



**CIVIL COURT (FIRST HALL)**

**MADAM JUSTICE**

**HON. AUDREY DEMICOLI LL.D.**

Application Nr **475/2021**

**NADEZHDA HRISTOVA NIKOLOVA (ID 63715A)**

**VS**

**DR JOSEPH P BONNICI AND**

**LP DAVINA ELLUL SULLIVAN**

**AS DULY NOMINATED BY THIS COURT BY VIRTUE OF A DECREE**

**DATED 14TH JUNE 2021**

**AS DEPUTY CURATORS**

**TO REPRESENT THE ESTATE OF**

**EDGAR AZZOPARDI (ID 463332M)**

**Sitting held on Friday, 14th October 2022**

**The Court:**

1. This is a final judgement regarding a claim filed by the plaintiff for the cancellation of a Special Privilege burdening the tenement with address number eighteen (18), Triq Mikiel Anton Vassallo, Hamrun, which

tenement was bought by the plaintiff from Edgar Azzopardi prior to his demise;

### **Preliminaries**

2. By virtue of a sworn application filed on the eighteenth (18<sup>th</sup>) of May 2021, the plaintiff **Nadezhda Hristova Nikolova** submitted and confirmed on oath:

- a. That the plaintiff by means of a public deed dated the sixteenth (16<sup>th</sup>) of January of the year two thousand and sixteen (2016) published in the acts of Notary Ruth Antoinette Antoncich LL.D (**Doc A**), bought and acquired the tenement with address number eighteen (18), situated in Triq Mikiel Anton Vassalli, Hamrun, from Edgar Azzopardi for the price of twenty thousand Euro (€20,000). Since Edgar Azzopardi resided in Australia, he appeared on the said deed as represented by Judith Busuttil (374666M);
- b. That on the mentioned public deed Edgar Azzopardi received the sum of one thousand and one hundred Euro (€1,100) and it was agreed between the parties that the balance of the purchase price amounting to eighteen thousand and nine hundred Euro (€18,900) is to be paid to Edgar Azzopardi by the plaintiff in monthly instalments of two hundred and fifty Euro (€250) without interest;
- c. That in view of this agreement Edgar Azzopardi reserved in his favour a Special Privilege on the tenement in question in terms of law. That this Special Privilege has progressive number 851/2016/H (**Doc B**);
- d. That recently when the plaintiff tried to process the last payment to Edgar Azzopardi by means of a bank transfer in his Australian bank account, such did not go through. That from further verification it resulted to the applicant that Edgar Azzopardi had passed away. That

the plaintiff then made various attempts to communicate with the relatives of Edgar Azzopardi in order to make the final payment and to carry out the cancellation of the Special Privilege, however they refused to cooperate with the plaintiff without any valid reason;

- e. That faced with these circumstances, the applicant had no other choice but to proceed to deposit the remaining balance that she had to pay to Edgar Azzopardi in the amount of two thousand and one hundred and fifty Euro (€2,150) under Court authority by means of a schedule of deposit. That the said schedule of deposit was filed on the 20<sup>th</sup> of April 2021 and bears reference number 1051/2021 (**Doc C**);
  - f. That as such the plaintiff paid the balance on the purchase price;
  - g. That in view of the extinction of the credit as resulting from the deed of transfer dated sixteenth (16<sup>th</sup>) of January of the year two thousand and sixteen (2016) in acts of Notary Ruth Antoinette Antoncich LL.D. here above indicated, the plaintiff is interested in obtaining the total cancellation of the Special Privilege here above indicated burdening the property that she acquired by virtue of that same deed;
  - h. That although the relatives of Edgar Azzopardi were called upon on several occasions to cooperate with the plaintiff and to give their consent so that the cancellation of the mentioned Privilege can be duly made, they failed to do so without any just cause;
  - i. That it is for this reason that this case had to be filed;
  - j. That these facts are personally known by the plaintiff;
3. The plaintiff therefore requested this Court to:
- i. Declare and decide that the balance of the price for the transfer of the tenement with address number eighteen (18), situated in Triq Mikiel Anton Vassalli, Hamrun amounting to eighteen thousand and nine

hundred Euro (€18,900) was duly paid by the applicant and therefore the said credit is today extinguished;

