



**COURT OF MAGISTRATES (GOZO)
SUPERIOR JURISDICTION
GENERAL SECTION**

**MAGISTRATE DOCTOR BRIGITTE SULTANA
LL.D., LL.M. (CARDIFF), ADV. TRIB. ECCL.
MELIT.**

Today, Friday, 24th of February 2023

Sworn Application number: 85/2021 BS

Martin Calì

-vs-

Barbara Alison Trotman

The Court;

A. PRELIMINARY:

**Having seen the sworn application filed by Martin Calì¹
who premised:**

1. WHEREAS the parties have been in a relationship for about fourteen years (14) and that their relationship has ended in recent months;

2. WHEREAS during that relationship the parties spent about two (2) years cohabiting together first in the applicant's property and subsequently in the property purchased jointly between them;
3. WHEREAS through the contract of acquisition of the twenty-fourth of January of the year two thousand and nineteen (24.01.2019) in the deeds of Notary Dr Paul George Pisani, the parties acquired jointly and severally between them the number one apartment (1), which is located on the first floor forming part of a block without number but known as, "Carefree", in Triq Dahlet Qorrot, Nadur Gozo bordering on the Southeast by Triq Dahlet Qorrot, on the North-West and South-West with property of the Falzon family or their successors in title and this as shown by the document attached and marked Doc A;
4. WHEREAS by a deed of the same day, namely the twenty-fourth day of January of the year two thousand and nineteen (24.01.2019), the parties stated that they did not contribute equally for the purchase and agreed that the respondent is indebted to the applicant for the balance of eighty thousand Euros (€80,000) with the agreement that the full amount shall be due by the respondent to the applicant by a simple verbal request as shown in the document attached hereto and marked as Doc B;
5. WHEREAS, following the agreement drawn up on the twenty-fourth day of January, two thousand and nineteen (24.01.2019), Doc B, the respondent made a declaratory deed in which she stated that she had paid the sum of forty-four thousand three hundred and ten Euros (€44,310) to the applicant and therefore the balance due was reduced to thirty-five thousand, six hundred and ninety Euros (€35,690). In the same deed

¹ Original in Maltese at fol. 1 to 3 contd. at fol. 10 and 11 as translated into English at fol. 28 to 34.

the respondent undertook to pay the sum of not less than three hundred Euro (€300) per month to the applicant, as shown in the document attached and marked Doc C which obligation was not entered into in agreement with the applicant;

6. WHEREAS the applicant concedes that some payments have in fact been made since then and the amount due today is thirty-four thousand, seven hundred and fifty Euros and eighty-five cents (€34,750.85);
7. WHEREAS in July of the current year, the respondent changed the lock of the common property of the parties, thereby depriving the applicant of the possession and free enjoyment of his property, both immovable and its contents;
8. WHEREAS the vehicle of the make Daihatsu Sirion Hatchback with registration number capital letters 'H' 'B' 'F' six (6) one (1) two (2) [HBF 612] property of the applicant and which is in his possession, is registered in the name of the respondent as evidenced by the document Doc D, who is failing to sign the documents required for the Logbook to be in the name of the applicant;
9. WHEREAS the respondent was asked to change again the lock in such a way that the applicant will have free and full access to his property, she remained in default;
10. WHEREAS and furthermore the applicant requested payment of the full amount due, and the respondent remained in default;
11. WHEREAS there is no agreement obliging the parties to retain joint ownership of the property;
12. WHEREAS the applicant does not want to remain in a state of joint ownership with the other co-owner

respondent and therefore had no choice but to proceed with this present sworn application.

The applicant therefore requested this Court to:

1. Declares that the respondent clandestinely and illegally denied the applicant the possession and full enjoyment of his property when she prevented the applicant from entering in his property and when she changed the lock of the premises Flat 1, Carefree, Triq Dahlet Qorrot, Nadur, Gozo, in July of this year;
2. Orders the respondent to give a copy of the key to the respondent within a short and peremptory time and to install the claimant in possession of the property described above in a short and peremptory time. In default, orders the applicant with the help and assistance of a nominated architect to replace the lock himself at the expense of the same respondent;
3. Orders the respondent to sign all the paperwork required for the registration of the Daihatsu Sirion Hatchback vehicle with registration number capital letters 'H' 'B' 'F' six (6) one (1) two (2) [HBF 612] so that it is transferred onto applicant's name;
4. Liquidate the movables inside flat 1, Carefree, Triq Dahlet Qorrot, Nadur, Gozo to establish which of these movables are the personal property of the applicant and which are the property of the respondent as well as which are those movables belong to parties jointly.
5. Orders with the help and assistance of a nominated architect that the common movable and immovable property be appraised, provided that the same architect shall report whether such property can be conveniently divided without adverse effect and without prejudice and in case of that the property or part of it may be

