COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE

DR. RACHEL MONTEBELLO B.A. LL.D.
MAGISTRATE

Case No.: 512/2005

THE POLICE
(Inspector Ian Abdilla)
(Inspector Hubert Cini)

-Vs-

ALEXANDROS KONSTANTINOS ALEXANDROS

Today, 20th March 2023

The Court,

Having seen the charges brought against **ALEXANDROS KONSTANTINOS ANASTASIOU also known as Konstantin Anastasiou**, 36 years, son of the late son of late Takes Panagions and Emelinde nee'Kampitsch born in Athens on the 30th June 1969 and residing at Castello San Frangisk, St. George's Street, Wardija Austrian Passporen JO1576877, of Greece Passport no. N 519180 who was:-

A. Charged with having, on these Islands, on the S June 2005 and in the preceding months, in various parts of Malta and outside Malta, by means of several acts committed by the accused, even it at different times, which acts constitute violations of the same provisions of the law:

1. for having, promoted, constituted, organized or financed an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more;
2. for having, make part or belonged to an organisation referred to in Subarticle (1) of Article SSA of Chapter 9 of the Laws of Malta;

3. for having, in Malta conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act;

B. Furthermore, the accused is being charged with having on these Islands, on the 8th June 2005 and in the preceding months, in Malta, by means of several acts committed by the accused, even it at different times, which acts constitute violations of the same provisions of the law:

1. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain of more than EUR 125,000.00 (circa LM52,000.00) to the detriment of **Tower Manner Limited**, and Mr. John Debono and Mr. Joseph Quattromani;

2. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 125,000.00 (circa LM52,000.00) to the detriment of **Tower Manner Limited,** and Mr. John Debono and Mr. Joseph Quattromani, which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

3. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain of more than EUR 75,000.00 (circa LM31,000.00) to the detriment of Acorn Distributions Limited, and Mr. Joseph Farrugia;

4. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 75,000.00 (circa LM31,000.00) to the detriment of **Acorn Distributions Limited**, and Mr. Joseph Farrugia, which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

5. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any

chimerical event, made a gain of more than EUR 75,000.00 (circa LM31,000.00) to the detriment of **Mr. Ambrose Muscat;**

6. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 75,000.00 (circa LM31,000.00) to the detriment of **Mr. Ambrose Muscat,** which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

7. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain of more than EUR 70,000.00 (circa LM30,000.00) to the detriment of **Grimax Limited**, and Mr. Raymond Grima, and Mr. Fabio Grima;

8. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 70,000.00 (circa LM30,000.00) to the detriment of **Grimax Limited,** and Mr. Raymond Grima, and Mr. Fabio Grima, which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

9. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in

the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain of more than EUR 57,000.00 (circa LM24,000.00) to the detriment of **Ready-to-move-in Limited**, and Mr. Alan Briffa;

10. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 57,000.00 (circa LM24,000.00) to the detriment of **Ready-to-move-in Limited**, and Mr. Alan Briffa, which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

11. For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in influence or credit, or to create the expectation or apprehension of any chimerical event, made a gain of more than EUR 21,000.00 (circa LM8,000.00) to the detriment of **Modern Image Limited**, and Mr. Martin Gauchi, and Mr. Anthony Saliba;

12. Also, for having during the same period, misapplied, converting to his own benefit or to the benefit of any other person, the sum of more than EUR 21,000.00 (circa LM8,000.00) to the detriment of **Modern Image Limited**, and Mr. Martin Gauchi, and Mr. Anthony Saliba, which sum has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose;

The Court is hereby kindly requested to apply *mutatis mutandis* the provisions of Article 5 of the Money Laundering Act, Chapter 373 of the Laws of Malta, as per Section 23A (2) of Chapter 9 of the Laws of Malta.

The Court is also hereby kindly requested that in case of a finding of guilt of the accused, apart from inflicting the punishment prescribed at Law, also orders the forfeiture of all the objects exhibited in these proceedings.

The Court is also hereby kindly requested that, in pronouncing judgment or in any subsequent order, sentence the person/s convicted, jointly or severally, to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having heard the accused plead not guilty to the charges;

Having seen that the Attorney General by means of a note dated 13th February 2006, sent the accused for trial before this court for the offences under the following articles of law:-

a) In articles 18 and 83A(1)(4) of the Criminal Code;

b) In articles 18 and 83A(2)(4) of the Criminal Code;

c) In articles 18, 48A and 83A(1)of the Criminal Code;

d) In articles 18, 48A and 83A(2) of the Criminal Code;

e) In articles 18, 308 and 310(1)(a) of the Criminal Code;

f) In articles 18, 309 and 310(1)(a) of the Criminal Code;

g) In articles 18, 293, 294 and 310(1)(a) of the Criminal Code;

h) In article 23A(2) of the Criminal Code and article 5 of Cap.373 of the Laws of Malta

i) In article 533 of the Laws of Malta;

Having seen that this cause was assigned to this Court as presided by means of a decree issued by the Chief Justice with effect from the 16th July 2018;

Having heard the Prosecution and the defence exempt the Court as presided from hearing again all the witnesses that were brought to testify before the Court when differently presided;

Having heard the testimony of the witnesses brought by the defence including the testimony of the accused himself;

Having seen the written submissions filed by the defence and having heard the Prosecution declare that it has no final submissions to make;

Having seen that the cause was adjourned for today for judgement;

Having considered;

The Court must begin by pointing out that the accused was arraigned before this Court, then differently presided, on the 9th June 2005. The cause was assigned to this Court as presided with effect from the 16th July 2018, at a stage when the defence declared that it still had futher evidence to bring forward, notwithstanding the fact that no less than twelve years had passed since the Prosecution had declared that it had no further evidence to bring forward. In fact, the accused had declared that he had no

objection to the proceedings being conducted summarily by this Court, on the 14th June 2006. This delay in the proceedings is unacceptable and deplorable and the Court condemns in the harshest manner the delaying tactics employed by the accused and his team which led to these proceedings being protracted over a period of no less than sixteen years.

The accused is being charged with six counts of **fraud**, that is, the offence envisaged under Article 308 of the Criminal Code, described in the marginal notes as "*obtaining money or property by false pretences*". This crime is committed by whosoever:-

"*... ... ... by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person ... ...*"

In its judgement in the names **Il-Pulizija v. Marjanu Zahra**[1], this same Court, differently presided, cited the judgement **Il-Pulizija v. Charles Zarb**, decided on the 22nd February 1993, where the following considerations were made in connection with the crime of fraud as envisaged under Article 308 of the Criminal Code:-

"*.... Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi. ....*"

Dwar l-artifizzji intqal mill-Qorti illi "hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti ta' l-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke

[1] 2nd March 2011. Confirmed on appeal by means of a judgement delivered on the 17th May 2012.

kolleggjalment komposta fil-kawza "Reg vs Francesco Cachia e Charles Bech" (03.01.1896 – Kollez.XV.350) li fiha intqal illi "quell' articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede."

Ghar-reati ta' truffa komtemplat fl-artikolu 308 tal-Kodici kriminali, il-Qorti iccitata lill-Imhallef Guze Flores fejn qal illi "kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghall-verosimiljanza tal- falsita prospettata bhala vera u b'hekk bhala mezz ta' qerq. Ma huwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-affermazzjonijiet menzjonjieri tal-frodatur. Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi tejatrali, li tissupera il-kawtela ordinarja kontra s-semplici u luzingi, u li taghti li dawk l-esterjorita ta' verita kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene."

"....Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid ikun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il- kliem "bi hsara ta' haddiehor" ma jhallux dubbju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar- reat fil-mument tal-konsumazzjoni tieghu ikun konxju ta'l-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita tal-profitt hija bizzejjed biex teskludi d-dolo."

Therefore, for the crime of fraud to subsist, the Prosecution must prove that the perpetrator employed the means mentioned in Article 308 of Chapter 9 of the Laws of Malta such as an unlawful practice, a fictitious name or the assumption of any false designation or by any other deceit, device or pretence. It must also be proved that on the basis or as a result of the employment of such means by the perpetrator, the

alleged victims or either of them were led to part with an object or to do something which resulted in the accused making unlawful gain and in a corresponding patrimonial loss to the victim. Above all, the Prosecution must prove that the perpetrator acted with the intention of defrauding his victim and making an unjust gain which, as already pointed out, must be shown to have actually been made to the prejudice of the victim of the crime.

As far as **other cases of fraudulent gain** are concerned, as envisaged by Article 309 of the Criminal Code – a lesser crime when compared to the crime of obtaining money or property by false pretences[2] - it has been authoritively held that:-

"*... ghalkemm l-element tar-"raggiri" jew l-"artifzji", huwa nieqes u allura anke gidba semplici hija bizzejjed ghal kummissjoni ta' dana ir-reat, izda dana irid bil-fors iwassal sabiex il-vittma u cioe' is-suggett passiv ta' dana ir-reat isofri xi telf patrimonjali. Illi kif gie deciz fis-sentenza* ***Il-Puliizja vs Carmela German*** *(Appelli Kriminali Inferjuri 30/12/2004): "Kwantu ghal kwistjoni jekk il-gidba semplici – a differenza ta'l-artifizji u raggiri – tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal qerq, cioe' intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonoqs milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba u basta, s'intendi li tkun effettivament waslet ghal dana it-telf min-naha u arrikkiment min-naha l-ohra."*[3]

Applying these principles to the facts pertaining to the charges proferred against the accused concerning fraud to the detriment of various persons, that is, Joseph Farrugia and Acorn Distribution Limited, Ambrose Muscat, Alan Briffa and Ready to Move In Limited, Fabio Grima, Raymond Grima and Grimax Limited, and Joseph Quattromani, John Debono and Tower Manor Limited, the Court must essentially determine whether the Prosecution brought sufficient evidence at law to prove that

[2] Article 308 of the Criminal Code.
[3] **Il-Pulizija v. Marjanu Zahra**, *op cit*.

accused induced his victims to part with their money with the use of a false pretence or false designation, or *de minimis* that he used some form of deceit to procure for himself an unlawful gain to the detriment of the said persons. Applied to the case at hand, it must be proven that the entire notion of the procurement of the loans and the agency and other contracts that the accused instructed the alleged vicitms to enter into in connection with the procurement of these loans, were merely a ruse devised by the accused deliberately in order to make a fraudulent gain to his own benefit or the benefit of another person to the detriment of the respective clients. The Court must underline that the fact in itself that the loans or insurance policies as collateral for the said loans, might not have been ultimately provided or issued, is not sufficient evidence of fraud.

The accused is also charged with six counts of **misappropriation**, the crime envisaged under Article 293 of the Criminal Code and, in its aggravated form, in Article 294 of the same Code[4].

The Court of Criminal Appeal in the case **Il-Pulizija vs. Enrico Petroni u Edwin Petroni**, decided on the 9th June 1998:

"Dana r-reat isehh meta wiehed (1) jircievi flus jew xi haga ohra minghand xi hadd; (2) bl-obbligu li jrodd dawk il-flus jew dik ix-xi haga lura jew li jaghmel uzu minnhom b'mod specifiku; (3) u minflok ma jaghmel hekk idawwar dawk il-flus jew dak l-oggett bi profitt ghalih jew ghal haddiehor.