- ii. Consequently order the total cancellation of the Special Privilege here above-mentioned burdening the said tenement;
- iii. Order and condemn the respondent/s to come forward for the publication of the opportune Notarial Act so that they could give their consent for the total cancellation of the Privilege here above-mentioned burdening the said tenement, and nominate a Notary Public and Deputy Curator to represent the respondent/s in the eventuality that they are contumacious and appoints a time and all other modalities for the publication of the said Notarial Act;

With all costs to be borne by the respondent/s;

4. By virtue of an application filed on the eighteenth (18<sup>th</sup>) May 2021 together with the sworn application, the plaintiff submitted that she had made various attempts to get in touch with the heirs of Edgar Azzopardi to no avail, and, in view of the fact that Dr Benjamin Valenzia had already been nominated by the Court deputy curator to represent the estate of Edgar Azzopardi for the purposes of the schedule of deposit filed by the plaintiff in Court, the plaintiff requested that his nomination be extended to include the present proceedings;
5. By virtue of a decree given by this Court as otherwise presided dated fourteenth (14<sup>th</sup>) June 2021, Dr Joseph P. Bonnici and Legal Procurator Davina Ellul Sullivan were nominated deputy curators to represent the estate of Edgar Azzopardi;
6. Having seen the sworn application filed by the plaintiff on the 18<sup>th</sup> May 2021, by virtue of a decree dated 22<sup>nd</sup> June 2021, the Court ordered that the defendants not be served with the relative documentation, and granted

the defendants noe a term of twenty (20) days during which he had to file a sworn reply. The first sitting was scheduled for Thursday, 15<sup>th</sup> July 2021;

7. By virtue of a sworn reply dated fifth (5<sup>th</sup> October 2021), the defendants noe raised the following pleas:
  - a. That they were not aware of the facts, and reserved their rights to file a more detailed reply once they were given the relative information as requested, and that any documents exhibited had to be confirmed on oath by the person who would have prepared them;
  - b. That the plaintiff had to prove that testamentary searches of the late Edgar Azzopardi had been carried out, both locally and in Australia;
  - c. That the plaintiff also had to prove that she did all she could to serve the heirs or his representatives by virtue of the procedures stipulated at law, including Chapter 12 of the Laws of Malta, and the Directives of the European Union;
  - d. That the plaintiff should produce receipts relative to the monthly payments as referred to in the sworn application;
  - e. Save for any other replies or documentation as may be the case;
8. During the sitting held on the seventh (7<sup>th</sup>) October 2021, the plaintiff declared that she does not understand the Maltese language as she is of Bulgarian nationality, and requested that proceedings be conducted in the English language. This Court upheld the request and ordered that proceedings henceforth be conducted in the English language.

## **The Court**

9. Having seen the sworn application filed by **Nadezhda Hristova Nikolova** on the 18<sup>th</sup> May 2021, as well as the documents attached thereto, namely:

(a) deed dated sixteenth (16<sup>th</sup>) January 2016 published in the Acts of Notary Ruth Antoinette Antoncich (marked **Doc A** a fol 11-22 of the case file); (b) note of enrolment of the Special Privilege bearing progressive number 851/2016/H (marked **Doc B** a fol 23-24 of the case file); and (c) schedule of deposit bearing reference number 1051/2021 (marked **Doc C** a fol 25-26 of the case file);

