



**COURT OF MAGISTRATES (MALTA)**  
**MAGISTRAT DR MARSE-ANN FARRUGIA LL.D.**

**Sitting held to-day Wednesday, 22nd February 2023**

**Application Number: 58/2022 MLF**

**In the acts of the judicial letter filed in terms of Art 166A of Cap 12 of the Laws of Malta, bearing number: 2675/21, filed on the 7<sup>th</sup> December 2021 and rendered an executive title on the 4<sup>th</sup> February 2022, and after the issuance of the garnishee order bearing number 339/2022, in the names:**

**Rebecca Chircop who manages the business RC Accounting Services**

**vs**

**The Writers Group Ltd**

The Court

1. Having seen the application of The Writers Group Ltd wherein it submitted as follows:
  1. Whereas the present application is being filed by the applicant in terms of Article 166A(5) of Cap 12 of the Laws of Malta, and this for the following reasons.

2. Whereas by means of the judicial letter being the subject of these proceedings, issued in terms of Article 166A, sender Rebecca Chircop (ID 313488M) who runs the firm RC Accounting Services requested the payment of credit which in her view was certain, liquid and due.
3. Whereas primarily *[sic]* it must be noted that the applicant company (Dok A) is a single member company, where the legal and judicial representative of the same is Isabella Rae Banda (Dok B), a person who despite having Maltese citizenship, is of Australian origin and neither understands, nor speak and much less reads the Maltese language. This is a fact which Chircop knows in view of the fact that she has a professional relationship with the same applicant company and with the sole shareholder, director and representative of the same, in such manner that she cannot therefore say that she was not aware of the applicant's lack of understanding of the Maltese language.
4. Whereas on the 31<sup>st</sup> December 2021 the company was notified with the present judicial letter (Dok C) written in the Maltese language without being provided with a translation in the English language in terms of Cap 189 of the Laws of Malta.
5. Whereas sub-article (1) of the Article 5 of Cap 189 of the Laws of Malta states that:  
  
*5 (1) Where any act is to be served on any person whom the registrar has reason to believe to be English-speaking, the registrar shall cause a translation thereof to be made into the English language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation.*
6. Whereas sub article (5) of the Article 5 of Cap 189 of the Laws of Malta states that:  
  
*(5) A copy in the English language of the provisions of sub article (1) to (4) shall be reproduced on or annexed to every copy of any act which is to be served on any person.*
7. Whereas furthermore, in the present case, the sender, Rebecca Chircop, also failed to send the said copy of the legal dispositions mentioned above in the English

language, and therefore the applicant could not have any form of indication as to the content of the letter, the nature and potential consequences of the same, and much less of what legal remedies she could have had at her disposal in order for her to be able to contest the letter sent to her, as she would have had an interest in doing. Furthermore, even because of this shortcoming, she could not know that she had a right to request a translation of the document as stated in Article 5(2) of Cap 189 of the Laws of Malta, since the legal disposition which the law requires to be notified with every act were not included in the letter forming the merits of these proceedings.

8. Whereas it must also be explained that the applicant had already, previously, received a legal letter sent by the same sender Rebecca Chircop, and thus she thought that this letter was another reminder sent after the first letter, about which she was taking account of the facts in order to rebut the allegations contained therein.
9. Whereas it was only when the representative of the applicant company, on the 2<sup>nd</sup> March 2022, was served with the garnishee order by means of a court executive officer, that she realised that the Court was involved, and thus, right away, she informed her lawyer.
10. Whereas therefore, since the judicial letter was not accompanied by a translation into the English language as required by law, it cannot be stated that the applicant company was duly notified in terms of the requirement of sub article (3) of Article 166A of Cap. 12 of the Laws of Malta where it is stated that:  
  
*“(3) The judicial letter shall also on pain of nullity contain an intimation to the debtor that if he does not reply within thirty days from the service upon him of the said judicial letter by presenting a note in the record of the said judicial letter rebutting the claim and which note may be signed and presented in court by the debtor himself without the signature of an Advocate or of a Legal Procurator being required, such official letter shall, constitute an executive title.”*
11. Whereas the default on the part of the sender Rebecca Chircop to call upon the applicant as required by law in the said sub article in an effective manner, as the law

requires, is a very serious default, since the requirement is one which is necessary ad validitatem and the sanction for this is the nullity of the very same judicial letter.