L-awtur Taljan Maino fil-ktieb tieghu Commento al Codice Penale Italiano [vol IV - p.102, para 1949 u p. 105 - para 1951] jghid is- segwenti:

[4] The elements of this crime had also been propounded by the Court of Criminal Appeal in its judgement **Il-Pulizija vs. Anthony Mary Bajada**, delivered on the 1st March 1952, where it was held:- "*Id-delitt ta' appropjazzjoni indebita jigi kkonsmat malli dak li jkun jaghmel atti ta' dominju fuq il-haga bil-volonta' li jezercita d-dominju fuqha; u dan ikun pruvat meta c-cirkostanzi u l-atti jkunu verament tali li univokament juru l-intenzjoni ta' l-appropjazzjoni, billi fihom infushom mhumhiex kompatibbli mal-kawza u t-titolu tieghu tad-detenzjoni ta' dik il-haga.*"

*"**Il reato di approprazione in debita e' perfetto colla conversione della cosa altrui in profitto a proprio o di un terzo, independentemente dall'effettivo ricavo della conversione.**" Il-Carminiani fil-ktieb tieghu Elementi Iuris Criminali - (para 1020) jiddefinixxi dan ir-reat li huwa jsejjahlu bhala:- "il fatto de quo lui, che avendo ricevuto dal propretario mediante contratto non transiattivo di dominio, una cosa immobile, questa contro i patti e' contro la volonta del propretario stesso e' converta in uso proprio con animo di appropriarsela o la distrugge e' a proprio lucro e commodo."*

Carrara fil-kieb tieghu Diritto Penale taht t-titolu Esposizione dei delitti inspecie (vol 4. para 284) li wkoll jissejjah dan ir-reat truffa b'mod l-aktar sintetiku, jiddefinixxi dan ir-reat bhala:- "la dolosa approprazione di una cosa altrui che si e' ricevuto del propretario per una convenzione non translattiva di domino e' da uso determinato." ***Essenzjalment ghalhekk l-approprazzjoni indebita ma hi xejn hlief abbuz ta' fiducja li permezz tieghu wiehed jirrendi bi profitt ghalih haga li tkun giet konsenjata lilu jew fdata f'idejh b'att liberu u spontanju … … … B'dan il-Qorti riedet tfisser li jrid ikun hemm konversjoni u hemm konversjoni inter alia meta l-hati jkun ircieva l-haga biex minnha jaghmel uzu determinat u minflok li jikkommettiha ghall-beneficcju tieghu stess jew jiddisponi mil-haga kuntrarjament ghall-pattijiet stipulati in buona fede***."[5]

The difference between the crime of misappropriation and the crime of obtaining money by false pretences (truffa) was expounded in the judgement in the names **Il-Pulizija v. Abdoul Moumine Abdoulaye Maiga**, delivered on the 14th December 2017:-

"*Ir-reat ta' approprjazzjoni indebita jiddistinwgi ruhu …. ukoll mit-truffa ghax* ***id-detentur tal-haga ma jigix ingannat permezz ta' raggiri jew artifizji biex jitlaq minn***

[5] Cited more recently in the judgement **Il-Pulizija v. Giuseppe Azzopardi**, delivered by the Court of Criminal Appeal on the 22nd July 2021. This Court's emphasis.

idejh dik il-haga favur l-agent.". "L-element partikolari tar-reat ta' approprjazzjoni indebita mhuwiex l-uzu ta' l-ingann da parti ta' l-agent biex jottjeni l-oggett, izda l-inversjoni tat-titolu tal-pussess tal-haga li l-agent ikun ottjena minghand is-suggett passiv bil-libera volonta' ta' dan*. ... ... "Ir-reat ta' truffa jiddistingwi ruhu essenzjalment minn dak ta' approprjazzjoni indebita, in kwantu fl-ewwel ipotesi l-pussess tal-oggett li minnu* ***jsir profitt indebitu jigi ottenut bhala rizultat ta' ngann adoperat mil-konsenjatarju, mentri fl-ipotesi l-ohra dak il-pussess ikun gie konsegwit mill-konsenjatarju legittimament, cjoe' minghajr ingann.*** *Fit-truffa l-ligi riedet timpedixxi l-inganni ghat-trasferiment ta' oggett biex isir profitt indebitu minnu; fl-approprjazzjoni ndebita l-ligi riedet tevita li min ikollu legittimament haga ta' haddiehor ma jabbuzax mill-fiducja lilu moghtija u jiddisponi minnha bhala tieghu. Ghalkemm minhabba f'din id-distinzjoni, l-approprjazzjoni ndebita hija kunsidrata mill-ligi anqas gravi mit-truffa, iz-zewg reati ghandhom bhala karatteristika principali l-lezjoni tad-dritt tal-proprjeta', jew dritt iehor reali, minghajr il-vjolazzjoni tal-pussess; u huma t-tnejn talvolta maghrufa fid-dottrina bhala "furto improprio.*"

This means that it is inconceivable that the accused person is found guilty of having procured money or other property by false pretences or unlawful means and thus by having committed fraud, and at the same time also found to have procured the same thing legimitately and without the use of fraud or deceit but then misapplied it to his benefit or that of third parties.

The Court must make the following initial general observations:

- Although the Prosecuting Officer confirmed that he did interrogate the accused when he was under arrest, the Prosecution did not exhibit any statement that may have been released by the accused during his interrogation. However, the accused chose to testify in these proceedings[6].

[6] Testimony of the accused, 28th April 2022.

- The Court must also point out at the outset note that the fact that the accused undertook to reimburse the clients by personally entering into a deed of constitution of debt and or the fact that he did not honour the debt, is not sufficient evidence in and of itself, that the accused misapplied the funds paid out by the victim or that he made a fraudulent gain. This merely serves to show that the accused acknowledged a civil obligation to reimburse the client, one that he assumed because, as he himself testified, he felt that it was his responsibility to reimburse the funds that they had paid out since he had himself introduced the clients to the foreign financial institution[7].

- The Court at the outset must point out, as correctly observed by the defence in its final submissions, that the charges brought against the accused all refer to crimes allegedly committed "*on the 8th June 2005 and in the preceding months in various parts of Malta and outside Malta*". This means that the evidence brought forward by the Prosecution must show that each of the crimes with which he is charged was committed on the mentioned date or in the months preceding June 2005, that is, May, April, March, February and January 2005. The Court is of the view that it must exclude from its examination for the purposes of establishing the guilt or otherwise of the accused, facts which constitute the material elements of such crimes and which occurred earlier than the 1st January 2005 and therefore, in the preceding year, since such period of time evidently falls outside the parameters expressly mentioned in the charge sheet defining the time of the commission of the crimes.

The Court expects that had the Prosecution intended to include within the particulars of time of the charge, facts that took place prior to the months preceding June 2005, such as in the preceding year or years, the summons would or should have indicated that the crimes were committed also "*in the years*" preceding 8th June 2005 and not merely in the "*months preceding*" said date.

[7] The accused also testified that when he undertook to reimburse the clients and signed the deeds of constitution of debt, he had no idea that these clients had already filed police reports regarding the matter.

However, as drawn up, the summons makes no reference to the years preceding 8th June 2005 and consequently, events or facts that took place in the preceding year cannot be taken into account by the Court for the purpose of establishing the concurrence of the elements of the crimes with which the accused is charged. Moreover, at no point did the Prosecution request the rectification of the summons in order to expressly include within the parameters of time indicated therein, with reference to the charges proferred, the years preceding 8th June 2005.

This principle was considered at length by this Court in the judgment in the names **Il-Pulizija (Spettur Angelo Gafa') v. Emanuel Ellul**[8]:-

"*Kif inghad, l-imputat gie mixli illi kkommetta r-reat tal-uzurija "fl-20 ta' Marzu 2012 jew fix-xhur ta' qabel". Isegwi ghalhekk illi kif impostata, l-imputazzjoni tirreferi ghal fatti li graw fl-20 ta' Marzu jew fix-xhur vicini ta' dik id-data. Ghalkemm l-imputazzjoni giet dedotta bhala reat kontinwat, il-Qorti ma tqisx illi l-kuncett legali tal-kontinwita` a tenur tal-Artikolu 18 tal-Kodici Kriminali jista' jestendi oltre l-parametri temporali espressament dedotti fl-akkuza, ghaliex il-Qorti ma tista' qatt issib htija ghal xi reat li jkun sehh fi zmien iehor jew f'hin iehor u mhux dak indikat fl-akkuza.*

L-Artikolu 360 tal-Kapitolu 9 ifisser kif ghandha tigi redatta ic-citazzjoni u liema huma dawk l-indikazzjonijiet mehtiega sabiex il-persuna imharrka tkun tista' thejji d-difiza taghha tajjeb u dan bic-cirkostanzi materjali indikati lilha f'dik ic-citazzjoni. Is-subartikolu (2) tal-Artikolu 360 tal-Kapitolu 9 tal-Ligijiet ta' Malta jipprovdi li:- Ic-citazzjoni ghandha ssemmi car il-persuna mharrka, u ghandu jkun fiha, fil- qosor, il-fatti ta' l-akkuza, bil-partikularitajiet ta' zmien u ta' lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw. Ghandu jkun fiha wkoll it-twissija li, jekk il-persuna mharrka tonqos li tidher, hija tigi arrestata b'mandat tal-qorti u mressqa quddiem l-istess qorti fil-jum li jkun imsemmi fil-mandat." Huwa

[8] 10th April 2019, delivered by this Court as presided. Cited with approval in the judgement delivered by the Court of Criminal Appeal in the names **Il-Pulizija v. Harish Daswani** on the 1st September 2020.

rikonoxxut illi z-zmien huwa cirkostanza materjali u sostanzjali tal-kaz tal-Prosekuzzjoni, b'dan illi jekk il-parametru taz-zmien ikun gie indikat hazin, allura l-binarji tal-azzjoni wkoll jitqiesu li huma hazin. Ghalkemm m'huwiex rikjest mil-ligi li fl-imputazzjoni il-Prosekuzzjoni tindika bi precizjoni matematika iz-zmien tal-allegat reat, huwa certament desiderabbli li jsir hekk, specjalment fejn, bhal fil-kaz odjern, jirrizulta mill-provi illi l-imputat kien ilu jislef flus lill-konjugi Worley sa minn Novembru 2010 u kwindi fuq medda ta' iktar minn sena. Multo magis meta r-reat in kwistjoni huwa meqjus bhala wiehed istantanju u m'huwiex wiehed ta' natura permanenti, ghalkemm tul iz- zmien kollu li fih jithallsu imghaxijiet jew jigi percepit qligh jew korrispettiv b'eccess minn dak permess mil-ligi, ghandu effetti permanenti. Fil-kaz tal-imputazzjoni odjerna, iz-zmien indikat fl-akkuza jirreferi ghal xhur u mhux snin u ghalkemm bl-uzu tal-plural fil-kelma "xhur" l-ispazju temporali tal- fatti li ghalihom tirreferi l-imputazzjoni jista' jitqies li gie estiz ghal diversi xhur ohra, il-Qorti pero` tqis illi l-parametri tal-kelma xhur, b'mod generali ghandhom ifissru dawk il-ftit xhur qabel id-data specifikata, u ma jistghu qatt jiggebbdu biex jinkludu fihom fatti li jkunu sehhew tnax-il xahar jew iktar, qabel. Inoltre, il-Qorti hija tal-fehma wkoll illi ma jistghux jidhlu fl-iskop tal-kliem "fix-xhur ta' qabel", dawk ix-xhur tas-sena ta' qabel id-data espressament msemmija fl- imputazzjoni, f'dan il-kaz l-20 ta' Marzu 2012."

In the judgement delivered by the Court of Criminal Appeal in the names **Il-Pulizija v. Harish Daswani**[9], it was held, on the basis of the aforementioned principle:-

"*... that the Court could not have found guilt of the first charge in view that not all the elements of the offence took place in the period mentioned in the charge sheet. The Court is therefore abstaining from taking cognisance of the second grievance regarding article 248A of the Criminal Code as well as parts of the third grievance through which regard the charge of human trafficking, ...*"

[9] *Ibid*.