10. Having seen the sworn reply filed by **Dr Joseph P Bonnici and LP Davina Ellul Sullivan** as deputy curators representing the estate of Edgar Azzopardi, dated 5<sup>th</sup> October 2021;
11. Having seen the affidavit sworn by the plaintiff, together with supporting documentation (**Doc NHN** a fol 131 *et seq* of the case file);
12. Having heard the testimony given by **Etienne Scicluna** on oath *viva voce* during the sitting held on the 19<sup>th</sup> November 2021, in his capacity as Assistant Registrar Civil Courts and Tribunals, and having seen the document the witness exhibited (**Doc ES1** a fol 201 *et seq* of the case file);
13. Having heard the testimony given by **Lorraine Attard** on oath *viva voce* during the sitting held on the 19<sup>th</sup> November 2021, in her capacity as Court Representative at HSBC Bank Malta plc, and having seen the documents the witness exhibited (**Doc LA1** a fol 213 *et seq* of the case file, and **Doc LA2** a fol 233 *et seq* of the case file);
14. Having seen the affidavit sworn by **Notary Dr Ruth Antoinette Antoncich**, together with supporting documentation (**Doc RA** a fol 333 *et seq* of the case file);
15. Having heard the testimony given by **Dr Henry Antoncich** on oath *viva voce* during the sitting held on the 20<sup>th</sup> January 2022;
16. Having heard the testimony given by **Judith Busuttil** on oath *viva voce* during the sitting held on the 20<sup>th</sup> January 2022;

17. Having seen the affidavit sworn by **Notary Dr Fiona Zammit Armeni**, together with supporting documentation (**Doc FZA** a fol 362 *et seq* of the case file);
18. Having seen that, during the sitting held on the third (3<sup>rd</sup>) March 2022, the plaintiff declared that she had no further evidence to produce;
19. Having seen that, during the sitting held on the seventeenth (17<sup>th</sup>) June 2022, Dr Bonnici, in his capacity as deputy curator of the defendant, declared that there was no more proof to be produced from his end, and sustained his arguments of the proof of the documentation already produced by the plaintiff;
20. Having seen the note of final submissions filed by the plaintiff on the second (2<sup>nd</sup>) August 2022 (a fol 376 *et seq* of the case file);
21. Having seen the note of final submissions filed by the defendants noe on the first (1<sup>st</sup>) September 2022 (a fol 388 of the case file);
22. Having seen that the case was adjourned for judgement for today;
23. Considers as follows:

### **Legal Considerations made by the Court**

24. This case revolves around the first condition agreed upon on a deed of sale dated 16<sup>th</sup> January 2016 and published in the Acts of Notary Dr Ruth Antoinette Antoncich, by virtue of which the plaintiff acquired from Edgar Azzopardi, who is now deceased, a garage in Hamrun. The first condition ran as follows:

*1. In consideration and for the price of twenty thousand Euro (€20,000) out of which the vendor declares to have already received the sum of one thousand one hundred*

*Euro (€1,100) on account of the purchase price. The parties are hereby agreeing that the balance of eighteen thousand and nine-hundred Euro (€18,900) is to be paid in monthly instalments of two hundred fifty Euro (€250) without interest. The parties are hereby agreeing that if the purchaser fails to pay two monthly instalments, or any equivalent amount, and remains in default for two weeks from the notification of an official letter to regularize her position she will forfeit the benefit of time for payment and the whole balance will become due with interest from date of contract. The vendor is hereby reserving, in his favour, the Special Privilege competent to him in terms of Law, over the above-described property.<sup>1</sup>*

25. Although it was actually Judith Busuttill who signed the deed of sale, she was duly authorised to do so by Edgar Azzopardi, by virtue of a power of attorney attached to the same deed which empowered her, *inter alia*, “To effect any transfer (sale, barter or exchange long-lease, ‘*datio in solitum*’ etc) of movable and/or immovable property [...] for such sale price or consideration and under those terms and conditions which my said attorney may deem fit [...]”<sup>2</sup>. It can thus be ascertained that Edgar Azzopardi was bound by the conditions of the deed of sale, in terms of the legal principle of *pacta sunt servanda*, enshrined in Chapter 16 of the Laws of Malta under Article 992(1), which clearly states, “*Contracts legally entered into shall have the force of law for the contracting parties.*”;

