CIVIL COURT (FIRST HALL)

MADAME JUSTICE

HON. AUDREY DEMICOLI LL.D.

Application Nr **724/2021 (AD)**

MICHAEL KUGLER (AUSTRIAN PASSPORT NR P7803697)
AS DULY REPRESENTED BY
DR DAMIEN DEGIORGIO (ID 103075M)

VS

MR GREEN LIMITED

Sitting held on Tuesday, 8th February 2022

The Court:

1. This is a partial judgement regarding the two preliminary pleas raised by Mr Green Limited in paragraphs 1 and 2 of its reply filed on the fourteenth (14th) of September 2021, following Michael Kugler's application instituting these proceedings filed on the twenty-second (22nd) of July 2021;

Preliminaries

2. By virtue of an application filed on the twenty-second (22nd) of July 2021, the applicant Michael Kugler requested this Court to recognise in Malta, and consequently declare as enforceable in Malta, the judgement dated twenty-sixth (26th) January 2021 given by the Regional Court in St Polten, Austria, by virtue of which the defendant company was ordered to pay the applicant the sum of €135,460.76, as well as interest calculated at the rate of 4% from the seventeenth (17th) July 2020 till effective payment, and expenses in the amount of €9,245.54, and the judgement dated thirtieth (30th) March 2021 given by the Superior Regional Court in Vienna, Austria, as Court of Appeal, by virtue of which the defendant company was ordered to pay expenses relative to appeal procedures in the sum of €3,422.82;

3. By virtue of a reply filed on the fourteenth (14th) September 2021, the defendant company raised three pleas, including the two preliminary pleas being addressed in this judgement, namely:

    (i) That the application is null in terms of Article 789 and Article 156 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), and this due to the fact that the application does not specify under which provision of Regulation (EU) No 1215/2012 of the 12th December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Brussels 1 Recast) the applicant is formulating his requests, thus hindering the defendant company from being able to defend itself against the applicant's claims;

    (ii) That the requests as formulated and based on EU Regulation 1215/2012 are null and void in terms of the same Regulation, and this due to the fact that Brussels I Recast does not give a party who wishes to enforce a foreign judgement the right to file an application for a declaration of recognition and enforcement as in this case. The respondent company maintained that this right was only afforded under Regulation 44/2001 (that is, the original Brussels I Regulation), which Regulation is no longer applicable today,

following the introduction of Brussels I Recast Regulation in 2015. Brussles I Recast only gives the right to the interested party to *"apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45"* in terms of Article 36(2) of Brussels I Recast, and no other right;

4. During the Court sitting held on the 5th October 2021, the applicant requested that judicial proceedings relative to this application be conducted in the English language. The defendant company found no objection to this request, and the Court upheld the request for judicial proceedings to be conducted in the English language;

5. During the same sitting held on the 5th October 2021, the applicant requested this Court to order that the order of submission of evidence and legal submissions relative to the first three pleas submitted by the defendant company be inverted, in view of the fact that all three pleas consist in allegations being made by the defendant company which need to be proven by the same company. The defendant company did not object to this request, but contended that the first two preliminary pleas should be heard and decided prior to the third plea raised by the defendant company. After having heard the parties make submissions relative to this request, the Court acceded to the applicant's request for inversion of proof, insofar as the first two preliminary pleas raised by the defendant company are concerned;

6. The defendant company was granted till the end of October 2021 to file a note of submissions in relation to the first two preliminary pleas, while the plaintiff was granted till the end of November 2021 to file a note of submissions in relation to the same two preliminary pleas;

7. During the sitting held on the 3rd December 2021, the Court noted that both parties had filed their note of submissions in relation to the first two preliminary pleas raised by the defendant company, and the case was

adjourned for judgement in relation to these preliminary pleas for today, the 8th of February 2022.