Charges concerning Joseph Farrugia and Acorn Distribution Limited

After reviewing the relevant evidence, the Court understands that on the 6th April 2004, an agency contract was concluded between contracting parties Acorn Distribution Limited as the Client, and International Company Consulting s.r.o, represented by Peter Kovac, as the Mandatary. Here, it was agreed that as the attorney, the latter Company was entrusted "*to look up the most suitable business partners for the provision of commercial loans ... to assure the elaboration of business plans as joint-venture funding projects, projects for investment programmes, acquisitions, mergers, for the purpose of the Mandatory's intervention into global business*."

The same agency contract also stipulates that a payment in the sum of €75,000 is required to be made by Acorn Distribution Limited, by way of a handling charge amounting to 0.5% of the required loan and the parties agreed that this money was to be used by the Company "*for paying expenses directly related to the fulfilment of the contactual obligation*" mainly consisting of banking charges relating to the provision of the loan, fees for accountancy services, experts, auditors, legal consultants and other expenses. It was also agreed in the Agency contract that whenever the Company fails to obtain the necessary insurance guarantee securing the expenses incurred by the client which are directly related to the procedures for the provision of the loan, the Company *"shall reimburse the client with the amount of money paid for said expenses, in addition with 20%"* (*sic.*)[10]

In fact, it results that Joseph Farrugia on behalf of Acorn Distribution Limited paid unto Selective Company Consult Malta Limited the sum of €75,000 (Lm50,000) by way of initial expenses that were required to be paid in order to procure financing in the form of a loan from a foreign bank, Tatra Banka in Bratislava, through the

[10] In fact, by virtue of the aforementioned declaration dated 9th April 2004, signed in Bratislava, Peter Kovac and Anthony Cutajar in their stated capacities guaranteed that they would pay, within ten (10) working days from the receipt of the funds, the sum of €760,000 to Joseph Farrugia on behalf of Acorn Distribution Limited.

intervention of International Company Consulting s.r.o. which acted as an agent for the said Maltese company. In fact, Joseph Farrugia testified that the said sum was transferred by Selective Company Consulting Malta to the bank account of International Consulting s.r.o at Tatra Bank Bratislava and, as would result from Doc. JFP5, on the 12th April 2004 these funds were indeed deposited by Selective Consult Malta with HSBC Bank which in turn remitted the said funds to the beneficiary International Co. Consulting s.r.o.

Subsequently, by means of a declaration signed on the 9th April 2004, Peter Kovac personally and on behalf of CompanyConsult Bratislava, together with Anthony Cutajar personally and on behalf of Selective Company Consult (Malta) Limited, guaranteed the payment of the sum of €760,000 to Farrugia within ten working days from the receipt of the funds[11].

In his testimony the accused explained that Joseph Farrugia on behalf of Acorn Development Limited, paid the sum of €75,000 as collateral for the required loan. This sum was paid to the Maltese company Selective Consult in order that this company carries out a due diligence process, but the costs for carrying out the due diligence were not paid by the client who also failed to pay the full amount required in order to obtain the loan. The accused confirmed that he has nothing to do with this Maltese company, Selective Company Consult Malta Limited, and that he never received any share of this money. He also explained that the client then expected to receive the sum of €750,000 through a bridge loan which would be used to pay the costs for the procurement of the larger loan, at which point, the accused decided that this was too complicated so he instructed the client to deal directly with Anthony James Fekete, the chairman of the board of directors of the City Cooperation bank in Vienna with the intervention of the investor Peter Kovac.

[11] This declaration was purportedly also signed by the accused in his capacity as Chairman of Companyconsult Bratislava (Dok. JFP1) but this was not confirmed by the accused in his testimony.

As for the agency contract Doc. JFT2, the accused testified that he did not represent any party on that agreement but he recognised his signature and stated that he "*signed it probably on behalf of the foreign company*" and probably by means of a power of attorney from the mandatary Peter Kovac. He also testified that his role in all this was limited to the introduction of the client to the investment group and that his interest in this agreement was the successful conclusion of the business deal, since he would be paid a success fee: "*a percentage (of 5%) from the successful conclusion of the business*". Although he received nothing from the monies paid out by Joseph Farrugia, the accused confirmed that he was retained by the foreign company in order to refer business to them against payment of a monthly fee which would have likely been paid from the funds paid by the clients he referred.

Having considered;

That bearing all this in mind, the Court must point out that for the purpose of establishing the concurrence of the requisite elements of the offence of misappropriation, it was incumbent on the Prosecution to show that the funds paid out by Joseph Farrugia were not only entrusted or delivered to the accused himself, but also that such funds were misapplied by him or converted to his benefit or that of others. However, the declaration Doc. JFP1, the agency contract Doc. JFP2 and the telegraphic transfer form Doc. JFP5, taken together, refute the assertion that these funds were paid out or entrusted to the accused. In fact, it is evident that the funds were paid out to Selective Company Consult Limited - in which the accused was not shown to have any role or position - and were indeed transmitted by said company to Tetra Banka as stipulated in the declaration Doc. JFP1. Therefore, the accused cannot be found to have misapplied these funds and in any event, the fact in itself that the loan was ultimately not provided to the client, is not sufficient to prove that these funds were converted by the accused to the benefit of a third party.

The Prosecution also failed to prove, for the purposes of the crimes envisaged in Articles 308 and 309 of the Criminal Code, that the agency contract was entered into

as a result of the use of a false designation or false pretences on the part of the accused or even some form of deceit. While it is true that Joseph Farrugia testified that the agency contract was signed by the accused, it was incumbent on the Prosecution to show that the accused was not empowered to act on behalf of International Company Consult s.r.o. or otherwise to show that the said company was fictitious or was not licensed, authorised or otherwise unfit or incapable of carrying out the mandate entrusted to it and that the accused was aware thereof.

Above all however, and as already pointed out in the general observations made by the Court, the accused was charged with committing these crimes on the 8th June 2005 and in the preceding months. This means that the Court cannot find guilt based on any facts which constitute the material elements of such crimes and which took place before 1st January 2005. Now, since the gain made by the perpetrator and the corresponding patrimonial loss to the victim of the crime of fraud is a constitutive material element of the crime, as is the delivery or entrustment to the agent of the crime of misappropriation, of the thing that is misapplied, it is essential for a finding of guilt for the crimes under Articles 293 and 294 and under Articles 308 and 309 of the Criminal Code, that these facts are proven to have taken place not earlier than the 1st January 2005.

Even if it had to result that the sum of €75,000 was paid to the accused, there is no evidence to show that Joseph Farrugia personally or on behalf of Acorn Distribution Limited paid out any other sums to the accused, or to third parties upon the accused's behest. Therefore, since the only evidence of the gain that might have been made to the prejudice of Joseph Farrugia or Acorn Distribution Limited and the only thing that might have been entrusted or consigned by them, is the payment of the sum of €75,000 in April 2004, then it follows that the crimes of fraud and misappropriation were not proven to have been commited within the time period of the charges proferred against the accused.

Consequently, the accused cannot be found guilty of the third and fourth charges in connection with crimes committed to the detriment of Joseph Farrugia and or Acorn Distribution Limited.

Charges concerning Ambrose Muscat

Ambrose Muscat testified that he was introduced to the accused as the chairman of a financial services organisation named Company Consult s.r.o., purportedly registered in Slovakia. He testified that Chris Cutajar of Selective Company Consult Malta Limited, which acted as an agent of the foreign company, informed him that this company was in the process of finalising a loan for third parties, one of whom was a large supermarket. A meeting was held with Chris Cutajar and Anthony Cutajar, where the accused was also present and it was he who explained the process of the loan and cited favourable interest rates (3.5% to 4%) on the loan. The accused told him that he was the chairman of Company Consult s.r.o. in Slovakia and boasted that he deals with large banks and he has very good contacts which can secure the facility. He also claimed that the accused kept calling him persisently sometimes even fifteen times in one day.

Ambrose Muscat confirmed that he was informed by the accused and Chris and Anthony Cutajar that in order to procure a loan of five million Euro, they would need to pay the sum of €120,000. Since in his view this amount was on the high side, he discussed this with the accused and they finally came to an agreement that he and his partner pay the sum of €30,000 as a commission by way of an agency contract which included the initial premium of the life policy which was twenty one thousand Euro (€21,000). Ambrose Muscat testified that the accused told him that he was not pleased with Selective Company Consult Malta, and that he should deal with him directly, and he also made it clear to the accused on several occasions that he was not a rich person and he wanted to be sure where he and his partner were placing their money, at which point the accused assured them that this deal was one hundred percent secure. He also stated that he gave his business plan to the accused who

assured him that the plan was discussed with foreign consultants, that a bank was found and that the money should be in hand by the end of 2004, while the sum of €300,000 would be received the following day in their bank account, the number of which was supplied to the accused on his request.

On the 12th November 2004, his partner entered into and signed an Agency Contract with the accused in representation of International Consultancy s.r.o. Bratislava, of which company the accused assured them that he was the Chairman. Although the accused promised that he would give them a copy of the contract, he never did so[12]. The sum of Lm12,953 (equivalent to €30,000) was paid out from the personal funds of Ambrose Muscat by means of a cheque which was handed to a certain Dunstan Williams on the accused's request in order that he would cash the cheque on his behalf (Doc. AMP3). He also confirmed that notwithstanding that the accused promised that the sum of €300,000 was to be transferred by SWIFT delivery to his company account in Malta, and notwithstanding that upon this assurance he travelled to Bulgaria with his business partner in order to view the property that they intended to purchase with the loan promised by the accused, the money was never received. Therefore they could not purchase the property.

He explained that the accused made many excuses including that he had made an error and he also changed his version and informed him that until the full loan was approved, the front finance could not be provided. Ambrose Muscat also stated that upon requesting the accused to return the money that he had paid out, he had refused to do so, claiming that the money had been paid out to third parties.

The accused placed pressure on him to pay further charges for an insurance policy which he would take out with the company Generali, and told him that failure to pay these charges would mean that he would lose the initial €30,000 he had paid. Ambrose Muscat explained that the accused also assured him that he would get this loan if he paid more money for the insurance policy and he also provided him with a

[12] Sample of contract exhibited as Dok. AMP2.

copy of this insurance policy (Doc. AMP4) but he never heard anything from Generali.

Meanwhile, the accused introduced him to Michael Stuchlik who he claimed had a financial servicing company in Austria, Catalan Assets Management and produced an invoice in German which he claimed stated that if he pays the money that the accused was requesting, Stuchlik would send an advance on the loan in the sum of €256,000 thus securing the financial facility that he required. The accused also informed him that in order for the process to take place he needed an bank account in Austria from which the life policy premium would be paid out and the accused asked him to pay €5,000 in order to open this bank account in Austria. The accused claimed that Dunstan Williams was in Slovakia, and the transfer, in the equivalent of Lm1,298, was made to him via Western Union money transfer plus Lm52 in charges (Doc. AMP5) in order that the bank account in Austria would be opened with a deposit of €2,500 and payment of €2,500 in bank charges.

The accused then put him in contact with Stuchlik many times where it appeared that his English was very limited but when he decided to contact Stuchlik himself, he realised that his Engish was perfect. When Stuchlik told him that he works with a telephone company and contrary to what was asserted by the accused, he does not have any finance companies whatsoever and moreover, that the accused owed him money, he realised that the accused's plan was to use the money that the witness was being asked to send Stuchlik in order to pay his own debt with him.