12. Whereas for all intents and purposes the applicant points out that it has an interest in opposing the pretended right of credit and this because she has legally valid reasons to do so.

Therefore, the applicant company requested this Court to, saving any other declaration which may be deemed required or necessary:

1. Appoint this application for hearing in terms of Article 166A(5) of the Laws of Malta;
  2. Declare that the applicant company was unaware of the judicial letter issued in terms of Article 166A of Cap. 12 of the Laws of Malta with number 2657/21 because it was not duly notified;
  3. Declare that the judicial letter issued in terms of Article 166A of Cap. 12 of the Laws of Malta with number 2657/21 did not contain the requirements laid down in Article 166A(3) of Cap 12 of the Laws of Malta;
  4. Rescind and declare null and without effect the executive title acquired by means of the said letter by the sender Rebecca Chircop (ID 313488M) who runs the firm RC Accounting Services;
  5. Revoke the garnishee order number 339/2022 issued on the 28<sup>th</sup> January 2022 in the names *Rebecca Chircop (KI 313488M) li tiggstixxi d-ditta RC Accounting Services vs The Writers Group Ltd (C 93952)*.
2. Having seen the reply of Rebecca Chircop who manages the business RC Accounting Services wherein she submitted:
    1. That the respondent is hereby opposing to the claims brought forward by the defendant company on the basis that the company is registered in Malta and di piu'

Isabella Rae Banda, who is the sole legal representative as duly confirmed in her application is a Maltese citizen as per the attached Maltese identity card Dok A;

2. That *dato ma non concesso* the possibility that Isabella Rae Banda is not fluent in the Maltese language, there are no sufficient grounds to believe that Isabella Rae Banda has no understanding at least the bare minimum of the Maltese language to understand that she has received documentation from the Court and that she is being requested to pay. It is quite impossible that the defendant did not understand the bare minimum that judicial proceedings have been lodged, so much that she had already received legal letters which she had ignored (vide Dok B).
3. That Article 5(2) of Chapter 189 of the Laws of Malta stipulates that the defendant could have requested that the Registrar of Courts to provide an English version, but she failed to lodge such request, instead decided to ignore the judicial letter duly received.
4. That the defendant's application to this Honorable Court confirms under paragraph 8, that she had received the legal letter annexed and marked Dok B which is in the Maltese language and that she was aware that the applicant was requesting the payment from her and she also confirms that she had understood that the judicial letter was also claiming payment from her, but was not aware that this was a letter from court but thought it was similar to the previous letter.
5. That the defendant is registered in Malta and is a separate legal entity from Isabella Rae Banda who is a Maltese citizen and therefore in terms of Article 7 of Chapter 189 there is no legal basis to conclude that the defendant company of Isabella Rae Banda has no understanding at all of the Maltese language which makes it impossible to her to believe that she had received a letter from Court and that she was being asked to pay, but rather it is more likely that she decided to ignore the judicial letter.

In view of the above, the respondent humbly submits that the notification of the judicial letter is valid one, and the application brought forward by the defendant company is to be refused.

2. Having heard the witnesses brought forward by the Prosecution and having seen all the documents exhibited and all the records of the case.
3. Having seen the written notes of submissions of the parties.

### **Considerations of the Court**

4. The facts of the case can be summarized as follows:
  - (i) On the 7<sup>th</sup> December 2021, the defendant Rebecca Chircop filed a judicial letter (number 2675/2021) in terms of Article 166A of Code of Civil Procedure against the applicant company, The Writers Group Ltd., wherein called upon the company to pay her the sum of €2,419.
  - (ii) The Writers Group Ltd. is a single member company registered in Malta, where the only director is Isabella Rae Banda, and the legal and judicial representation is also vested in her.
  - (iii) This judicial letter was served on the applicant company on the 31<sup>st</sup>. December 2021, but the applicant company failed to contest it within the time-limit prescribed by law. Hence the amount claimed was rendered an executive title in favour of the defendant Rebecca Chircop.
  - (iv) After being notified of an executive warrant filed by the defendant against the plaintiff company, the latter filed the present proceedings in order for this executive title to be declared null and void in terms of Article 166A(5) of the Code of Civil Procedure.
5. In these proceedings, the applicant company is claiming that:
  - (i) although its director Isabella Rae Banda is a Maltese citizen, she is of Australian origin, and she does not understand the Maltese language, nor does she speak it

or write it. She declares that here in Malta she communicates only in the English language.