Facts of the Case

8. By virtue of a judgement dated 26th January 2021 delivered in the Regional Court of St Polten, Austria, the defendant company was ordered to pay the plaintiff the sum of one hundred and thirty-five thousand, four hundred and sixty Euro and seventy-six cents (€135,460.76), together with interest calculated at the rate of four per cent (4%) from the 27th July 2020 till the date of effective payment, and expenses in the sum of nine thousand two hundred and forty-five Euro and fifty-four cents (€9,245.54);

9. By virtue of another judgement dated 30th March 2021 delivered by the Superior Regional Court in Vienna, Austria, a Court of Appeal, relative to the appeal from the afore-mentioned judgement, the defendant company, which followed the appeal, was ordered to pay the plaintiff the sum of three thousand, four hundred and twenty-two Euro and eighty-two cents (€3,422.82) representing judicial expenses for the appeal procedure, including Value Added Tax in the amount of five hundred and seventy Euro and forty-seven cents (€570.47);

10. It appears that the defendant company remained in default, notwithstanding the fact that it was called upon by the plaintiff to comply by the obligations it was ordered to comply with by the Courts as explained above;

11. The plaintiff claims that the defendant company has material assets in Malta of a value which would cover the amount owed by the defendant company to the plaintiff. Thus, the plaintiff is seeking to have the judgements delivered in Austria recognised and enforced in Malta.

Preliminary Pleas raised by the Defendant Company in Paragraphs 1 and 2 of their Reply to the Application

12. This judgement will address the preliminary pleas raised by the defendant company in paragraphs 1 and 2 of their reply to the present application:

a. The sworn application is null in terms of Articles 789 and 156 of the Code of Organisation and Civil Procedure, because the plaintiff does not specify under which provision of Regulation (EU) No 1215/2012 he is basing his request: The defendant company submits that failure on the part of the plaintiff to indicate the legal basis upon which he is basing his claims, leads to the prejudice of the defendant company because it makes it impossible for it to be able to defend itself adequately. Since Regulation (EU) No 1215/2012 provides for a number of different actions which can be instituted by different parties seeking enforcement of a foreign judgement and parties seeking to challenge such enforcement, failure of the plaintiff to indicate which of these actions is being relied upon by the plaintiff makes it impossible for the defendant company to defend itself. The defendant claims that the action was filed in a vacuum and in a manner that hinders it from preparing a suitable defence, as well as hindering the Court from deciding this matter on legal grounds, thus resulting in a violation in terms of Article 789(1)(c) of Chapter 12 of the Laws of Malta;

b. The requests made by the plaintiff as allegedly based on Regulation (EU) No 1215/2021 are null in terms of the same Regulation, since Brussels I Recast does not give the party who seeks the enforcement of the foreign judgement the right to file an application for a declaration of recognition and enforcement of judgement as the one in question: The defendant company submits that although it is true that Brussels I (Recast) Regulation deals with the recognition and enforcement of

judgements in civil and commercial matters between Courts of the various EU States, the same Regulation provides a very specific process and mechanism regulating the recognition and enforcement of judgements across the EU, rendering redundant the *exequatur* procedure in Council Regulation (EC) No 44/2001 which preceded the Brussels I (Recast) Regulation. The defendant company claims that the plaintiff could only file an application in terms of Article 36(2) to apply for a decision that there are no grounds for refusal of recognition of the judgement, or to invoke the judgement in terms of the procedure envisaged under Article 37; however, the procedure adopted by the plaintiff in this case has no legal basis.

Submissions by the Plaintiff regarding the Preliminary Pleas raised by the Defendant Company in Paragraphs 1 and 2 of their Reply to the Application

13. On a preliminary note, the plaintiff submits that the preliminary pleas are unfounded in fact and at law, and verge on the frivolous and vexatious. Furthermore, the plaintiff argues that nullity of the initial application is an extreme sanction that should not be taken lightly;

14. The plaintiff then addresses each of the preliminary pleas raised by the defendant company in paragraphs 1 and 2 of its reply to the original application as follows:

    a. <u>Regarding the first preliminary plea</u>: The plaintiff points out that the present proceedings were not instituted by means of a sworn application, because the law does not establish such a requirement. Therefore it follows that this judicial act is not regulated by Article 156 of Chapter 12. This notwithstanding, however, Article 156 does not specify that it is a legal requisite to quote chapter and verse of the law when instituting an action. In addition, the plaintiff submits that, in any case, the respondent's position was clearly not prejudiced, as evident

from the respondent's reply, which indicates that he is quite familiar with the law itself;

b. Regarding the second preliminary plea: The plaintiff submits that he declarations sought by him conform perfectly with the wording and the spirit of EU Regulation 1215/2012, and that it is clear that the form used by the applicant does not in any manner or form contradict or go counter to any provision of the Regulation, nor does it infringe anything which the Regulation holds *ad validitatem*;

15. As a general submission, the plaintiff also notes that should the defendant company's claims be deemed justified, the alleged shortcomings could still be corrected in terms of Article 175 of Chapter 12, without rendering the application null.

