the matter is not resolved between the parties concerned. From the acts of the case, it does not result that this route was not resorted to by defendant company. The fact that the plaintiff did not adhere by the book to proper administration as per abovementioned annual requirement, does not exonerate the defendants from any payments due.

The fourth plea of defendant company is therefore being rejected.

[30] Fol 92

2. Without prejudice to the considerations which will later on be made about payments that have already been done, with regard to the remaining sums, what in fact does result to the court is that the amounts claimed by plaintiff company result from documentation and accounts for which budgets were discussed and approved by the condomini in the AGMs for the years in question. The transcripts of the minutes of the AGM meetings and the schedules with budgets approved for that particular year are all attached to and exhibited in the court proceedings. Defendant company was always duly represented in such meetings and it does not result that it ever directly objected to these amount for the respective years that payment is being requested for in the present case.

3. The fifth plea raised by defendant company states that it had made a payment of over €13,000 to Madliena Village Owners Association and it was never given an account of the works they were used or for which plaintiff company is requesting additional payment.

It is the opinion of the Court that this plea does not hold ground.

Defendant Company connects this payment to the contract of sale of Madliena Village by defendant Company to Fairview Properties Ltd on the 7th December 2010. Michael Bennett states that[31] when Madliena Village was sold to Fairview Properties Limited on the 7th December 2010, as part of the purchase price, Fairview Properties Ltd agreed to pay any outstanding amounts due as condominium charges by Andrew Cross, director of Madliena Village Limited and any other of his associated companies. Based on this understanding, Fairview

[31] Fol 79

Properties Ltd "*paid the amount of at least €13,883.50 to Max Homes on account of any outstanding debts."*

It however transpires from the evidence that whilst Fairview Company Ltd had in fact paid up all the debts that had accumulated by the time the purchase of the complex took place in 2010, BUT the amounts being claimed in the present case are those that started accumulating afterwards from 2011 onwards[32].

Moreover, Michael Bennett on behalf of defendant company admitted in his evidence that he was *"not aware whether the payment made to Max Homes is referring to the apartments in issue[33]."*

It is further to be noted that the claim by defendant company that Madliena Village was to be exempted from paying maintenance fees with respect to the apartments subject to the present court case until litigation procedures about them would be terminated holds no ground. Without prejudice to the fact that no concrete evidence was brought to substantiate this claim, it is also pertient to point out that any such agreement is *res inter alio acta* to plaintiff company which was not part of any such agreement, if any. It is moreover worth noting that during his evidence, Neville Agius stated that[34] a condition which Michael Bennett - on behalf of defendant company - wanted was to be exempt from paying maintenance on the apartments subject to court litigation until the owner is decided by the court. This condition - which was acceded to according to witness-results very different from what was decided and reproduced in the minutes of the AGM proceedings. In fact during the AGM meeting of the 26th June 2011[35] no reference to such exemption was made. Rather, the same Neville Agius – who

[32] Fol 580
[33] Fol 122
[34] Fol 434 et seq
[35] Fol 27 et seq

represented by proxy both Madliena Village Ltd and Michael Bennett among others – together with all the condomini present at the meeting agreed to make every effort possible to collect payments of all arrears from defaulting condomini.

In the light of the above, the Court will be rejecting the 5th plea raised by defendant company.

4. In its sixth plea defendant company alleges that any contributions due regarding units 709/710 and unit 502 used to be regularly paid by the third parties who occupied the premises respectively.

With respect to unit 502, as stated above, Michael Bennett simply stated that it was occupied by Hadrian Busietta under tolerance during the period of time for which plaintiffs are requesting payment in this court case and that he is *"informed that Hadrian Busietta paid all contributions which were due during the time he occupied the premises, while I have settled all other contributions claimed with respect to this property."* But this allegation was in no way substantiated. Not only was the third party concerned not brought forward to testify but no other evidence was presented to the Court to show that the mentioned contributions were indeed effectively paid with regard to this unit 502.

In so far as units 709/710 are concerned, it is true that according to the agreement of th 13th October 2010[36] the Embassy of Netherlands acquired from Paul Caruana the units in question under the title of lease for four years with effect from the 25th November 2010 to November 2014 and it had to pay an annual maintenance fee as per clause 19. Two schedules of deposit have been filed. In the first one one dated 1st March 2012[37], from the sum of rent for the period 25th

[36] Fol 596 et seq
[37] Fol 103

February 2012 till 24th May 2012 the embassy deducted the amount of €222 as maintenance fees since it declared that such sum had previously been paid to the garnishee Paul Caruana. And in the second schedule of deposit of the 14th December 2012[38] covering periods of rent from the 25th November 2012 till the 24th February 2013 the Embassy stated that it was depositing in court a lesser amount due to certain expenses which it had to incur amongst which an undisclosed amount which it had to pay directly to the administration of the condominium for the use of the pool.