Since the accused had already taken all his money, he had no option but to use his savings, consisting in government bonds, to secure the funds required for the payment of the life policy premium. However, he offered the accused his savings as security for the loan rather than hand them over to the accused, an option which the accused accepted only by involving the same Dunstan Williams in order to find a third party who would loan the money to pay for the insurance policy charges. Dunstan Williams approached him in the presence of the accused and said he had found a person to loan

the sum of Lm12,000 together with interest in the sum of Lm1,500 if the money was paid back within one week, or Lm2,500 if the repayment was made within two weeks. When he expressed his concern over the very high interest rate, the accused assured him that he would receive the front financing, now in the sum of €256,000, as soon as he pays the Lm12,000. Williams took him to Calamatta, Cuschieri & Co, where he realised that all the paperwork was already in place for Lm14,500 worth of his government bonds to be transferred into the personal name of Dunstan William, who informed him that he would be paying the sum of Lm12,000 to the accused. However the front financing never materialised although the accused informed him that the Lm12,000 were taken by Williams in cash to Company Consult in Slovakia.

When nothing happened, Ambrose Muscat explained that he contacted the accused, who told him that he would need to pay another €2,000 to be paid to OTP Bank which would be providing the loan of five million Euro and that this was to be paid to accused's own mother, Ermelinda Jaksch who would go to the company official who was ranking this policy: this money was indeed transferred to the accused's mother via Western Union (Doc. AMP8). Accused also asked him to pay another Lm1,450 in cash which he would keep at his residence to pay a bank analyst, a certain Mr. Hoss who was to come over to Malta in order to vet the loan application. However this person never turned up. When he called the President of OTP Bank to discuss the processing of his loan application, he was told that he knew the accused only socially and had no business connections with him whatsoever and that moreover, his Bank was not processing any loans of Maltese persons although he did recall some loan applications made by a Slovak company.

Ambrose Muscat requested the accused to provide him with a receipt for all the money that he had passed onto him and in late January 2005, he received a fax purportedly from Peter Kovac of CompanyConsult, stating that he had paid €120,000 (Doc. AMP9). However he learnt from a certain Duncan Petroni who had been abroad to meet the said Peter Kovac, that the document was not authored by KOVAC and he was angry when told about it. Moreover, around February 2005 he heard

Duncan Petroni speaking on speaker phone to a certain Joseph Smotlak, an employee of CompanyConsult in Slovakia, where Mr. Smotlak informed him that the company never received any money pertaining to Ambrose Muscat from the accused.

Ambrose Muscat confirmed that by then he realised that he had been defrauded by the accused and he commenced legal action to recover the monies he had paid to him. The accused had also constituted himself as his certain, liquid and true debtor in the sum of Lm8,000 by way of compensation which had to be paid by the 12th February 2005. He confirmed that in total, the accused owes him Lm35,000 out of which he recovered only the sum of Lm4,000, leaving an outstanding balance of Lm30,965. He also confirmed that he paid directly to the accused the sum of Lm1,450 while the remainder of the amount was paid out to third parties upon the accused's request.

The accused did not testify specifically in connection with the facts of the case concerning Ambrose Muscat save for confirming that he did not directly retain any part of the sum of Lm12,953 that was paid by the client since these were transferred to the foreign company, although indirectly some of those funds might have been used to pay his monthly fee.

Having considered;

The Court must begin by pointing out that although Ambrose Muscat testified that his partner Iordan Natchev entered into an Agency Contract with the accused on the 12th November 2004 and that the sum of Lm12,953 (equivalent to €30,000) was concurrently and for the reasons set out in that contract, a signed copy of the said contract was not exhibited in the record of the proceedings. While it is true that Ambrose Muscat declared that he was never in possession of a signed copy of the contract, the fact remains that his partner was never brought to testify before the Court in order to attest to the conclusion of this contract with the accused and the terms and conditions agreed upon. Even if the Court had to consider even momentarily, the suggestion that the agency contract contained the same terms and conditions listed in

the sample agreement exhibited as Doc. AMP2, this would mean that the accused was due to receive a sum by way of a handling charge of 0.5% of the required loan and was entrusted to apply these funds for paying expenses such as banking charges relating to the provision of the loan, fees for accountancy services and the like[13].

However, as matters stand, the terms of the agreement for the payment of the sum of €30,000 were not sufficiently proven and consequently the Court cannot be morally convinced of the terms upon which the funds paid out by Ambrose Muscat were entrusted or consigned and consequently conclude that the funds were misapplied or converted to the benefit of the accused or of a third party contrary to the instructions given to him by Ambrose Muscat's partner.

However, the receipt purportedly signed by the accused (Doc. AMP10) does satisfactorily prove that he received a total of Lm31,508 from Ambrose Muscat and it also proves the purpose for which these funds were entrusted to him. Indeed, this declaration states that the funds were received by the accused "*to enable Company Consult s.r.o. to act on behalf of Ambrose Muscat in connection with a loan application for five million Euro*", intended to aid the said person to invest in property in Bulgaria. The accused also declared that part of these funds "*has secured a life policy insurance of 20,833 Euro as well as a bank account of 2,500 Euro in an Austrian Bank*".

However, this receipt cannot of itself be deemed to constitute sufficient evidence that the accused misapplied or converted the funds he received from Ambrose Muscat. The Prosecution failed to show that in effect, the accused did not transmit these funds or part thereof, to Company Consult s.r.o in order to enable said company to act on behalf of Ambrose Muscat in connection with the procurement of the loan. In fact, no representative of this foreign company, such as Peter Kovac or Joseph Smotlak, was brought to testify about the receipt or otherwise of these funds. As for the sum of €21,000 (part of the aforementioned payment of Lm12,953), which Ambrose Muscat

[13] See page 54 of the acts, Doc. AMP2.

testified represented the payment of the initial premium of the life policy which the accused told him would be taken out with the company 'Generali', no evidence whatsoever was brought to show that the copy of the policy application form allegedly compiled by the accused (Doc. AMP4) was never submitted to the said company, Generali[14].

It was entirely up to the Prosecution and certainly not the defence, to disprove the declaration made by the accused in Doc. AMP10 and to show that the funds paid out by Ambrose Muscat were not applied to the procurement of the loan and in particular, to show that the life policy premium was not paid as declared or that the bank account in an Austrian Bank in the sum of €2,500 was not opened. In this regard, the Court considers that Dunstan Williams' testimony or the testimony of a representative of OTP Bank was vital to prove the allegation that the sum of €5,000 (the equivalent of Lm1,298) that was transferred to Dunstan Williams via Western Union in order to open the bank account with said OTP Bank (Doc. AMP5), was not indeed utilised for that purpose.

The same considerations apply to the payment made to the accused's mother, Ermelinda Jaksche, via Western Union (Doc. AMP8) in the sum of Lm955.27. Ambrose Muscat testified that the accused's mother "*would to the company official who was ranking this policy*" but neither Ermelinde Jaksche nor a representative of OTP Bank was brought to testify in this regard.

The Court considers that all this evidence was vital to establish the essential elements of the crime of misappropriation as already set out previously in this judgement.

However, as for the payment of Lm1,450 which Ambrose Muscat testified was handed to the accused in cash in order to pay a bank analyst, a certain Mr. Hoss, who

[14] Indeed, the Court cannot fail to point out that although the said application appears to be drafted in the German language, the Prosecution never even requested the appointment of a translator in order to translate the document into the language of the proceedings in order to show, if necessary, that the contents of this application form were, for instance, irrelevant.

had to come to Malta but never did, the Court must make the following considerations. Having established that the accused admitted that he did receive the total sum paid out by Ambrose Muscat, which also therefore includes the sum of Lm1,450 paid to him in case, the Court is of the view that here, it is evident that the accused could not have applied the money for the purpose for which it was entrusted to him, that is for the accused to pay a certain bank analyst, Mr. Hoss, who had to come to Malta but never did.

From Ambrose Muscat's testimony, it results that this money was not intended to be sent to Company Consult s.r.o or to another insitution, foreign or otherwise, and since the accused failed in his declaration (receipt Doc. AMP10) to mention that he did indeed pay the sum of Lm1,450 to a bank analyst, it therefore follows that this money was retained by the accused. This means that instead of applying the money to the purpose it was entrusted to him, the accused converted such money to his or some other benefit which was not in accordance with the agreement reached in connection with the disbursement of these funds.

Having considered;

That as for the charge of fraud, the Court must begin by pointing out that it was incumbent on the Prosecution to prove that the accused assumed a false designation or used false pretences as a result of which Ambrose Muscat was persuaded to pay the monies which were proven to have been disbursed by him for the purpose of obtaining the required loan. However, none of the evidence adduced establishes that the enterprise in respect of which the accused undertook to act on behalf of his client or to whom he introduced the client, was fictitious. Moreover, no evidence was brought to show that the undertaking to seek to procure the loan required by Ambrose Muscat, was fraudulent such as that the accused purported to exercise capabilities, contacts or influence (including through the foreign company) that he did not truly possess and which elicited in his client a false expectation that as a result of the payment of the sum of Lm31,508, he would receive the required bank loan.

In fact, no representative of Company Consult s.r.o was brought to testify before the Court and no document was produced in evidence, to show that the accused was not authorised to act on behalf of the compay or held no official position in the said company. Nor did the Prosecution deem it fit to prove, by means of the testimony of a representative of the competent authorities in Slovakia and an original or authenticated official document issued by said authorities, that the company International Company Consulting s.r.o. does not exist or is not licensed or otherwise authorised to act as a financial intermediary or to provide the services specified in the Agency contract. Finally, as far as Doc. AMP9 is concerned, neither Peter Kovac who allegedly authored the said document, nor Duncan Petroni who discussed the matter with the said Peter Kovac, were brought to testify in order to sustain the allegation that the document was false.

Therefore, in the absence of satisfactory evidence that the accused employed false pretences, false names of designations or other means of deceit which led Ambrose Muscat to make the payments amounting to a total of Lm31,508, the necessary elements of the crime obtaining money by false pretences are lacking and consequently, the accused cannot be found guilty of that crime.

As for the lesser crime of other cases of fraudulent gain, envisaged in Article 309 of the Criminal Code, again the Court found no evidence that the accused lied to Ambrose Muscat regarding his ability to procure, through the services of Company Consult s.r.o. a commercial loan from a foreign bank.

Above all, however, the documents exhibited by Ambrose Muscat confirm that the payment of all the monies disbursed by him in connection with this case and received by the accused, was effected prior to the 1st January 2005. In fact, there is no evidence that shows that Ambrose Muscat made any payments towards the procurement of the required loan after the 14th December 2004. As for the cash payment in the sum of Lm1,450, Ambrose Muscat never testified as to the date of

consignment of these funds to the accused so the Court cannot exclude that in effect, this payment was also made prior to the 1st January 2005. This means that even if the Prosecution had successfully proven all the elements of the crimes of fraud or misappropriation, the element of the fraudulent gain and corresponding loss required to prove the commission of the crimes envisaged in Articles 308 and 309 of the Criminal Code, and the element of delivery or entrustment to the agent of the crime in the case of misappropriation, of the money that was consequently misapplied, result to have occurred (or there exists a reasonable doubt that these did not occur) within a time period that is expressly excluded from the scope of the charges proffered in terms of the summons. Therefore, in any event the Court cannot find the accused guilty of these crimes.

Charges Concerning Alan Briffa and Ready to Move In Limited

Alan Briffa, director of Ready to Move In Limited, confirmed that he required a bank loan of one million Euro in connection with a project for a petrol station, and was introduced to the accused in September 2003. The accused informed him that he does not work on such small amounts and suggested that his company applies for a more substantial loan and he offered a loan of ten million Euro on insurance repayable in monthly instalments of €250,000. He also told him that he would have to pay initial expenses amounting to €200,000 in order to initiate the procedures. Alan Briffa confirmed that he could only afford €50,000 and on the 4th November 2003, he paid the sum of Lm10,000 to the accused in cash although the accused signed a receipt in the sum of €50,000. He also paid €7,500 for the bank guarantee. An arrangement was made whereby the accused would pay an amount of money to George Muscat and the witness signed a note whereby he undertook to pay to Muscat the sum that the accused had paid to him.