The Court

16. Having seen the application filed by the plaintiff dated 22nd July 2021, and the reply filed by the defendant company on the 14th September 2021;

17. Having heard the parties' submissions, and having seen the decree given by this same Court during the sitting held on the 5th October 2021;

18. Having seen the defendant company's note of submissions regarding the preliminary pleas raised in paragraph 1 and 2 of its reply to the application in question, dated 29th October 2021;

19. Having seen the plaintiff's note of submissions regarding the same two preliminary pleas, dated 24th November 2021;

20. Having seen that this case was adjourned for judgement in relation to the above-mentioned two preliminary pleas during the sitting held on the 3rd December 2021;

21. Considers as follows:

Considerations made by the Court

22. This Court feels that, given the circumstances of this particular case, it should first provide an outline of the procedure for recognition and enforcement of judgements across the European Union, prior to addressing the preliminary pleas raised by the defendant company, in order to provide a background against which to base its considerations;

A. <u>General Observations</u>

23. Issues relative to jurisdiction and the recognition and enforcement of judgements in civil and commercial matters across the European Union were, until 2015, regulated by Council Regulation (EC) No 44/2001 of 22 December 2000, more commonly known as the Brussels I Regulation; however, in a move towards simpler enforcement of judgements, the European Parliament and the Council of the European Union, upon recommendation of the European Commission, decided that the Brussels I Regulation should be recast, into what today is Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, more commonly known as the Brussels I (Recast) Regulation. The reason behind this shift is outlined in Recital 1 of the Preamble to the Brussels I (Recast) Regulation itself, wherein it is stated that Regulation (EU) No 1215/2012 was intended, *"to improve the application of certain of its provisions, to further facilitate the free circulation of judgements and to further enhance access to justice"*;

24. One of the main differences between Council Regulation (EC) No 44/2001 and Regulation (EU) No 1215/2012 lies in the procedure for the recognition and enforcement of judgements decided in a Member State by another

Member State. Recital 26 of the Preamble to the Brussels I (Recast) Regulation establishes that:

> *Mutual trust in the administration of justice in the Union justifies the principle that judgements given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgement given by the courts of a Member State should be treated as if it had been given in the Member State addressed.*

25. To this end, the procedure under Council Regulation (EC) No 44/2001 by virtue of which one had to obtain a declaration of enforceability of a judgement in the Member State addressed, better known as the *exequatur* procedure, was axed under Regulation (EU) No 1215/2012, in the European Parliament and Council of the EU's bid to make the administration of justice across Member States more streamlined. Indeed, by virtue of **Article 36(1) of Regulation (EU) No 1215/2012**,

> *A judgement given in a Member State shall be recognised in the other Member States without any special procedure being required.*

and, by virtue of **Article 39 of Regulation (EU) No 1215/2012**:

> *A judgement given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.*

26. Nevertheless, this did not mean that there are presently no obstacles to enforceability in the Member State addressed. Recital 29 of the Preamble to the Brussels I (Recast) Regulation also establishes that:

> *The direct enforcement in the Member State addressed of a judgement given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a judgement if he considers one of the grounds for refusal of recognition to be present. […]*

27. Thus, by virtue of the procedure established under **Article 36(2) of Regulation (EU) No 1215/2012**:

> *Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.*

and, by virtue of **Article 46 of Regulation (EU) No 1215/2012**, found under Subsection 2 of Section 3 of the same Regulation:

> *On the application of the person against whom enforcement is sought, the enforcement of a judgement shall be refused where one of the grounds referred to in Article 45 is found to exist.*

28. In summary, therefore, it results that under Regulation (EU) No 1215/2012:

    a. No declaration is required for a judgement given in a Member State to be recognised and enforced in the Member State addressed;

b. It is only the person against whom the enforcement of the judgement is being sought that can institute proceedings to halt the enforcement of said judgement;

c. The person against whom the enforcement of the judgement is being sought may only bring an action for refusal of recognition and enforcement on the basis of any of the grounds listed in Article 45 of the Regulation, which list is to be considered exhaustive;