- divided, orders the architect to draw up a plan of partition for the same;
6. Consequently orders that each party shall take up the share so liquidated;
 7. Appoint a Notary Public to publish the deed of partition on the day and at such time and place as may be directed by the court and deputy curators to represent any defaulters;
 8. Alternatively, in the event that the property held jointly with the applicant cannot be shared jointly and without prejudice, the Court shall order the sale of the same, by judicial sale with the admission of third party bidders so that the proceeds are shared by all according to the share due to them according to law;
 9. Liquidate the damages suffered by the applicant due to the fact that he is being deprived of the occupation of his premises;
 10. Orders the respondent to pay the amount so settled;
 11. Declares that the respondent is a true, liquid and absolute debtor of the applicant in the amount of thirty-four thousand, seven hundred and fifty Euros and eighty-five cents (€34,750.85) and this in terms of the agreement reached between them; and
 12. Orders the respondent to pay the plaintiff the sum of thirty-four thousand, seven hundred and fifty Euros and eighty-five cents (€34,750.85), with interest according to law in cash or otherwise orders that this balance due be added to the applicant's share of the immovable property provided that all the due balance is paid together with interest from the proceeds of the

sale of the immovable property from the share otherwise due to the respondent.

With all the costs against the respondent who is as of now summoned for the reference to her oath.

Noting that the Court acceded to a request by the respondent for proceedings to continue in the English language;²

Noting that the sworn application as translated into English was notified to the respondent on the 5th of January, 2022;³

Noting the attachments to the sworn application consisting of: [i] a deed of acquisition dated the 24th January, 2019 in the acts of Notary Paul George Pisani, for the joint acquisition by the parties of apartment number 1 in the unnumbered block known by the name «Carefree», at Triq Daħlet Qorrot, in-Nadur, Gozo;⁴ [ii] an agreement dated the 24th January, 2019 witnessed by Notary Paul George Pisani whereby the respondent declared herself indebted to the applicant in the sum of eighty thousand euros (€80,000);⁵ [iii] a unilateral declaration of the respondent dated the 5th March, 2021 where the respondent states that she settled the value of forty-four thousand and three hundred and ten euros (€44,310) out of the eighty thousand euros €80,000 due to the applicant leaving a balance of thirty-five thousand and six hundred and ninety euros (€35,690),⁶ and; [iv] a vehicle logbook issued by Transport Malta with reference to

² Record of the 6th December, 2021 at fol. 26 to 27.

³ Court Bailiff's rubber stamp at the back of fol. 34 as well as the record of the sitting of the 11th January, 2022 at fol. 37.

⁴ Deed at fol. 12 to 16.

⁵ Agreement at fol. 17.

⁶ Declaration at fol. 18. This unilateral declaration of the respondent has been agreed to by the applicant in premise number six (6) of his sworn application where he further states that some payments have been made since then with the outstanding balance now still due to him amounting to thirty-four thousand and seven hundred and fifty euros and eighty-five cents (€34,750.85).

a vehicle of commercial description «Sirion Hatchback» with registration number HBF612;⁷

Noting that notwithstanding being notified with the sworn application, the respondent failed to file a sworn reply;⁸

Noting that the applicant's request for the appointment of a court expert to carry out an evaluation of the property, apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo as furnished was acceded to with Perit Alexei Pace appointed in that capacity on the 29th of March, 2022;⁹

Noting the court expert's report of the 9th May, 2022;¹⁰

Noting that on the 5th July, 2022 the applicant declared that he is in agreement with the value attributed to apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo by the court expert and declared his evidence stage closed;

Noting that during the sitting of the 26th October, 2022, the case was adjourned for filing of final notes of submissions by both parties and for judgment to be delivered today;

Noting all the documents filed in the records of this case;

Considers:

B. EVIDENCE:

Having heard the witnesses under oath and seen the testimony made by affidavit of:

Martin Cali, the applicant, who gave testimony by means of a sworn declaration.¹¹ He declares that he was in a relationship with the respondent for fourteen (14) years. From 2007 to 2018 they lived in separate apartments but after she had a nasty fall in December 2018, the respondent

⁷ Logbook at fol. 19 and 19a.