During the first meeting he had with the accused, Alan Briffa claims he was given a number of documents to sign, including an agency contract agreement in virtue of which the accused was to act as the middleman between him and the foreign company

which would loan the sum required. Accused informed him that the security for the loan would be the project itself while an inusrance policy guaranteeing the payment of the loan would also have to be issued in the sum of €42,500 yearly. The accused also offered to be a partner in the project and that he would in turn pay the annual sum of €42,500 himself. Alan Briffa also confirmed that the agreement with the accused was that if the loan was not forthcoming, then the accused would reimburse the money disbursed as expenses relating to the loan agreement.

Alan Briffa stated that the accused told him that he would need to go to Bratislava in order to sign the loan agreement and this he did on the 18th March 2004 in Bratislava (Doc. BCA1), where he was picked up by Peter Kovac, the accused's partner. There he also met Joseph Smotland and he signed the loan agreement at a Notary in Bratislava, where the agreement had already been prepared. However, this contract was only signed by himself and the Notary; he explained that he had to sign the latter part of the contract again before the Bank representative and the guarantor, but this never happened and he was never told to go and sign the document, although he did contact both the accused and Peter Kovac in this regard.

They also showed him the building of the bank in Bratislava which would be issuing the loan within two months. He also went to Bratislava for a second time on the 12th May 2004. However, the loan was never issued and he never received the monies, notwithstanding that the accused used to call him everyday to assure him that all was proceeding smoothly and that the loan application was in the final stage. He never gave him any reason why two years on, the loan had still not been issued and the accused never reimbursed him the money that he had paid out, although he asked him to do so and was assured that he was going to pay everyone everything.

Alan Briffa confirmed that the accused never did become involved as a partner in his company although the agreement that had been reached between them was that this would take place once all expenses relating to the loan had been paid. He also confirmed that since he did not pay George Muscat, the latter had begun to chase him

for repayment of the debt that he had taken over from the accused and also eventually issued a garnishee order against him for the sum of Lm15,000. He also eventually entered into a constitution of debt with George Muscat in respect of the said sum of Lm15,000 on the 4th November 2004.

The Court begins by making the following observations.

Firstly, the copy of the Guarantee Agreement (Doc. ABC1A) exhibited by Alan Briffa during his testimony is unsigned, while the relevance of Komplex a.s. and its respresentative Josef Franc, and the relevance of Doc. ABC1D[15], remains unexplained. Moreover, as would result from Alan Briffa's testimony, the loan agreement (Doc. BCA1) is not signed by a representative of the bank nor by the purported guarantor[16].

As for the Agency Contract which Alan Briffa declared was signed by the accused, the Court cannot but observe that this agreement expressly stipulates that the Mandatary, 'CompanyConsult', that is, International Company Consulting s.r.o., was to be represented on the same contract by "*Peter Kovac, the company's legal representativ*e". However, the Prosecution brought no evidence to show that this Agency Contract was signed by the accused without the knowledge or approval of Peter Kovac; nor was any evidence tendered to show that the accused was not also a legal representative of the said company. On the contrary, from Alan Briffa's own testimony, the Court understood that Peter Kovac was indeed the accused's business partner and that following the conclusion of the agency agreement, Kovac himself met with Alan Briffa in Bratislava in connection with the loan which the accused, in terms of the aforementioned agency agreement, undertook to procure from the foreign bank.

It is also very relevant to point out that in terms of the Agency contract, Company Consult s.r.o., purportedly represented by the accused who also allegedly signed said

[15] Fol. 113.
[16] Vide fol. 118, Doc. BCA1.

contract, was entrusted "*to look up the most suitable business partners ... for the provision of commercial loans ... to assure the elaboration of business plans as joint-venture funding projects, projects for investment programmes, acquisitions, mergers, for the purpose of the Mandatory's intervention into global business*." The Mandatary also undertook, *inter alia*, to "*co-operate with the Client in processing and completing the documentation required for a loan/credit application ..." while the Client, Alan Briffa, undertook "to pay the agreed price to the Mandatary for the action according to this Contract*". Amongst the payments which the Client, Alan Briffa, was obliged to effect in terms of the Agency contract, is the following:-

"*The Client shall pay to the Mandatary a handling charge of 50,000 Euro (equalling 0.50% of the required loan) – to a bank account agreed and not later than with the signing of this contract. The Mandatary is supposed to use this money for paying expenses directly related to the fulfilment of the contactual obligation ... mainly banking charges related to the provision of the loan, fees for accountant services, experts, auditors, legal consultants and the expenses of the Mandatary as e.g. accommodation, phone charges, telex/fax (incl. International transmissions) as well as other charges occurring in the course of the Mandatary's contractual obligations*".

Pertinent to note also that the parties agreed that the Agency contract was to be effective as of the date of signing, in this case the 4th November 2003, **for an unlimited period of time**, unless terminated in writing upon agreement by both contracting parties. Although it does not result from the evidence that this particular contract was indeed terminated in any manner, the parties to the same contract also agreed that **the dissolution of the contract does not affect the right of the Mandatary to receive payment of the agreed reward and the agreed expenses**.

Bearing all this in mind, it is the firm view of this Court that in order for the charge of misappropriation to be duly proven in this particular case, the Prosecution had to bring the best evidence to sufficiently establish that the Alan Briffa did in fact pay the sum of €50,000 to the accused. However, neither the receipt mentioned by Alan Briffa in

his testimony, nor any proof of the source of the funds which Alan Briffa claims to have paid out to the accused, was brought in evidence.

Moreover, the Prosecution also had to prove that the funds allegedly paid by Alan Briffa to the accused in terms of the Agency contract, were not applied towards the agreed purpose of paying expenses directly related to the fulfilment of the contactual obligation and that nothing was done in furtherance of the agreed purpose of securing the provision of a commercial loan for the company Ready to Move In Limited. Thus, the testimony of a representative of Company Consult s.r.o. was essential for the successful prosecution of this charge since lacking such testimony, the Court cannot be morally convinced that the monies paid out by Alan Briffa or his company were not in fact transferred by the accused to the said company in order to pay out the expenses required for the application and processing of the anticipated loan. Since nothing appears to have impeded the Prosecution from bringing this evidence, the Court considers that this is a grave and unjustifiable shortcoming on its part.

Moreover, the fact that the loan was not procured one and a half years later, when no time-limit was stipulated for the procurement of that loan, in no way serves to prove that the monies paid out by Alan Briffa were misappropriated and applied for a purpose other than for payment of expenses related to the fulfilment of the contractual obligation, particularly when it is clearly stipulated that the sum of €50,000 was due to the company, represented by the accused on the agency contract, as a handling charge as of the date of signing of the same agreement.

Indeed, no evidence was brought to convince the Court that the company represented by the accused failed to pay expenses related to the fulfilment of the contractual obligation and in particular, that the bank loan was not issued specifically because the fees and expenses listed in Article 5.2 of the Agency contract, were not paid by the accused or the company. Neither Andrew G. Massie, nor any other representative of the Bank, Morgan Trust Company Limited, was brought to testify in connection with the reason why the credit facility referred to in the Loan agreement (Doc. BCA1) was

not granted to the borrower, Ready to Move In Limited – testimony which in the Court's view was necessary to show the existence of the essential element of the crime of misappropriation, that is, the wrongful conversion of the funds paid to the accused.

Consequently, the accused cannot be found guilty of the charge of misappropriation to the detriment of Alan Briffa and his company due to a lack of evidence.

Having considered;

As has already been observed with regard to the alleged fraud committed to the detriment of Ambrose Muscat, it was also incumbent on the Prosecution in this case, to prove that the accused assumed a false designation or used false pretences as a result of which Alan Briffa was persuaded to pay the monies which were allegedly disbursed by him for the purpose of obtaining the required loan. Indeed, none of the evidence tendered by the Prosecution establishes that the enterprise in respect of which the accused undertook to act on behalf of his client, was fictitious, in other words, that the undertaking to seek to procure a loan for his client was *a priori* impossible, or that the accused purported to exercise a role or capabilities, contacts or influence that he did not truly possess and which elicited in his clients a false expectation that as a result of the payment of the monies actually disbursed, they would receive the required bank loan.

Moreover, as repeatedly pointed out, no representative of Company Consult s.r.o was brought to testify before the Court and no document was produced in evidence, to show that the accused was not authorised or held no official position in the said company. Nor did the Prosecution deem it fit to prove, by means of the testimony of a representative of the competent authorities in Slovakia or an official document, that the company International Company Consulting s.r.o. does not exist or is not licensed or otherwise authorised to act as a financial intermediary or to provide the services specified in the Agency contract.

As for the Loan Agreement signed by Alan Briffa on behalf of Ready to Move in Limited (Doc. BCA1), the Prosecution did not bring the necessary evidence, such as the testimony of representative of the companies mentioned in the said documents or the Notary who purportedly drew up the Loan Agreement, to show that City Bank Privatkunden AG & Co. KgaA and Morgan Trust Company Limited, the Transfer Agent and Administrator of the Loan Agreement ('the Bank'), are inexistent and fictitious, or are not licensed or authorised to provide the credit facilities and the trustee services mentioned in the said Agreement. Neither was any evidence submitted which even tends to show that these companies were not aware of a loan application by Ready to Move In Limited, were not contractual partners of Company Consult s.r.o., or were not contacted by said company in connection with the procurement of such loan. Nor did the Prosecution show that the Notary JUDr. Ol'Ga Folbova who purportedly drew up the Loan Agreement and in whose presence it was signed by Alan Briffa (Doc. BCA1), was not after all, a qualified Notary and that the stamps and seal on the said Agreement are false.

Consequently, the Court cannot exclude that the purported loan mentioned in the Loan Agreement was not granted due to some unforeseen event or for a reason which is extraneous and unconnected to deceit or fraudulent action on the part of the accused. Certainly the Court, in the absence of such evidence, cannot and will not speculate about the reason why this loan was not granted to Ready to Move In Limited by City Bank Privatkunden AG & Co. KgaA through the Transfer Agent Morgan Trust Company Limited; nor will the Court assume that the Loan Agreement was merely a manoevre on the part of the accused to convince the client that the monies he paid out to the accused were indeed employed in accordance with the terms of the Agency Contract. The onus for bringing forward such evidence as to convince the Court of the fraudulent nature of the Loan Agreement was solely on the Prosecution which, however did absolutely nothing to discharge the required burden of proof.

Above all however, the evidence brought by the Prosection irrefutably affirms that all the facts of this case, including the payments disbursed and the contracts entered into

by Alan Briffa, took place in between November 2003 and May 2004, thus falling well outside the time indicated in the summons as the period within which the offences to the detriment of said Alan Briffa were allegedly committed, that is, "*on the 8th of June 2005 and in the preceding months*".