With regard to the first schedule of deposit the Court underlines that what the schedule states is that the Embassy had already paid the sum due for maintenance fees to Paul Caruana. Caruana was not brought in court to testify if such amount was in turn paid to the administrators in respect of maintenance fees. So on a basis of probabilities there is no proof to show that from the sum being claimed by plaintiff for that particular period, the indicated sum should be deducted from what plaintiff is claiming in the present court case.

With regard to the second schedule of deposit the Court notes that there is no indication of the sum that the Embassy alleges payment thereof directly to the administrators of the condominium and moreover there is no hint of evidence that whathever sum the Emabassy was referring to had not already been deducted by the administrators from the amounts being now claimed in the present court case.

The sixth plea is therefore rejected.

5. In its seventh plea, defendant company is further alleging that no payment of the condominium fees is due for units 702 and 704 because these were still in

[38] Fol 104

shell form state and therefore they are receiving no benefit from the common parts of the complex.

It is pertinent to point out in the first place that although defendant company is claiming that these two units were in shell form, no evidence to this effect was brought.

In any case, the Court referes to article 11 (1) and (2) of the Condominium Act which state as follows -

"(1) The costs necessary for the preservation, maintenance, ordinary and extraordinary repairs, for the enjoyment of the common parts, for the rendering of services in the common interest and for the alterations agreed upon by the condomini are to be divided between the condomini in proportion to the value of the property of each condominus, saving always any contrary agreement."

The Condominium Act allows the possibility that not all condomini pay the same amount of condominium fees as indicated by subarticle 2 of the article in question-

(2) Where the expenses are made with respect to anything that serves the codomini in an unequal measure, the expenses shall be apportioned in proportion to the use that each one can make."

Having said so the Court underlines the fact that the apportionment of costs is catered for in clause 8 of the Condominium Rules and Regulations, so it is a matter that should be dealt with according to those provisions. And as already indicated earlier, any disputes concerning the Rules and Regulations should be

referred to arbitration in terms of the Condominium Act. Thus, this Court has no jurisdiction to decide on such issues.

Notwithstanding the above, it is pertinent to point out that in any case, section 11 (2) of the Condominium Act on which defendant company is basing its plea[39], is being wrongly interpreted by the said company. In the case **Joseph Camilleri et vs Allcare Limited**[40] the Court gave a very thorough interpretation of article 11 (2) of the Act –

"2. Hu evidenti li l-appellanti qegħda tistrieħ fuq l-Artikolu 11(2) tal-Att dwar il-Condominia (Kap 398) biex issostni l-aggravju tagħha:

"(2) Meta l-ispejjeż isiru dwar xi ħaġa li sservi lill-condomini f'miżura mhux ugwali, l-ispejjeż jinqasmu fi proporzjon tal-użu li kull wieħed jista' jagħmel."

3. Fil-fehma tal-qorti, l-appellanti qegħda tinterpreta dan il-provvediment b'mod żbaljat. Il-fatt li condominus jagħżel li ma jagħmilx użu minn appartament li jifforma parti minn kondominju, ma jeżonerahx milli jikkontribwixxi sehemu mill-ispejjeż. Is-subinċiż (2) qiegħed jirreferi għal dawk il-każijiet fejn ħaġa fil-kondominju, sa mill-bidunett ma tkunx intiża għall-użu b'mod ugwali bejn il-condomini. Tista' tgħid li l-Artikolu 11(2) hu riproduzzjoni tat-tieni paragrafu tal-Artikolu 1123 tal-Kodiċi Ċivili Taljan, li jipprovdi:

"Se si tratta di cose destinate a servire i condomini in misura diversa, le spese sono ripartite in proporzione dell'uso che ciascuno puo farne."

[39] Fol 636
[40] Decided on the 15th July 2016 : Qorti tal-Appell per Imħallef A.Ellul; 9012/11

Il-Qorti Kassazzjoni Taljana fis-sentenza numru 17557 tal-1 ta' Awissu 2014, ikkumentat hekk dwar dan il-provvediment:

"La norma in questione ha infatti riguardo al godimento potenziale che il condomino puo' ricavare dalla cosa o dal servizio comune, atteso che quella del condomino e' una obbligazione propter rem che torva fondamento nel diritto di comproprieta' sulla cosa comune, sicche' il fatto che egli non ne faccia uso non lo esonera dall'obbligo di pagamento della spesa."