⁸ Record of the sitting of the 26th January, 2022 at fol. 104.

⁹ Record of the sitting of the 29th March, 2022 at fol. 111.

¹⁰ 8 page report besides 4 pages of images bound in a translucent front and white back binder.

¹¹ Sworn declaration at fol. 38 to 40 with attachments at fol. 41 to 103.

moved in with him at his Baħar iċ-Ċagħaq apartment. In 2019 the parties jointly bought the apartment in question, apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo after the applicant sold another apartment he had in Qala, Gozo.

He further states that although the property in Nadur, Gozo was purchased on his name and that of the respondent jointly, its purchase price was funded wholly by him with the respondent making only a small contribution towards the notarial fees and tax dues. He also states that for this reason, and on the same day when the purchase of the property was concluded, he and the respondent signed a separate agreement whereby the respondent declared herself indebted to him in the sum of eighty thousand euros (€80,000).

As regards the personal relationship between him and the respondent, he states that he and the respondent went to see a counsellor and a psychiatrist on the behest of the respondent. He continues by stating that he continued to go even after the respondent refused to attend more sittings. He adds that he then stayed at his apartment in Baħar iċ-Ċagħaq and upon his return to Gozo he found that the respondent's behaviour had worsened and hence he was constrained to travel back to Malta. He continues to state that late in March, 2021 the respondent informed him by email that their relationship was over. He adds that subsequent to that communication the respondent took over the property in Nadur, Gozo, refurnishing it to her liking without his input or consultation.

He adds that there was constant communication between him, and the respondent and the respondent had even suggested that she would purchase his share of the property at cost. He continues by stating that the promise of sale was, however, never concluded as the respondent informed him

that she was unable to commit to a date as she held no funds, and everything hinged on her mother passing away.

He insists that he was barred from entering the property and this even after he was acquitted from the charge of harassment filed by the respondent.

He concludes by listing amounts which according to him are due to him by the respondent as damages.

He also annexes several documents to substantiate his claim. The documents consist of a breakdown of dues and payments made on the apartment in Nadur, Gozo including acquisition fees and expenses, loans, and furnishing fees and expenses,¹² a series of emails¹³ between the parties as well as some emails involving lawyers, what appears to be a Microsoft Word document with annotations written on it,¹⁴ screenshots of messages sent via cellular telephone apps,¹⁵ a utility bill for the amount of three hundred and ninety-one euros and seventy-six cents (€391.76c) issued by ARMS Limited to the applicant with regards to the apartment in Nadur, Gozo,¹⁶ an image – scanned or photographed – of a letter presumably left at the apartment in Nadur, Gozo, by the respondent to the applicant,¹⁷ a photocopy of a report appearing to have been issued by Perit Cornelia Tabone on the 30th March, 2021 on the respondent's request giving a valuation of apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo with attached a photocopied photograph showing the main open plan room of the apartment,¹⁸ copies of emails, a resolution issued by Mizzi Organisation on the 18th December, 2019, and one side of the logbook purportedly relating to the vehicle Daihatsu Sirion with registration number HBF612,¹⁹ a plan showing the layout

¹² Fol. 41.

¹³ Fols 42 to 53, 56, 59 to 63, 66 to 78, 81 to 89.

¹⁴ Fol. 54.

¹⁵ Fols 55, 57, 58, 90,

¹⁶ Fols 64 to 65.

¹⁷ Fols 79 to 80.

¹⁸ Fols 91 to 92.

¹⁹ Fols 93 to 95.

and dimensions of apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo,²⁰ a list of movables with corresponding attributed values—as prepared by the applicant—purportedly situate in apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo,²¹ a series of invoices for household goods issued on different dates to the applicant at his address in Baħar iċ-Ċagħaq, Malta.²²

The applicant gave further testimony on the 5th July, 2022.

He submitted copies of a rental agreement referable to his apartment in Baħar iċ-Ċagħaq, Malta together with additional documents relating to the same lease. He explains that the date of this agreement, the 1st November, 2020, is the same date on which he and the respondent moved to Gozo with the intention to retire. He continues by stating that this lease agreement was rescinded by his tenant who opted to go back to his country. He states that this was a lucky strike because he then had his own issues and needed to use the Malta apartment again. He says he cannot rent it out again because he now has to live in it since he cannot make sue of his Gozo apartment because of the respondent.