Charges concerning Joseph Quattromani, John Debono and Tower Manor Limited

Joseph Quattromani, a shareholder in the company Tower Manor Limited together with John Debono, testified that he was introduced to the accused as a person who would procure loans for construction projects. His company was involved in a construction project and required a loan in the sum of five million Euro. The accused, during several meetings that were held with him, convinced him that the prospects for the grant of such a loan were good and that he would supply the expenses in order to procure the loan, provided that he will be reimbursed when the loan is in hand. Subsequently, the accused informed him that the sum of €125,833 would need to be paid, partly as agency fees in the sum of €30,000 representing a percentage of the desired loan, partly as the first premium of the insurance policy and as to the remainder, other expenses as listed in the Schedule of Expenses (Doc. JQ1). This sum was paid by Joseph Quattromani from the funds pertaining to Tower Manor Limited[17], to Anthony Cutajar or Chris Cutajar of Selective Company Consult Malta Limited in instalments, and the money was duly transmitted to the accused. This would result from receipts exhibited (Docs. JQ2, JQ3, JQ4 and JQ5). As for the two cheques issued by Joseph Quattromani[18], John Debono confirmed that these were given directly to the accused.

Joseph Quattromani also confirmed that he, together with John Debono on behalf of Tower Manor Limited, signed an Agency Contract which was signed in their presence

[17] See also testimony of John Debono, 22nd September 2005.
[18] Fol. 138, part of Doc. JQ6.

also by the accused[19] and one of the Cutajars with an obligation on the part of the accused to secure the loan within three months from the signing of the agreement. According to John Debono, they were promised that an offshore bank account had to be opened in the name of Tower Manor Company Limited in the Bahamas. John Debono testified that meanwhile, he and his partner were in constant contact with Peter Kovac who had sent them emails promising that the loan would be issued.

However this loan never materialised and moreover, the amount paid out was never reimbursed to them despite the accused calling him and John Debono persistently, claiming that the money would be received soon. When he asked the accused to refund the money that was paid in anticipation of the loan since it became clear that the loan was never going to materialise, the accused agreed. The accused also gave him a letter issued by Tetra Bank in Bratislava claiming that the bank was going to transfer the sum of €75,000 in favour of the company to a bank in Malta but he was told by banks in Malta that without the order for the money to be transferred, the letter meant nothing. In fact, the transfer never materialised.

Joseph Quattromani also testified that in April 2005 the accused made arrangements for him to go to Bratislava, where he met Peter Kovac who promised to take him to Tetra Bank but never actually did take him there. However, he undertook on behalf of Company Consult and before a legal officer in Bratislava, to refund the sum of €125,830 by means of monthly instalments and Peter Kovac paid him €4,000. This document was eventually also signed by the accused who in Malta also paid an instalment of €2,000 and part of the second instalment in the sum of Lm450 in June 2005. In total, he received the sum of €7,000 out of the total sum of €125,830 that was paid by his company[20].

Having considered;

[19] See also testimony of John Debono, 22nd September 2005.
[20] This was also confirmed by John Debono in his testimony of 22nd September 2005, fol. 192.

Although Joseph Quattromani claimed in his testimony that it was agreed that should the loan not be granted within three months from the signing of the agency contract then the total amount disbursed by his company would be reimbursed, the Court after having examined the Agency Contract Doc. JC7, which is undated, found no such obligation of time in favour of Tower Manor Limited. On the contrary, Article 6 of the Agency Contract stipulates that whenever Company Consult s.r.o., the Mandatary, fails to obtain the necessary insurance guarantee securing the expenses incurred by the Client (that is, Tower Manor Limited) directly relating to the procedures for the provision of the loan, said Mandatary is bound to reimburse the Client with 0.5% of the money paid for said expenses in addition with 20%. Moreover, it was also agreed that the local charges for the Intermediary Company of 0.1% are non-refundable.

The Prosecution failed to bring the best evidence of the obligation undertaken by the accused to refund the total sum of €125,830 to Tower Manor Limited and despite Joseph Quattromani's testimony that a document was signed both by Peter Kovac and the accused to this effect, this document was not produced and it does not result that this document was lost or destroyed. Consequently, when faced with the obligation stipulated in Article 6 of the Agency contract, regarding payments in case of default, the Court cannot agree that it has been satisfactorily proven that the accused assumed an obligation to reimburse the total amount disbursed by Tower Manor Limited.

In any event, as already considered, the failure of the accused to honour such an obligation does not in itself constitute evidence of misappropriation.

As already pointed out in relation to the charge of misappropriation to the detriment of Alan Briffa and Ready to Move In Limited, the Court deems that it was incumbent on the Prosecution to bring sufficent evidence that the funds paid by Tower Manor Limited and ultimately received by the accused, were not applied towards the agreed purpose, that is, for the payment of expenses directly related to the fulfilment of the contactual obligation, as stipulated in Article 5.2 of the Agency contract, and that nothing was done in furtherance of the agreed purpose of securing the provision of a

commercial loan for the company Tower Manor Limited. The fact that the loan was not procured one and a half years later, when no time-limit was stipulated in the Agency contract within which the loan had to be procured, in no way serves to prove that the monies paid out by Tower Manor Limited were misappropriated and applied to the accused's benefit or for a purpose other than for payment of expenses related to the fulfilment of the contractual obligation. This is so particularly when it is clearly stipulated that part of the total amount paid by Tower Manor Limited, that is the sum of €30,000 representing 0.6% of the required loan, was paid by way of a handling charge which was due both to Selective Company Consult Malta Limited and to CompanyConsult s.r.o. as of the date of signing of the same agreement.

Moreover, there is no evidence to show that that the foreign company represented by the accused did not receive the funds or that the expenses related to the fulfilment of the contractual obligation were not paid, and in particular, there is no evidence to show that the bank loan was not issued specifically because the fees and expenses listed in Article 5.2 of the Agency contract, were not paid by the accused or the Company Consult.

The Court furthermore observes that of the total amount disbursed by Joseph Quattromani (Doc. JQ4, JQ5 and JQ6), the documents exhibited show that only the sum of €50,000 was actually received by the accused, while the remainder was paid to the credit of Selective Company Consult Malta Limited, without any evidence having been brought to prove that these funds were transmitted to and actually received by the accused. Consequently, also in view of the fact that the sum of €30,000 was paid out as a handling charge that, as agreed, was unconditionally due on the date of signing of the agreement, and in the absence of any evidence that irrefutably establishes that these funds and the other monies paid out by Joseph Quattromani representing the expenses detailed in the Schedule of Expenses (Doc. JQ1), were not after all applied for the stated purpose, the required elements of the crime of misappropriation are lacking and therefore the accused cannot be found guilty of this charge.

Having considered;

As for the charge of fraud, the Court cannot but begin to point out that it was incumbent on the Prosecution to prove that the accused assumed a false designation or used false pretences as a result of which Joseph Quattromani was persuaded to pay the monies which were proven to have been disbrused by him for the purpose of obtaining the required loan. However no representative of Company Consult s.r.o. was brought to testify before the Court and no document was produced in evidence to show that the accused was not authorised or held no official position in the said company. Nor did the Prosecution deem it fit to prove, by means of the testimony of a representative of the competent authorities in Slovakia and an official document to the effect that the company International Company Consulting s.r.o. does not exist or is not licensed or otherwise authorised to act as a financial intermediary or to provide the services specified in the Agency contract.

Furthermore, as already pointed out, while from the evidence adduced it would result that Selective Company Consult (Malta) Limited was represented by Chris Cutajar and or Anthony Cutajar, there is nothing that even tends to show that the accused held an official role or acted in representation of this company and or received monies that were shown to have been paid directly to this company, save for the sum of €50,000[21]. Above all, none of the evidence adduced establishes that the enterprise in respect of which the accused undertook to act on behalf of his client, was fictitious, in other words, that the undertaking to seek to procure a loan for his client, was *a priori* impossible or that the accused purported to exercise power or influence that he did not truly possess and which elicited in his client a false expectation that as a result of the payment of the sum of €125,833, he would receive the required bank loan.

Therefore, in the absence of satisfactory evidence that the accused employed false pretences, false names of designations or other means of deceit which led Joseph

[21] Vide Doc. JQ2 and Doc. JQ3.

Quattromani and or John Debono or their company, to make the disbursements listed in the Schedule of Expenses – which Schedule, in any event, results to have been compiled and sent by Selective Company Consult (Malta) Limited and not by the accused - the necessary elements of the crime obtaining money by false pretences are lacking and consequently, the accused cannot be found guilty of that crime.

As for the letter mentioned in Joseph Quattormani's testimony, allegedly issued by Tetra Bank in Bratislava, where it was stated that the bank was going to transfer the sum of €75,000 to a bank in Malta in favour of Tower Manor Limited, this letter was never exhibited in the record of these proceedings; consequently, the Court cannot give any weight or any consideration whatsoever to this allegation.

As for the lesser crime of other cases of fraudulent gain, envisaged in Article 309 of the Criminal Code, again the Court found no evidence that the accused lied to Joseph Quattromani regarding his ability or expertise to intervene with foreign banks in order obtain on his behalf, a commercial loan from a foreign bank or to provide the other services specified in the Agency Contract. The Court is not convinced that the evidence brought forward by the Prosecution with regard to this particular case, is sufficient to prove anything other than a deal that fell through for reasons that remain unknown. In fact, no evidence was brought to explain why the required loan was not after all granted to Tower Manor Limited and specifically that it was untrue that the accused would use the monies paid out by Joseph Quattromani to obtain the said loan and provide the other services specified in the Agency Agreement.

As has already been observed, the accused received a handling charge that was specifically agreed to be due to him and to Selective Company Consult (Malta) Limited together with additional amounts listed in the Schedule of Expenses, but there is nothing in the record of the proceedings that shows that these monies were received by the accused with the intention of making a fraudulent gain to the detriment of Joseph Quattromani. Rather, the Court, on the basis of the evidence adduced, deems that this is a civil matter regarding a contract that was not honoured but where the

reasons for such failure to honour were not proven to be attributable to fraud exercised by the accused.

Notwithstanding the above considerations, it is evident that the entire facts of this case, including the disbursement by Joseph Quattromani and or his company, of all the monies entrusted to the accused and or paid out in connection with the Agency Agreement allegedly as a result of the use of fraud and deceit by the accused, took place wholly in the year 2004, thus evidently falling outside the time period specified in the summons as the time of the commission of the crimes of fraud and misappropriation to the detriment of the said person and company. Consequently, the accused cannot be found guilty of these crimes as charged in any event.

Charges concerning Anthony Sultana, Martin Gauci and Modern Image Studios

Anthony Sultana, a director of Modern Image Studios, testified that in around June 2004, his company was seeking an investor in order to invest the sum of two hundred thousand Maltese Liri and the accused told him that he could obtain a loan of a larger sum, against payment of expenses. When he informed the accused that he did not have the funds to cover such expenses, the accused offered to pay these expenses himself and he accepted. He also prepared business plans and around September 2004 the accused asked that he and his three partners pay the expenses in whatever amounts they can afford. Together with his partner Martin Gauci, managing director of the company Modern Image Limited, he disbursed the sum of €22,000 which was paid to the accused in instalments. The accused had proposed that he would incur the remainder of the expenses himself and once the loan was granted, they would pay him back the expenses he would have disbursed plus his commission of 5% of the total amount of the loan[22].

An agreement was entered into between the accused and Martin Gauci (Doc. STA1) where it was stipulated that the accused had disbursed the sum of €284,800 in relation

[22] See also testimony of Anthony Sultana, 22nd September 2005.

to the loan guarantee, loan costs and first months insurance, however Anthony Sultana testified that the accused did not in reality pay this amount. He explained that he came to this conclusion because the accused never provided any documentation to sustain this allegation and furthermore, nobody from Company Consult s.r.o. ever confirmed that they recieved payment of this amount from the accused. Anthony Sultana also confirmed that Modern Image Limited paid the equivalent in Maltese Lira of €16,866 Euro in cash to the accused in three instalments in September 2004. The accused provided a receipt for the sum of Lm3,450 as part of the sum of €16,866 that was paid by Modern Image Limited. The loan was supposed to materialise by the end of September 2004 but as the deadline approached, the accused made excuses, including that more money needed to be paid due to new procedures, so that the deadline was always delayed. In fact, the loan never materialised and the money paid out to the accused by Modern Image Limited was never reimbursed, despite the accused having entered into a constitution of debt woth Martin Gauci on behalf of Modern Image Limited (Doc. STA4).