26. The sale itself seems to have been contested only once, by third parties claiming to be co-owners of the garage in question<sup>3</sup>; however, these third

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<sup>1</sup> See **Doc A** attached to the sworn application, a fol 11 of the case file

<sup>2</sup> See **Doc A** attached to the deed of sale, which, in turn, is attached to the sworn application, a fol 17 of the case file

<sup>3</sup> See **Doc B** and **Doc C** attached to the plaintiff’s affidavit, a fol 141 and 142 *et seq* of the case file respectively



parties eventually dropped their claims, and decided not to pursue the matter further<sup>4</sup>;

27. The issue before the Court is this: the plaintiff has repeatedly claimed that she has paid off the principal amount in monthly instalments as agreed in the deed of sale; however, Mr Azzopardi's family has repeatedly refused to acknowledge the remaining balance as being paid, and to provide the documentation required for the publication of the deed of cancellation of the special privilege;

28. Having gone over the proof submitted by the plaintiff, the Court makes the following observations:

a. The plaintiff has exhibited proof to substantiate her claim that the remaining balance of €18,900 was paid in full. In fact, the Court notes that the plaintiff has exhibited proof that:

(i) €1,750 were passed on to Dr Henry Antoncich upon "*the directions given by Edgar Azzopardi*"<sup>5</sup>. Dr Antoncich also confirmed that he had issued the receipts<sup>6</sup> for this amount exhibited by the plaintiff, and confirmed that, "*Jiena naturalment il-flus ghaddejthom lil Edgar Azzopardi [...]*"<sup>7</sup>;

(ii) €15,000 were paid via bank transfer<sup>8</sup>, generally in monthly instalments of €250, but never less than this amount; and

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<sup>4</sup> See **Doc E** attached to the plaintiff's affidavit a fol 146 of the case file

<sup>5</sup> See the plaintiff's affidavit marked **Doc NHN** a fol 131 of the case file

<sup>6</sup> See receipts marked as **Doc A1-A6** a fol 135-140 of the case file

<sup>7</sup> Testimony on oath given during the sitting held on 20<sup>th</sup> January 2022. Relative transcript can be found a fol 355 of the case file

<sup>8</sup> The plaintiff lists the payments effected via bank transfer in her note of final submissions. This Court matched the list to each corresponding transaction in the bank account statements exhibited by **Lorraine Attard** in her capacity as Court Representative for HSBC Bank Malta plc (**Doc LA1** a fol 213 *et seq* and **Doc LA2** a fol 233 *et seq*), and with the bank transfer receipts exhibited by the plaintiff by virtue of a note filed in the Court Registry on the 28<sup>th</sup> June 2021 (a fol 67 *et seq*). Thus, the Court is satisfied that the plaintiff has managed to substantiate her claim that she effected payment for a total of €15,000 via bank transfers.

(iii) €2,150 were deposited under the authority of this Court<sup>9</sup>;