29. With these elements in mind, the Court now turns to the facts of the case in question:

B. The Preliminary Pleas raised by the Defendant Company

30. Whilst it is true that the defendant company raises two separate preliminary pleas in paragraphs 1 and 2 of its reply to the original application respectively, the Court notes that these pleas are intrinsically-linked, and are based on the same premise, namely that Regulation No 1215/2012 provides no legal basis which entitles the plaintiff to bring forward the present action. On this premise, the defendant company argues that the application is null because: (a) the action itself cannot be identified from the application, and (b) Regulation No 1215/2012 does not give the plaintiff the right to file such an application in the first place;

(i) First Preliminary Plea: Nullity on the ground that the action sought cannot be identified from the application

31. Contrary to that submitted by the plaintiff in his note of submissions, the defendant company clearly indicates in paragraph 10 of its note of submissions that it is basing its plea of nullity upon Article 789(1)(c) of Chapter 12 of the Laws of Malta, which runs as follows:

> *789. (1) The plea of nullity of judicial acts is admissible –*
> *[…]*
> *(c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act;*
> *[…]*
> *Provided that such plea of nullity as is contemplated in paragraphs (a), (c) and (d) shall not be admissible if such defect or violation is capable of remedy under any other provision of law.*

32. The defendant company links Article 156 of Chapter 12 of the Laws of Malta to its plea of nullity under Article 789(1)(c), stating that the application is null precisely because it does not conform with the elements required *ad validitatem* under Article 156;

33. In his note of submissions, the plaintiff maintains that Article 156 is not applicable in this case, as proceedings were not instituted by means of a sworn application, but by means of an application which need not have been sworn. Nevertheless, the Court notes that the fact that the application was not sworn does not mean that the general elements under Article 156, namely *"a statement which gives in a clear and explicit manner the subject of the cause in separate numbered paragraphs", "the cause of the claim"* and *"the claim or claims"* can be excluded from an application which is not sworn, as, ultimately these are the elements that distinguish the application from any other form of written pleading, as well as being crucial elements for a Court to be able to understand and entertain any claim or request filed by a plaintiff, regardless of whether such application is sworn or not;

34. The Court of Appeal, in the judgement delivered in the names ***Richard Attard vs John Rizzo***[1]:

[1] Rik Nru 181/2011/1, Qorti tal-Appell (Superjuri), 18 ta' Frar 2021

14. […] [F]'materja ta' nullita' tal-atti, is-sanzjoni estrema tan-nullita' ta' att ġudizzjarju titlob li l-eċċezzjoni tintlaqa' biss f'każijiet eċċezzjonali meta r-rimedju waħdien li jingħata lill-imħarrek għall-preġudizzju mġarrab ikun it-tħassir tal-att, kif jipprovdi wkoll il-proviso tal-Artikolu 789(1) tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili. Hjia sanzjoni estrema li l-liġi timponi biss meta n-nuqqas formali jew sostanzjali ma jkunx jista' jiġi assolutament tollerat bla ħsara għal xi prinċipju ta' ġustizzja proċedurali [App. Ċiv. **4.11.1991** fil-kawża fl-ismijiet ***Vella v. Cefai*** (Kollez. Vol: **LXXV.ii.4567**)] *Fuq kollox, il-liġi tal-proċedura hija maħsuba biex il-kawżi jimxu b'ħeffa u effiċjenza, ekonomija w ħarsien tal-jeddijiet tad-difiża u tal-prinċipji tal-ġustizzja naturali;*

15. Illi l-eċċezzjoni preliminari mistħarrġa mill-ewwel Qorti fis-sentenza appellata kienet titkellem fuq in-nuqqas ta' ċarezza tal-azzjoni mibdija mill-appellant. Mill-kliem innifsu tal-Artikolu 156(1)(a) tal-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili, joħroġ illi (i) l-attur għandu jidentifika l-oġġett tal-kawża billi jiddikjara r-raġuni għala jkun qiegħed jitlob dik il-ħaġa; (ii) dak l-oġġett u dik ir-raġuni jridu jkunu mfissrin ċar u sewwa; (iii) t-talba jew it-talbiet ikunu marbutin mar-raġuni jew raġunijiet kif premess fir-Rikors Maħluf; u (iv) li dawn l-elementi għandhom jirriżultaw mill-att ġudizzjarju nnifsu u mhux minn xi kjarifika li tista' ssir dwarhom waqt is-smigħ tal-kawża; [App. Ċiv **30.3.1998** fil-kawża fl-ismijiet ***Ray Bezzina v. Anthony Galea***]