Having considered;

That it must be pointed out at the outset that in order to prove the essential element of the crime envisaged in Article 308 of the Criminal Code in the case concerning Anthony Sultana and Modern Image Limited, the Prosecution had to prove that the accused deceived Anthony Sultana into paying out the funds received by him, by using false pretences or a false designation. Alternatively, the Prosecution had to prove that the accused did not, in fact disburse the sum of €284,800 that he declared to have paid to Company Consult s.r.o. in relation to the loan guarantee, and thus created a ruse to lead his victim to believe that he was actively working on the procurement of the loan.

However the Prosecution brought no evidence to prove beyond a reasonable doubt that the accused deceived Anthony Sultana when he declared to have paid such expenses as would enable the processing of the loan application and in particular, the

Prosecution failed to produce a respresentative of the foreign company, Company Consult, to confirm that this amount was not in fact paid by the accused and thus to sustain the allegation made by Anthony Sultana in his testimony in this regard. Such evidence would have undoubtedly served to show that the accused used false pretences which persuaded Sultana and his company to pay him the sum of €22,000, and thus made an illegal gain to their detriment.

As for the charge of misappropriation, it must also be pointed out that the testimony of a representative of Company Consult s.r.o. was *sine qua non* for the successful prosecution of this charge since in the absence of such testimony, the Court cannot be morally convinced that the monies paid out by Anthony Sultana or Modern Image Limited were not in fact transferred by the accused to the said company in order to pay out the expenses required for the application and processing of the anticipated loan. Moreover, the Prosecution did not bring a representative of RAIFFEIESEN-BANK, Austria, to testify that Companyconsult did not use the funds paid out by Modern Image Limited to open the bank account mentioned in Doc. STA2, and nor was a representative of the insurance company WR.STADTISCHE brought before the Court to confirm that no funds were paid for the issue of insurance policy in the name of Modern Image Limited. It is the Court's view that this evidence was essential in order to prove that the funds paid out by Modern Image Limited for the purpose stated in the receipt Doc. STA2, in the sum of €2,500, were not applied according to the agreement reached between the directors of Modern Image Limited and the accused.

As already pointed out earlier, the fact that the accused acknowledged that he is a debtor of Modern Image Limited and undertook to reimburse the sums paid out by said company (Doc. STA4), is in no way tantamount to an admission of guilt for the crimes with which he is charged with having committed to the detriment of said company.

Again, it results that all payments made by Anthony Sultana and the transactions in connection with the procurement of the loan required by Modern Image Limited, took

place entirely within the year 2004. As already observed previously, the summons makes no reference to the years preceding 8th June 2005 and consequently, events or facts that took place in the year 2004 fall outside the parameters expressly defined by the Prosecution in respect of the time of the commission of the crimes with which the accused is charged, cannot be taken into account by the Court for the purpose of establishing the concurrence of the elements of such crimes.

Therefore the accused cannot be found guilty of the crimes allegedly committed to the prejudice of Anthony Sultana and Modern Image Limited.

Charges concerning Fabio Grima, Raymond Grima and Grimax Limited

Fabio Grima, a director of Grimax Limited, testified that he was introduced to the accused in September 2003 through George Muscat and Robert Tonna and met him at the Westin Dragonara Hotel. There they discussed a financial loan which was required by Grimax Limited in the sum of Lm430,000 in order to acquire a going concern consisting in a complex in Bugibba. The accused suggested that a loan of 2.5 million Euro shoud be applied for and there should not be any problems for this loan to be granted against payment of charges and a percentage commission. He also wanted a 10% stake in Grimax Limited. At the beginning of January 2004, the accused told him that he had a problem because the loan that he could provide was for five million Euro instead of the amount initially discussed and that the charges and percentage that would have to be paid would be more substantial.

Fabio Grima explained that since he did not have the extra funds, the accused offered to pay the extra expenses that were requred to raise the loan, himself and he actually did pass onto him the sum of €11,000 to pay to Peter Kovac whom he met in Bratislava (Doc. FGA3). On the 30th January 2004 an Agency Contract was entered (Doc. FGA1) by Fabio Grima and his brother Raymond Grima and signed also by the accused, in connection to the provision of a loan of five million Euro and the sum of

€25,000 in cash was handed to the accused towards this loan by way of prepaid fees and charges.

Fabio Grima confirmed that he went to Bratislava three times in all. On the first occasion in March 2004, he met Peter Kovac in Vienna from where they then travelled to Slovakia, where Kovac made all the arrangements in order to sign the loan agreement before a Notary (Doc. FGA4). This Loan Agreement was signed only by himself and the Notary and he was promised that the loan would be issued within six weeks. There he was also introduced to Martin Bugmanovic who he was told was an insurance guide and for who he completed an application for the issue of the insurance policy for which he had paid the accused. The grant of the loan was then postponed to the 1st May 2004 because the accused informed him that there were problems to manage the loan from Malta and it would be necessary for Fabio Grima to go to Bratislava. He therefore went again to Bratislava after receiving a fax from Company Consult (Doc. FGA5) confirming that the trustee would pay the money and after also receiving from the accused a sanction letter stating that the loan would be by Barclays Bank Great Britain (Doc. FGA6).

Fabio Grima testified that he was contacted by phone by Edwin Zammit from the HSBC Merchants Street Branch, who informed him that he learnt from Sady Grech that a large sum was going to be deposited in his account within the week and asked him to provide documentation regarding the nature of the loan. He personally met Edwin Zammit and showed him the sanction letter provided by the accused and was informed by Zammit that he would fax Barclays about the sanction letter and the transfer. However HSBC informed him that they never received a reply and Edwin Zammit later informed him that should be money be transferred to his account, HBSC will not accept it.

On his second visit to Bratislava, Fabio Grima, together with his brother Raymond Grima[23], met Peter Kovac who paid the hotel accommodation expenses. During this trip he realised that the whole process had recommenced from scratch as they were still searching for a bank that would finance the project as well as an insurance company. The brothers went to Austria with Kovac and a certain Darger Fisher with regard to an insurance policy, where they met some bankers and spent four hours in a meeting, where he explained his business plan to them and they said they would keep in touch with Peter Kovac. However nothing materialised.

Fabio Grima confirmed that he went again to Bratislava with his brother Raymond Grima and other clients of the accused, in September 2004 in order to sign another loan agreement, where he resided in what he understood to be the accused's apartment together with Duncan Petroni who had the keys to this apartment. Peter Kovac was surprised to see them and told him that he knew nothing about the loan agreements that each client had brought with him to sign. Therefore, no loan agreements were signed. He also confirmed that he paid all the travelling expenses out of his own pocket and although the accused promised to reimburse him.

In fact, no loan was never issued and in total, Grimax Limited paid the sum of €71,000 to the accused (Doc. FGA2) plus the sum of €2,500 to the accused's partner, Peter Kovac, via Western Union transfer of which no refund was ever received.

Having considered;

As for the crime of fraud envisaged in Articles 308 and 309 of the Criminal Code, the Court reiterates the considerations already made in respect of the other counts of fraud. In essence, the Prosecution had to prove that the accused was not authorised to represent the foreign company, Company Consult s.r.o. and therefore deceived Fabio Grima by using a false designation. However the Prosecution did not bring a respresentative of the foreign company, Company Consult s.r.o. to testify in this

[23] Ref. Testimony of Raymond Grima, 10th August 2005.

regard. Inspector Ian Abdilla testified in cross-examination that he does not know whether the accused appears in any official role in Company Consult Limited and he also confirmed that he had tried to locate Peter Kovac through Interpol and Europol but to no avail. Even then, no evidence of these attempts was adduced before the Court.

As for the Loan Agreement signed by Fabio Grima in Bratislava (Doc. FGA3) and the document issued by Company Consult on the 5th August 2004 in connection with the impending transfer of credit in the sum of five million Euro to Grimax Limited (Doc. FGA5), the Prosecution did not bring the necessary evidence, such as the testimony of representative of the companies mentioned in the said documents, or the Notary who purportedly drew up the Loan Agreement, to show that City Bank Privatkunden AG & Co. KgaA and Morgan Trust Company Limited, the Transfer Agent and Administrator of the Loan Agreement, are inexistent and fictitious, or are not licensed or authorised to provide the credit facilities and the trustee services mentioned in the said Agreement. Neither was any evidence brought which even tends to show that these companies were not aware of a loan application by Grimax Limited, were not contractual partners of Company Consult, were not contacted by said company in connection with the procurement of such loan and did not in fact affirm that the sum of five million Euros would be transferred into the account of Grimax Limited by the 15th September 2004. Nor did the Prosecution show that the Notary JUDr. Ol'Ga Folbova who purportedly drew up the Loan Agreement and in whose presence it was signed by Fabio Grima, was not after all, a qualified Notary and that the stamps and seal on the said Agreement are false.

Consequently, the Court cannot exclude that the purported loan mentioned in the Loan Agreement was not granted due to some unforeseen event or for a reason which is extraneous or unconnected to deceit or fraudulent action on the part of the accused. Certainly the Court, in the absence of such evidence, cannot and will not speculate about the reason why this loan was not granted to Grimax Limited by City Bank Privatkunden AG & Co. KgaA through the Transfer Agent Morgan Trust Company

Limited, and nor will the Court assume that the Loan Agreement was merely a manoevre on the part of the accused to convince the client that the monies disbursed were indeed employed in accordance with the terms of the Agency Contract. The onus for bringing forward such evidence as to convince the Court of the fraudulent nature of the Loan Agreement was solely on the Prosecution which, however did not discharge the required burden of proof.

As far as the so-called sanction letter dated 8th September 2004 referred to by Fabio Grima in his testimony before the Court (Doc. FGA6), again, the Prosecution failed to show that the document did not in fact originate from Morgan Trust – Fiduciaries Ltd., or that Andrew G. Massie and Sady Grech do not occupy the position of Managing Director and Deputy Chief Investments Banking of that company. There is also absolutely no evidence to show that the document is false or that it was not in fact signed by Sady Grech. In particular, Edwin Zammit, the manager of HSBC mentioned by Fabio Grima in his testimony as having been contacted by Sady Grech in connection with the funds mentioned in this sanction letter, was not brought to testify about the alleged contact by Sady Grech and the alleged lack of reply from Barclays Bank in connection with this sanction letter.

As for Fabio Grima's third visit to Bratislava in order to sign the loan agreement provided to him by the accused, Peter Kovac was not produced by the Prosecution in order to confirm that he was not aware of this loan agreement and that this was therefore nothing but a *mise-en-scene* staged by the accused to lend credence to his allegedly fradulent scheme.

Finally, the fact that the accused might not have paid the sum of €50,000 that he undertook to pay on the declaration dated 1st March 2004 in connection with the letter of credit and the wiring of funds to the indicated bank account, does not in itself serve as evidence of criminal intent on the part of the accused to defraud Grimax Limited. Indeed, it is the Court's view that even if it had to transpire that the loan that the accused sought to obtain for Grimax Limited was not granted because the accused did

not, in fact, honour his obligation to pay the share of expenses that he undertook to pay by April 2004 (Doc. FGA2) in order to ensure the provision of the loan, still this failure to honour the obligation is not sufficient to constitute the necessary element of the use of false pretences required for the finding of guilt for the charge of fraud. That element would have had to be proven by means of concrete evidence that the accused used a false designation and was not authorised to act and receive monies on behalf of Company Consult Slovakia, and or evidence that said foreign company and or Peter Kovac did not have the necessary credentials, authorisation or license to procure the loan which the accused on its behalf undertook to provide for its client Grimax Limited through the services of Company Consult and that consequently, the entire set-up staged by the accused was fictitious and fraudulent, calculated to deceive the client into paying money for services relating to the provision of a loan which could not be thus procured.