- b. Although Bernadette Bradford and Mark Azzopardi consistently refused to bring forward proof of their identity as heirs of the deceased<sup>10</sup>, the e-mail marked as **Doc E** attached to the plaintiff's affidavit<sup>11</sup> was sent to Fenech & Fenech Advocates by Edgar Azzopardi from Mark Azzopardi's e-mail address, thereby proving that Edgar and Mark Azzopardi were related. Furthermore, Dr Henry Antoncich also testifies, "*Jiena kelli l-contact details tat-tfal ta' Edgar u ghamilt kuntatt magghom. [...] Lit-tfal ta' Edgar Azzopardi tlabthom kopja tac-cerrtifikat tal-mewt ta' missierhom [...] Kienu qaluli illi l-ezekutrici hija l-armla ta' Edgar Azzopardi [...]*". Thus Dr Antoncich was also aware that the contacts the plaintiff had following the demise of Edgar Azzopardi were in fact Mr Azzopardi's wife and children. In addition, the Court notes how, in any case, Bernadette Bradford and Mark Azzopardi never contested the fact that they are in fact Mr Edgar Azzopardi's children;
- c. The plaintiff has exhibited proof to substantiate her claim that whenever there was an issue with the payment going through, she did her utmost to remedy the situation. In fact, the exchange of messages between herself and Bernadette Bradford show that the plaintiff got in touch with Ms Bradford whenever there was an issue with payment, as was the case, for instance, in September 2017<sup>12</sup> and November 2017<sup>13</sup>, and, once the situation was remedied, Ms Bradford herself confirmed receipt of payments<sup>14</sup>;

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<sup>9</sup> See schedule of deposit bearing reference number 1051/2021 exhibited by **Etienne Scicluna** in his capacity as Assistant Registrar Civil Courts and Tribunals, marked as **Doc ES1** a fol 201 *et seq* of the case file

<sup>10</sup> See e-mails exchanged between **Notary Dr Fiona Zammit Armeni**, Bernadette Bradford and Mark Azzopardi, a fol 368 *et seq* of the case file

<sup>11</sup> A fol 146 of the case file

<sup>12</sup> See exchange of e-mails between the plaintiff and Ms Bradford attached to the plaintiff's affidavit, a fol 156 of the case file

<sup>13</sup> See **Doc I** attached to the plaintiff's affidavit, a fol 158 *et seq* of the case file

<sup>14</sup> *Ibid*, notes 12 & 13

d. There were instances where the plaintiff not only paid the relative monthly instalment, but paid instalments in advance. Thus, for instance, on 16<sup>th</sup> November 2020, the plaintiff effected a bank transfer for December 2020 to March 2021 in the amount of €1,000, and, on the following day, the plaintiff effected a bank transfer for April to July 2021 in the amount of €1,000<sup>15</sup>. This clearly shows that the plaintiff's intention was always to settle the remaining balance as soon as possible, in order to have the special privilege removed and her affairs with Edgar Azzopardi's estate sorted;

29. The Court is thus satisfied **that the plaintiff abided by the first condition agreed upon in the deed of sale entered into with the late Edgar Azzopardi, and that the remaining balance was paid in full;**

30. Article 2084 of the Civil Code clearly states:

*Privileges and hypothecs are extinguished –*

*(a) by the extinguishment of the principal obligation;*

31. Considering that it has been sufficiently proven to the satisfaction of this Court that the principal obligation was extinguished, as the remaining balance of €18,900 was paid in full, the Court sees no reason why the special privilege reserved by Edgar Azzopardi in his favour on the deed of sale should remain in place;

32. It transpires from the e-mails introduced by Notary Dr Fiona Zammit Armeni in the acts of this case, that Bernadette Bradford and Mark Azzopardi were reluctant to send documentation essentially required by Maltese law for the act of cancellation of the special privilege to be drawn

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<sup>15</sup> See bank transfer receipts a fol 116 and 117 of the case file

up, and this for various reasons, namely that they considered it 'dangerous' to send personal information via the Internet<sup>16</sup>;

33. The Court observes that:

- a. Notary Dr Fiona Zammit Armeni identified herself in the e-mails she sent as a Notary Public & Commissioner for Oaths, and took the time and effort to explain to Mr Azzopardi and Ms Bradford why the information was being requested on her part;
- b. This notwithstanding, should Ms Bradford and Mr Azzopardi still not have trusted Notary Zammit Armeni, they could have easily taken other measures to ensure that the relative deed of cancellation of special privilege could be published, including consulting a solicitor or barrister in Australia to liaise with Notary Zammit Armeni and make all necessary verifications in their name so as to ensure that that which Notary Zammit Armeni was trying to explain to them, was effectively legal and required under Maltese law;