- (ii) Isabella Rae Banda did not understand the contents of the judicial letter received by the company, because it was drafted in the Maltese language, nor did she understand that these were judicial proceedings, where a reply opposing the claim had to be filed within a specified time, and in default the letter will be rendered an executive title.
  - (iii) The judicial letter, did not have annexed to it a copy in the English language of the provisions of sub article (1) to (4) of Article 5 of Chapter 189 of the Laws of Malta, as prescribed in Article 5(5) of the same Chapter.
6. The defendant Rebecca Chircop did not contest the allegation of the defendant company that the judicial letter in question did not have annexed to it a translation in the English language or a copy in the English language of the provisions of sub article (1) to (4) of Article 5 of Chapter 189 of the Laws of Malta, as prescribed in Article 5(5) of the same Chapter. If this notification had been annexed to the judicial letter, the director Isabella Rae Banda would have known that the letter was a judicial act and that she had a right to request a translation of the judicial letter in English.
7. Article 5(5) of Chapter 189 is very clear and categorical:

*“A copy in the English language of the provisions of subarticle (1) to (4) shall be reproduced on or annexed to every copy of any act which is to be served on any person.”*

8. This provision of the law is mandatory – as the legislator uses the word “shall” - and leaves no room for interpretation. This notice must be annexed to every copy of any act which is to be served on any person, indiscriminately, even if the recipient is a Maltese-speaking person. The mere fact that in this case, this provision of law was not complied with, means that the notification of the judicial letter was not carried out in accordance

with the law. In the judgement **GO p.l.c. vs Janet Florence Preece** decided on the 23<sup>rd</sup> April 2018, the Court of Appeal (Inferior jurisdiction)<sup>1</sup> held as follows:

*“33. Hu fatt li fil-Kap. 189 ma jinghadx espressament li n-notifika tkun nulla. Pero’ subinčiz (5) tal-artikolu 5 ježiġi li l-att għandu jkollu mehmuż miegħu, “Kopja bl-ilsien Inġliż tad-disposizzjonijiet tas-subartikoli (1) sa (4) inkluzi”. Ladarba l-appellata ma tifhimx bil-lingwa Maltija, kien essenzjali li l-appellata tiġi notifikata wkoll bl-imsemmija disposizzjonijiet. Peress li ma ġietx notifikata b’dik id-dikjarazzjoni u l-appellata ma tifhimx bil-Malti, mela ma ġietx notifikata bil-mod kif trid il-liġi. Ladarba rriżulta li l-appellata ma tifhimx bil-Malti u ma ġiex segwit dak li ježiġi l-artikolu 5(5) tal-Kap. 189, in-notifika ma saritx kif imiss. Għaldaqstant it-titolu eżekuttiv kellu jiġihassar.”*

9. The defendant Rebecca Chircop tried to discredit the witness Isabella Rae Banda, when she stated that she does not understand Maltese language, and tried to prove and argue that the witness had a basic knowledge of the Maltese language, sufficient for her to enable to her to realise that the letter she received was a judicial letter, and not simply a legal letter. Even if for the sake of argument only it is conceded that Isabella Rae Banda has some knowledge of basic Maltese words, the fact remains that the Court is satisfied that she does not have enough knowledge of the Maltese language in order to enable her to follow these proceedings in the Maltese language.

10. Article 7 of Chapter 189 states that:

*“For the purposes of this Act –*

*(a) a Maltese-speaking person is a person who has a sufficient knowledge of the Maltese language fully to understand and follow the proceedings conducted in that language;*

*(b) an English-speaking person is a person who has not a sufficient knowledge of the Maltese language fully to understand and follow the proceedings if conducted in that language but who has a sufficient knowledge of the English language fully to understand and follow the proceedings if conducted in that language;*

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<sup>1</sup> Per Judge Anthony Ellul.