He further states that for the court expert's report—and the photos attached therewith—he noticed that a few of his personal belongings are missing. He mentions two pastel paintings of some worth, some other paintings, and furniture.

Referred to fol. 97 of the acts of the case—the list of movables with corresponding attributed values as prepared by himself—he states that from that list, in comparison to the images attached to the court expert's report, he could see that several items went missing from the Nadur, Gozo apartment. He lists these items amongst which he notes books and an original oil painting signed «Azzopardi».

²⁰ Fol. 96.

²¹ Fol. 97.

²² Fols 98 to 103.

The Court also took cognizance of the report issued by court expert Perit Alexei Pace on the 9th May, 2022.

In said report, the court expert, after holding a site inspection at apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo and considering its size, state, location, and all applicable policies, concluded that the property:

- i. has an internal floor area of circa one hundred and nine (109) square meters;
- ii. is accessible through a common door and a common staircase;
- iii. is furnished and finished and kept in an excellent state of repair, and;
- iv. shows no signs of structural concern.

He therefore proceeded with estimating the freehold value of the property at one hundred and eighty-five euro (€185,000).

The Court notes that the court expert gave no indication as to whether the property could be easily and conveniently divided as per demands number 5 and 8 of the applicant's sworn application. This, however, out of no default attributable to the court expert who, in the decree of appointment dated the 29th March, 2022, was clearly solely appointed to *carry out a valuation of the property as aforementioned* after the applicant's request for his appointment was registered *in view of the fact that the valuation of the immovable property is required with the request being for an architect to value the property as furnished*.

The lack of any default attributable to the court expert in this regard is further substantiated by the applicant's declaration at the sitting of the 5th July, 2022 when the applicant declared that he is in agreement with the value attributed to apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo by the court expert and declared his evidence stage closed

therefore accepting completion of the court expert's brief as per the court expert's appointment.

C. CONSIDERS:

Preliminary:

This case was instituted by the applicant Martin Calí who, following the laying out of several premises where he explains the build-up to his demands, makes several demands to the Court relating to: [i] the provision of keys to apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo by the respondent – who he claims has changed the lock – to him – demands 1 and 2; [ii] the partition or sale by citation of apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo – demands 5, 7, and 8; [iii] the valuation, liquidation and partition of several movables as belonging to him, the respondent, or them jointly – demands 4 and 5; [iv] the liquidation of damages suffered by him and the payment thereof to him by the respondent – demands 9 and 10; [v] a declaration that he is owed the value of thirty-four thousand and seven hundred and fifty euros and eighty-five cents (€34,750.85c) by the respondent and an order for the respondent to pay the same value to him – demands 11 and 12; [vi] an order for the respondent to sign paper work relating to the vehicle «Daihatsu Sirion» with registration number HBF612 – demand 3.

The respondent, validly notified with the acts of the case, including a formal translation of them in the English language, failed to file a sworn reply and often failed to appear in Court.

Further Considerations:

The Court cannot deflect from the fact that the case as instituted by the applicant is an accumulation of actions which, as known and well established in a string of

consistent and coherent judgments, is not allowed in the local juridical system.

The applicant has put forward twelve (12) demands, some of a possessory nature and others of a declaratory or petitionary nature, that is: an accumulation and mixture of *actiones possessoriae* and *actiones petitoria*.

Local jurisprudence has been consistent and coherent on this matter. The Court here notes the extensive research laid out in the respondent's final note of submissions and the various judgments therein quoted, the reasoning and conclusions of which are not opposed by this Court.

This Court thus upholds the legal thinking in the judgments already quoted in the respondent's final note of submissions with particular reference to the judgments *Angelo Callus vs Philip Fenech et*, decided by the First Hall of the Civil Court on the 7th December, 2021, *John Micallef et vs Francis Fava et*, decided by the Court of Magistrates (Gozo) in its Superior Jurisdiction on the 29th November, 2005, and *Vincent Galea vs Anthony Robert Pisani*, decided by the Court of Appeal on the 12th January, 2005 thereby declaring that: notwithstanding the fact that the defendant failed to file a sworn reply and therefore to raise a preliminary plea relating to the accumulation of actions, this Court is entitled to raise such plea itself *ex officio* as a point of public order.