34. The Court will not dwell on the accusations made by Ms Bradford and Mr Azzopardi which have been proven by the plaintiff to be baseless, their demeanour once approached about the cancellation of the special privilege, and/or the reason behind their reluctance to forward the information required for the publication of the deed of cancellation; however, this Court emphasises that regardless of their thoughts on the matter, their father, the late Edgar Azzopardi, had entered into an agreement with the plaintiff, which agreement should be honoured as it has the force of law. **The Court can identify no valid reason at law upon which the special privilege should not be cancelled, considering that the principal obligation was extinguished;**

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<sup>16</sup> See e-mail attached to the affidavit sworn by **Notary Dr Fiona Zammit Armeni** a fol 366 of the case file

35. For all intents and purposes, it should be noted that the deputy curators nominated to represent the estate of Edgar Azzopardi seem to have in fact been in contact with the heir/s of Edgar Azzopardi themselves, and they were given ample opportunity by this Court to file any documentation which could further substantiate their claims. In fact, during the sitting dated seventeenth (17<sup>th</sup>) May 2022, it was minuted that, *“Dr Bonnici is requesting an adjournment as he needs to forward documentation to the heirs of Edgar Azzopardi in Australia.”*<sup>17</sup> Nevertheless, no proof was brought forward from their end during the subsequent sitting, and, in fact, during the sitting dated seventeenth (17<sup>th</sup>) June 2022, Dr Bonnici declared that, *“[F]rom his part there is no more proof to be produced and sustains his arguments of the proof of the documentation already produced by plaintiff.”*;

36. The Court refers to Article 2064 of the Civil Code, which establishes that:

*The cancellation of a registration may also be ordered by a judgment if it is not shown that the registration was made for a lawful cause, or if it is shown that the right of the creditor is extinguished.*

37. Having seen sufficient proof to the effect that the right of the creditor is indeed extinguished, which proof was confirmed on oath by the plaintiff herself as well as by the various witnesses brought forward by the plaintiff, and having seen that the proof brought forward by the plaintiff was in no way, shape or form contested by the defendants, this Court considers the plaintiff's requests justified in fact and at law, and will proceed to **accede** to the plaintiff's requests.

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<sup>17</sup> Minutes from the sitting dated 17<sup>th</sup> May 2022, a fol 374 of the case file

## **Decide**

38. For these reasons, the Court:

- i. Rejects all the defendants' pleas;
- ii. Declares that the balance of the price for the transfer of the tenement with address number eighteen (18), Triq Mikiel Anton Vassalli Hamrun, amounting to eighteen thousand and nine hundred Euro (€18,900) was duly paid by the plaintiff, and therefore this credit is today extinguished;
- iii. Orders the cancellation of the Special Privilege bearing Progressive Number 851/2016/H burdening the property;
- iv. For the purpose of the publication of the relative deed of cancellation, the Court:
  - a. Nominates Notary Dr Fiona Zammit Armeni to publish this deed;
  - b. Orders the heirs of the late Edgar Azzopardi to forward to Notary Dr Fiona Zammit Armeni all relative information and documentation that may be required in terms of the Laws of Malta for publication of the same deed within two (2) weeks from when such request is made by the said Notary;
  - c. Orders that the deed be published in the building of the Courts of Malta in Valletta, on a date and time to be fixed by the said Notary not later than two (2) months from the date of this judgement;
  - d. Appoints Dr. Benjamin Valenzia to appear on behalf of the defendants in the case that the heirs of Edgar Azzopardi, or a representative as duly appointed by them by virtue of a power of attorney, fail to appear for the publication of the deed.

Costs are to be borne by the defendants.

**Read in open Court.**

**Hon Madam Justice Dr Audrey Demicoli LL.D.**

**LP Carina Abdilla  
Deputy Registrar**