Wieħed irid jiddetermina d-destinazzjoni tal-ħaġa li dwarha jkunu saru l-ispejjeż. Jista' jkun li d-destinazzjoni ta' ħaġa fil-kondominju tkun għall-użu b'mod divers bejn il-condomini u l-ħlas tal-ispejjeż fir-rigward ta' dik il-ħaġa tidher li għandha tkun fi proporzjon għall-użu li kull wieħed jista' jagħmel u mhux fi proporzjon għall-użu li kull wieħed jagħmel. Jekk il-ħaġa hi ntiza biex isservi lill-condomini f'mizura mhux ugwali, allura japplika l-Artikolu 11(2). Tant din hi l-interpretazzjoni korretta li d-disposizzjoni tipprovdi li l-ispejjeż, "... jinqasmu fi proporzjon tal-użu li kull wieħed jista' jagħmel." u mhux "li jagħmel". Il-fehma tal-qorti tkompli tissaħħaħ mit-test Ingliz tal-provvediment:

"... the expenses shall be apportioned in proportion to the use that each one can make."

Il-fatt li l-condominus minn jeddu jagħżel li ma jagħmilx użu minn ħaġa, mhu ta' ebda rilevanza għall-finijiet tas-subinċiż (2) tal-Artikolu 11 tal-Kap. 398.

4. Fil-fehma tal-qorti skond l-Artikolu 11, il-prinċipju hu li l-condominus għandu obbligu li jikkontribwixxi b'mod proporzjonali għall-ispejjeż, irrispettivament

ikunx qiegħed effettivament jagħmel użu jew le mill-partijiet komuni. Il-provvediment m'huwiex jagħti rilevanza għall-użu effettiv li kull wieħed mill-condomini jkunu qiegħed jagħmel. F'sentenza tal-Qorti Kassazzjoni Taljana (Tieni Sezzjoni) numru 17557 tal-1 ta' Awissu 2014, intqal:

In tema di condominio, fatta salva la diversa disciplina convenzionale, la ripartizione delle spese della bolletta dell'acqua, in mancanza di contatori di sottrazione installati in ogni singola unita' immobiliare, va effetuata, ai sensi dell'art 1123 c.c. , comma 1, in base ai valori millesimali delle singole proprieta, sicche' e' viziata, per intrinseca irragonevolezza, la delibera asembleare, assuta a maggioranza, che – adottato il diverso criterio di riparto per persona in base al numero di coloro che abitano stabilmente nell'unita immobiliare – esenti al contempo dalla contribuzione i condomini i cui appartamenti siano rimasti vuoti nel corso dell'anno."

In the light of the above, even in shell form, and hence even if they were not being used, apartments 702 and 704 are not deemed to have been entitled to benefit from article 11 (2) of the Act.

This plea is therefore being rejected.

6. Having considered all the evidence both by both parties, and for all the reasons mentioned above, the Court is of the opinion that plaintiffs have supported their claims with ample documentary evidence and witnesses who corroborated them. So on a basis of probability, it is the opinion of the Court that the maintanenance fees indicated as due by the defendant are correct and (subject to the observations

in the next paragraph) the request for payment thereof by defendant deserves to be upheld albeit limetedly as will be expanded hereunder .

7. The Court notes that during his evidence, ex-administrator Conrad Gatt, confirmed on oath in court that the sum of €4,200 was paid on account by defendant company during the period when he was administrator. So this amount will be deducted from the final sum that will be awarded to plaintiff.

Also it is to be noted that on the 24th June 2011, ex-administrator Peter Engerer had declared in a letter that he had received double payments on each of the apartments 702 and 704. So plaintiff Company cannot claim payment on these two apartments for the year 2011/2012 because it has been settled.

8. **Thus, the plaintiff's claim will be limitedly upheld for the sum of ten thousand three hundred and thirty four Euros and twenty three cents (€10,334.23).**

9. The remaining pleas of defendant company will be consequemtly rejected except in so far as they are compatible with what has been decided.

For these reasons, the Court decided the case as follows –

1. Upholds the first and second claim of plaintiff noe limitedly to the sum of ten thousand three hundred and thirty four Euros and twenty three cents (€10,334.23);

2. Upholds the second plea of defendant Company but rejects the remaing pleas except in so far as they are compatible with what has been decided in this judgement;

3. The costs will be apportioned with 1/5 to be borne by plaintiff noe whilst the remaining costs, together with legal interest as requested by plaintiff in the sworn application, are to be borne by defendant company.

Hon. Dr. Miriam Hayman LL.D.
Judge

Victor Deguara
Deputy Registrar