With the above in mind, this Court cannot consider any of the demands relating to the liquidation, valuation, division or sale by licitation of any property in question.

The other demands not relating to the liquidation, valuation, division or sale by licitation of property are also to be excluded in line with prevalent and consistent

jurisprudence regarding accumulation – mixture – of actions.

This Court may, however, and it will still look into the demands relating to the *actio possessoriae* which, in this case, are limited to the first (1st) and second (2nd) demands of the applicant regarding an alleged act of spoliation by the respondent to the prejudice of the applicant.

These demands emanate from the applicant's allegation that the respondent changed the lock to apartment 1, «Carefree», Triq Daħlet Qorrot, Nadur, Gozo.

In this regard, this Court notes as follows:

Spoliation, or better, the *actio spoliei*, is regulated by Article 535 of the Civil Code, Chapter 16, Laws of Malta, which reads:

535. (1) *Jekk persuna tiġi, bil-vjolenza jew bil-moħbi, mneżżgħa mill-pussess, ta' liema xorta jkun, jew mid-detenzjoni ta' haġa mobbli jew immobbli, hija tista', fi żmien xahrejn mill-ispoll, titlob, b'azzjoni kontra l-awtur tal-ispoll, li terġa' tiġi mqiegħda f'dak il-pussess jew f'dik id-detenzjoni, kif jingħad fl-artikolu 791 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.*

(2) *Dan it-tqegħid mill-ġdid fil-pussess jiġi ordnat mill-qorti, wkoll jekk il-konvenut ikun is-sid tal-ħaġa li tagħha l-attur ikun bata l-ispoll.*

The English translation of this article reads thus:

535. (1) *Where any person is by violence or clandestinely despoiled of the possession, of whatever kind, or of the detention of a movable or an immovable thing, he may, within two months from the spoliation, bring an action against the author thereof demanding that he be reinstated in his*

possession or retention, as provided in article 791 of the Code of Organization and Civil Procedure.

(2) Such reinstatement shall be ordered by the court even though the defendant be the owner of the thing of which the plaintiff has been despoiled.

From this Article there result three elements that must subsist for an action of spoliation to succeed. These are:

- i. That the applicant possessed the object under any title whatsoever including mere detention—*possedissee*;
- ii. That he was despoiled of his possession or detention—*spoliatum fuisse*, and;
- iii. That he filed the action of spoliation within two (2) months from the alleged act of spoliation—*infra bimester deduxisse*.

It is undisputed that if any one of these three elements fails to subsist, the action of spoliation cannot be successful.

In the case at hand, it is immediately evident that this cumulative action containing elements of the action of spoliation has not been brought forward within two months from the alleged act of spoliation.

This results abundantly clear from the applicant's own testimony in his sworn declaration where, in the fifth (5th) paragraph on the page of said declaration at fol. 39 of the Court file, he unequivocally states that *in July 2021 she – the respondent – changed the lock to the property and denied me absolutely of free access to it.*

Although the denial of unfettered access to the property apartment 1, «Carefree», Triq Dahlet Qorrot, Nadur, Gozo doesn't appear to be contested; the present case was instituted on the 24th of September, 2021.²³ The precise date

²³ Ref. Court Registry's rubber stamp at fol. 1.

in July, 2021 when the respondent changed the lock to the apartment has not been formally established by the applicant, keeping in mind that proof of this was the applicant's responsibility.

This notwithstanding, this Court has taken the arduous task of itself going through the voluminous email printouts submitted to it.

From these email printouts, it appears clear that discussion on changing locks commenced in May, 2021 – see email printouts as submitted by the applicant at fols 66 and 67. The locks were ascertained changed by the applicant in an email sent on his behalf by his legal representative to that of the respondent on the 22nd July, 2021 – ref. Fol. 86.

It is thus clear that the action, in its mixed and cumulative nature, was filed beyond the two-month term requested for one of spoliation to be successful.

Having ascertained this, this Court need not delve into the fulfilment of the additional two requirements as would be necessary for an action of spoliation to subsist.

DECIDE:

For these reasons, this Court declares and decides this case by rejecting the first (1st) and second (2nd) demands of the applicant and disposing of the applicant's additional demands as invalid and null in the manner in which they are proposed.

Costs for the applicant.

(sgn.) Dr Brigitte Sultana
Magistrate

(sgn.) John Vella
D/Registrar

True Copy

For the Registrar