16. Illi ingħad ukoll f'deċiżjonijiet ta' dawn il-Qrati matul iż-żmien [App Ċiv. **29.3.2019** fil-kawża fl-ismijiet ***Roland Darmanin Kissaun et v. Global Capital Financial Management***] *li n-nuqqasijiet fl-att ġudizzjarju jridu*

jidhru mad-daqqa t'għajn u mill-mod kif l-att ikun imfassal. Minbarra dan, biex tista' tintlaqa' l-eċċezzjoni tan-nuqqas ta' siwi jew nullita' ta' att ġudizzjarju, in-nuqqas irid ikun wieħed li jissemma fid-dispożizzjonijiet tal-Artikolu 789(1) tal-Kodiċi msemmi. […]

35. Although it is true that, as the defendant company points out in its first preliminary plea, the plaintiff does not indicate the provision under Regulation (EU) No 1215/2012 in terms of which the application is being filed, the requests made in the same application indicate that the plaintiff is seeking a declaration of recognition and enforceability of the judgement delivered by the Courts in Austria, by virtue of which he would subsequently be able to invoke the judgement against the defendant company in Malta, and thus be able to seek his rights against the defendant company by all means available to him under the Laws of Malta;

36. Nevertheless, **nowhere** does Regulation (EU) No 1215/2012 provide for a procedure for a declaration of recognition and enforceability of a foreign judgement in the addressed Member State, and this precisely for the reasons outlined above. What the plaintiff failed to realise is that the judgements obtained in the Austrian Courts are, in themselves, **sufficient**, under Regulation (EU) No 1215/2012, for him to be able to exercise his rights as creditor of the defendant company. Assuming that he is able to provide all the documents required under Article 37 of Regulation (EU) No 1215/2012 to the satisfaction of the Maltese Courts, **a declaration of recognition and enforceability is no longer required under EU Legislation, and a procedure therefor no longer exists**;

37. Thus, in the absence of a clear indication of the provisions at law on the basis of which the plaintiff is basing his requests, **the Court fails to identify which action is being brought in terms of Regulation (EU) No 1215/2012 by the plaintiff**. According to case law outlined above, in order to satisfy the elements of Article 156(1)(a) of Chapter 12, the plaintiff must identify in a clear and explicit manner the subject of the cause. Failure of the plaintiff to indicate in his application which action he is seeking in terms

of Regulation (EU) No 1215/2012 is tantamount to a violation of Article 156(1)(a) of Chapter 12, as the subject of the cause is not clearly and explicitly identified;

38. It is only from his submissions regarding the second preliminary plea that this Court gathers that the plaintiff is basing his action on two elements: (a) judicial precedent, and (b) an interpretation of *"a decision that there are no grounds for refusal of recognition"* under Article 36(2) of Regulation (EU) No 1215/2012 as equating to a declaration of recognition and enforceability of the judgement delivered in his favour by the Austrian Courts:

    a. Insofar as **judicial precedent** is concerned, with reference to the judgement given in the names ***L-Avukat Desira noe vs Oil & Ship Consultancy Limited (1099/2018 FDP)***, which the plaintiff quotes in his note of submissions as precedent, this Court notes that this was a case where there was no objection by the defendant to the enforceability of the judgement against the defendant in Malta. The circumstances of the case where therefore different from those of this case, and the judgement delivered in Cyprus would have been recognised and enforced in Malta regardless of whether or not the request made by the plaintiff in that particular case was upheld by the Court. This is not so in this case, where the defendant company is clearly objecting to the enforcement of the judgement delivered by the Austrian Courts in Malta, as evidenced by the third plea raised in its reply to the application, which plea is not being addressed by the present judgement;

    b. On the other hand, insofar as **the plaintiff's interpretation of Article 36(2)** is concerned, the relative paragraphs from the Preamble of Regulation (EU) No 1215/2012 reproduced above make it very clear that it is only the person against whom enforcement of a judgement is being sought that can bring an action for refusal of enforcement on the basis of one of the grounds listed in Article 45. It is not, as the plaintiff claims, solely a question of different wording, but rather a question of the type of action which should be brought itself. It is

evident from the Regulation itself that the plaintiff, armed with a judgement in a Member State, already has the tool for recognition of enforcement of that judgement in the addressed Member State, and that the procedure under Article 36(2) only serves to give the defendant a safety-net against the very powerful tool with which the plaintiff is armed;