*(c) every person shall be deemed to be Maltese-speaking unless the court shall be satisfied to the contrary.”*

11. The Court notes that these proceedings started in the Maltese language. In the sitting of the 22<sup>nd</sup>. March 2022,<sup>2</sup> the defense lawyer of the applicant company requested that the proceedings continue in the English language because Isabella Rae Banda did not understand the Maltese language. The defense lawyer of the defendant Rebecca Chircop did not object to the request, without prejudice to the contents of her reply filed in the records of this case. Hence the Court acceded to the request, and the proceedings continued in the English language.
12. The fact that the defendant Chircop did not object to the request that these proceedings are to be continued in the English language can only mean that Chircop was acknowledging that Isabella Rae Banda did not have sufficient knowledge of the Maltese language fully to understand and follow these proceedings if conducted in that language, but that she has sufficient knowledge of the English language fully to understand and follow the proceedings if conducted in that language. Consequently, the defendant herself acknowledged that Isabella Rae Banda is not a Maltese-speaking person, but is an English-speaking person for the purposes of Chapter 189.
13. The fact that Isabella Rae Banda is not a Maltese-speaking person made it all the more imperative – although as stated above, the law makes no exception with respect to Maltese-speaking persons – that the judicial letter drafted in the Maltese language, has at least attached to it the annex in terms of Article 5(5) of Chapter 189, informing her of her right to request a translation of the judicial act.
14. It is true that at one point during her cross-examination Isabella Rae Banda stated that after receiving the judicial letter in question she contacted her lawyer. But the Court is morally convinced, having had the opportunity to heard the witness testify *viva voce*, that it is obvious from her evidence taken as a whole, and the manner in which she testified, that the witness was genuinely confused on which letter she contacted the lawyer, since

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<sup>2</sup> See page 20 of the proceedings.

there was a previous legal letter sent to her, and a subsequent garnishee order (also a judicial act) which was served on her.

14. The defendant Chircop also refers to Article 5(2) of Chapter 189, which prescribes that an English-speaking person who is served with a judicial act in the Maltese language can “*apply for an English translation of the act served on him.*” She submits that the applicant company failed to do so, and simply ignored the judicial letter received from Court because she thought it was just another request for payment from her, i.e. from the defendant.
15. Although this may seem a somewhat ingenious argument, in reality it is a fallacious one. Isabella Rae Banda cannot be presumed to have been aware of her right to request a translation in the English language, because the judicial letter did not contain the annex informing her of this right, as is required by Chapter 189. In the opinion of this Court, Article 5(5) of Chapter 189 must be interpreted in a reasonable way so as to guarantee to the recipient of a judicial act a right to a translation which is effective and not illusionary. In this case, the maxim that ignorance of the law is no excuse cannot be applied, because the law itself makes it mandatory on whoever issues a judicial act to annex with it a paper containing the provisions of the law regarding rights to translation, so that the recipient is made aware of these rights. In the present case, the judicial letter did not contain this annex, and this deprived Isabella Rae Banda from her right to be informed of her rights and to exercise them in effective manner.
16. Consequently, the Court concludes that the applicant company was not duly notified with the judicial letter, since it did not contain the annex informing it of its right to request a translation, as required by law. The prejudice is more acute in this case, because the only director and the sole judicial and legal representative of the company is an English-speaking person. Hence, the notification of the judicial letter was not done in accordance of the law, and the executive title must be rescinded.

## **Conclusion**

17. In view of the above considerations, the Court:

1. abstains from taking further cognizance of the first request of the applicant company;
2. whilst rejecting all the pleas of the defendant, accedes to the second request of the applicant company, and declares that the applicant company was not duly notified of the judicial letter number 2675/21 issued in terms of Article 166A of Chapter 12 of the Laws of Malta.
3. abstains from taking cognizance of the third request of the applicant company;
4. accedes to the fourth request of the applicant company, and rescinds and declares null and void the executive title issued in favour of the defendant on the basis of the above-mentioned judicial letter against the applicant company, namely the garnishee order bearing number 339/2022 issued on the 28<sup>th</sup> January 2022 in the names “*Rebecca Chircop (KI 313488) li tiggstixxi d-ditta RC Accounting Services vs The Writers Group (C93952)*”;
5. abstains from taking cognizance of the fifth request of the applicant company.
6. orders that that all costs concerning these proceedings are to be borne by the defendant.

**Magistrate**

**Doreen Pickard**

**Deputy Registrar**