This considered, and without prejudice to the above, the Court adds that very fact that the plaintiff had to elaborate on the basis upon which he is basing his action in his note of submissions, further proves that the nature of the action instituted does not result from the application itself, but from clarifications which were made by the plaintiff later on. Case law outlined earlier on made it clear that the nature of the action should result from the application itself, and not from clarifications made thereupon;

39. Finally, this Court must examine whether the failure of the plaintiff to indicate which action is being relied on has been prejudicial to the defendant company. Without delving into the merits of the third plea raised by the defendant company, the Court notes how the third plea raised by the defendant company invokes, in fact, Articles 45 and 46 of Regulation (EU) No 1215/2012. The provisions of Articles 45 and 46 should, however, have been addressed in an action instituted by the defendant company itself under Article 36(2), and not as a plea on the merits following an application filed by the plaintiff seeking enforcement of a foreign judgement in his favour. It is very clear that, faced with an application for a declaration of recognition and enforceability of a foreign judgement when such a procedure is not provided for at law in the first place, the defendant company was placed in a difficult position, as it was unsure of how to raise a proper defence. It thus resorted to invoking Articles 45 and 46 of Regulation (EU) No 1215/2012 and reserving its rights to file its own judicial proceedings against the plaintiff in terms of the same Regulation;

40. Thus, in summary, the Court concludes that:

a. Although it is evident from the wording of the application itself, that the plaintiff is seeking a declaration of recognition and enforceability of the foreign judgement, it remains unclear on what legal basis the plaintiff is instituting this action, as the action cannot be identified from the application as being an action instituted in terms of Regulation (EU) No 1215/2012;

b. Even though the defendant company raised a plea on the merits of the plaintiff's request, the way the defendant company invoked Articles 45 and 46 does not make up for the fact that the action relied on by the plaintiff is not clearly identified. Rather, the very fact that such a plea was raised in such a manner shows how the defendant were faced with a situation where they were unsure of how to defend themselves, resorting instead to moulding a completely different judicial procedure in such a way that it would fit the proceedings instituted by the plaintiff, in an effort to safeguard their rights as provided for by Regulation (EU) No 1215/2012;

c. It thus follows that, in spite of the fact that it appears from the outset that the requisites under Article 156(1) are all met in the application by virtue of which these proceedings were instituted, the application is still defective at law, as: (i) it is not clear which action is being sought under Regulation (EU) No 1215/2012; (ii) it consequently makes it difficult for the defendant company to defend itself by utilising the proper procedure under Regulation (EU) No 1215/2012; and (iii) the defect cannot be remedied by virtue of a correction or amendment authorised under Article 175 of Chapter 12 of the Laws of Malta, as, what is required, is essentially a completely different action brought by a different plaintiff, that is, brought by the party against whom enforcement of the foreign judgement is being sought;

d. Finally, on a more general note and without prejudice to the above, the Court also points out that if it were to allow an action requesting a declaration of recognition and enforceability of a foreign judgement to proceed further, it would also be undermining the very foundations

and principles of better administration of justice on the basis of which Regulation No 44/2001 was recast into Regulation No 1215/2012;

41. Thus, in view of the above, **the Court declares that the first plea raised by the defendant company is justified, and that the proceedings as instituted by the plaintiff are null and void at law**.

(ii) Second Preliminary Plea: The action sought by the plaintiff has no legal basis under Regulation (EU) No 1215/2012

42. In view of the fact that the first plea raised by the defendant company was declared to be justified, the Court need not delve into the merits of the second preliminary plea raised by the defendant company.

Decide

43. For these reasons, the Court upholds the first plea raised by the defendant company, and declares that the proceedings as instituted by the plaintiff are null and void at law. The defendant company is thus being discharged *ab observantia judicii*.

Costs pertinent to these proceedings are to be borne by the plaintiff.

Read.

Hon Madame Justice Dr Audrey Demicoli LL.D.

Dr Graziella Attard
Deputy Registrar