Therefore, since the Prosecution evidently failed to produce the necessary testimony and evidence to satisfy the onus of proof of concurrence of all elements of the crime of fraud, the accused cannot be found guilty of this charge.

In so far as charge of misappropriation is concerned, the Court makes the following observations.

As for the sum of €25,000 which was paid to the accused[24], it is evident from the terms and conditions of the Agency Contract (Doc. FGA1) dated 30th January 2004, that this sum was due to Company Consult s.r.o. by way of a prepaid handling charge equivalent to 0.5% of the required loan (Article 5.2 of the Agency Contract). The parties to the said contract agreed that this sum was to be used by Company Consult for the payment of expenses and charges related to the bank loan, as specified in Article 5 of the said contract, however the Prosecution failed to show that the accused did not transfer the funds he received from Grimax Limited (Doc. FGA2) to Company Consult s.r.o. or to Peter Kovac. In fact, not only was Peter Kovac not brought to

[24] Vide Doc. FGA2, page 162.

testify but **Fabio Grima himself confirmed in his testimony that the accused did pass onto him the sum of €11,000 in order to trasmit to Peter Kovac on account of the extra expenses that were required to fund the loan application**. How Peter Kovac applied those funds is irrelevant to the purposes of these proceedings where it is the accused and not Peter Kovac who is being charged with the crime of misappropriation.

In the absence of the testimony of Peter Kovac as to whether he received the sum of €21,000 and the sum of €25,000 that were purportedly received by Company Consult s.r.o. in order to pay the first premium for an insurance policy and in order to open an bank account, respectively, the Court cannot exclude that indeed such sums were indeed sent by the accused to Company Consult Ltd for the stated purpose and that therefore, such sums were not misapplied.

In any event, no evidence was brought to show that the funds paid to the accused were not used in connection with the fulfilment of the contractual obligation undertaken by the accused to search for the most suitable business partners for the provision of commercial loans and for procuring the anticipated loan on behalf of the client.

It therefore follows that the elements of the crime of misappropriation were not proven to the degree required for a finding of guilt on a charge of a criminal offence.

Above all, the facts of this case result to have taken place outside the parameters specified in the summons as to the time of the commission of these offences, since it was declared by both the accused and Grimax Limited that the monies disbursed by Grimax Limited in the sum of €71,000 had already been received by the accused on the 1st March 2004 (Doc. FGA2). Moreover, Fabio Grima testified that he went to Bratislava to sign the loan agreement (Doc.FGA4) in March 2004, while the Agency Contract (Doc. FGA1) in respect of which the sum of €25,000 was paid to the accused, was concluded on the 30th January 2004. Consequently, the accused cannot be found to have committed the offences of fraud and misappropriation to the

detriment of Fabio Grima and his company as charged in summons, that is, "*on the 8th of June 2005 and in the preceding months*".

Charges under Article 83A of the Criminal Code

The accused was charged by means of the first and second charges under Section "A" of the summons with belonging to a criminal organisation. In the note filed on the 13th February 2006 sending the accused for trial before this Court, the Attorney General indicated the provisions of Article 83A of the Criminal Code.

(1) Any person who-
(a) promotes, constitutes, organises or finances an organization with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more; or
(b) knowing or having reasonable cause to suspect the aim or general activity of the organization set up for the purpose mentioned in paragraph (a), actively takes part in the organisation's criminal activities, including but not limited to the provision of information or material means or the recruitment of new members,
shall be guilty of an offence and shall liable, on conviction, to the punishment of imprisonment for a term from four to nine years.

(2) Any person who belongs to an organisation referred to in sub-article (1) shall for that mere fact be liable to the punishment of imprisonment for a term from two to seven years.

Then, sub-article (4) of Article 83A, envisages the responsibility and corresponding punishment in the event where the person found guilty of the said offence is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that

body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate.

This crime corresponds to the crime known as "*associazone per delinquere*" found in the Italian penal code and in respect of which, jurist Francesco Antolisei made the following observations:-

"*La ratio di questa incriminazione e' palese: l'esistenza di un'associazione per delinquere suscita inevitabilmente allarme nella popolazione e, quindi, di per se' sola, e cioe' indipendentemente dai delitti che siano commessi, determina un perturbamento dell'ordine pubblico."*

...

A) "Associazione" non equivale ad "accordo", come si puo' rilevare dal confronto dell'art. 304 con l'art 305 (infra n. 240). Affinche' esista associazione occorre qualche cosa di piu': e' necessaria l'esistenza di un minimum di organizzazione a carattere stabile, senza che, pero', occorra alcuna distribuzione gerarchica di funzioni. La forma di organizzazione adottata e' indifferente, tanto piu' che, trattandosi di un'attivita' illecita, e' ben naturale che di regola si rifugga dalla tipiche forme associative. Non occorre neppure che esista ripartizione di gradi u gerarchia di funzioni, perche' la presenza di capi costituisce una mera eventualita'. Il carattere stabile del vincolo associativo da' al reato in parola la netta impronta del delitto permanente. Su cio' nessun dubbio e' consentito.

B) Obiettivo dell'associazione deve essere la commissione di piu' delitti (non di contravvenzioni). In altri termini, si esige che l'associazione abbia come scopo ***l'attuazione di un programma di delinquenza, e cioe' il compimento di una serie indeterminata di delitti. Associarsi per commettere un solo delitto non integra la fattispecie in esame.*** *A differenza nel codice Zanardelli (art. 248), non si richiede che gli associati abbiano di mira alcune specie di delitti piuttosto che altre. Pure* ***irrilevante e' che i delitti in programma siano della stessa specie oppure di specie diversa*** *a che tutti o alcuni di essi siano perseguibili a querela. La molteplicita' dei*

delitti non e' esclusa allorche' questi sono collegati dal nesso della continuazione. ... occorre che tra le finalita' dell'associazione vi sia qualle di realizzare determinate fattispecie criminose." [enfasi tal-Qorti]

As far as the difference between this crime and the crime of conspiracy envisaged under Article 48A of our Criminal Code, with which the accused is also being charged and which requires proof of a common agreement to commit determined crimes, Antolisei explains thus:-

"*L'associazione per delinquere presenta qualche affinita' con la compartecipazione criminosa, ma ne differisce profondamente. Nel concorso di persone, infatti, l'accordo fra i compartecipi e' circoscritto alla realizzazione di uno o piu' delitti nettamente individuate, commessi i quali l'accordo medisimo si esaurisce e, quindi, viene meno ogni pericolo per la comunita'. Nell'associazione a delinquere, invece,* ***dopo l'eventuale commisione di uno o piu' reati, il vincolo associative permane per l'ulteriore attuazione del programma di delinquenza prestabilito*** *e, quindi, persiste quell periodi per l'ordine pubblico che e' caratterestica essenziale del reato.*"[25] [emfasi tal-Qorti]

It is incumbent on the Prosecution to prove that the accused knowingly formed part of or performed any of the acts mentioned in Article 83A(1) within or for, a criminal organisation. The Court therefore expects to find evidence of an pre-existining association consisting of at least two persons and which is established for the purpose of executing indeterminate but serious crimes, and also proof of a clear nexus between the accused and the said organisation. This nexus must be shown through evidence that the agent of the offence either actively participated in the organisation's criminal activities or evidence that he promoted, orgnised or financed the organisation itself or even merely belonged to the organisation, the latter attribute deserving of a lesser punishment.

[25] Francesco Antolisei: Manuele di Diritto Penale Parte Speciale Pag 228 – 232.

However, after examining all the evidence and testimonies brought forward by the Prosecution, the Court can only reasonably conclude that the accused had some form of agreement with the Slovakian-based company, International Company Consult s.r.o. and Peter Kovac, purportedly an officer of the said company, to act as an intermediary and introduce Maltese clients to the company which would in turn, act and intervene on behalf of the clients with foreign institutions for the provision of commercial loans in their favour. It is true that the accused's endeavours failed to secure a loan for either one of the persons who testified in these proceedings as having paid money to the accused for this purpose. However, as already observed earlier on, while it emerges from the testimony of Fabio Grima and Alan Briffa that they did meet a Peter Kovac in Bratislava who purported to be the accused's business partner who did also refund part of the monies they had disbursed on account of the loans they required, no evidence was brought to prove that foreign company did not exist and or that the entire scheme was devised by the accused and Kovac in order to defraud the clients into parting with their money in the belief that the Company Consult s.r.o. would act on their behalf to secure a loan from a foreign bank. In fact, the constitutive elements of the crimes of fraud and misappropriation were not successfully proven in respect of either one of the six counts brought against the accused.

Therefore, the evidence available is insufficient to prove to the required degree, the existence of a criminal organisation that was deliberately established for the commission of criminal offences. Consequently, the accused cannot be found guilty of belonging to or actively participating in such an organisation for the purposes of the crime envisaged in Article 83A of the Criminal Code.

Charges under Article 48A of the Criminal Code

The accused was charged with the crime of conspiracy by means of the third charge under Section "A" of the summons. In the note filed on the 13th February 2006 sending the accused for trial before this Court, the Attorney General indicated the provisions of Article 48A of the Criminal Code.

(1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment shall be guilty of the offence of conspiracy to commit that offence.

(2) The conspiracy referred to in sub-article (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

In the judgement in the names **Il-Pulizija v. Omissis, Kyle Cesare u Emanuel Briffa**[26], the Court of Criminal Appeal considered that:-

"*Ir-reat tal-assocjazzjoni, li huwa wiehed mill-atti preparatorji ghar-rejat konsmat jew attentat u li ghalhekk jista' jirrizulta indipendentement mir-reat mahsub, jirrikjedi l-konkorrenza ta' tlett elementi:* ***il-ftehim bejn tnejn minn nies jew aktar; l-intenzjoni li jsir ir-reat (specifikat u mhux wiehed generiku); u pjan ta' azzjoni miftiehem***. *Is-sejbien ta' htija o meno jirravviza ezercizzju xejn facli li, in mankanza ta' xi forma diretta tal-ezistenza ta' ftehim, jirrikjedi interpretazzjoni ta' kull cirkostanza u partikolarita' li tista' twassal ghall-konkorrenza ta' dawn it-tlett elementi b'mod partikolari ghaliex ma hemmx dik il-presunzjoni feroci ghall-ezistenza tieghu bhala per ezempju fir-reat kontemplat fl-artikolu 287 tal-Kapitolu 9, dak tal-pussess mhux gustifikat ta' flus jew oggetti ohra minn persuna kkundannata ghal serq jew ricettazzjoni.*"

Although the summons does not specify the crime which the accused allegedly conspired to commit, in the note of the 13th February 2006 in virtue of which the accused was sent for trial before this Court, the Attorney General indicated only the provisions of Article 83A of the Criminal Code as the crime which the accused is charged with conspiring to commit in terms of Article 48A of the same Code.

[26] Decided on the 5th February 2018.

The Court therefore must examine whether sufficient evidence to the required degree was adduced to the effect that the accused conspired with third parties to belong to or constitute, finance, promote or actively participate in a criminal organisation in terms of Article 83A(1)(2) of the Criminal Code.

After having examined all the evidence, the Court is of the view that while the evidence clearly shows that an agreement existed between the accused and Peter Kovac and or Company Consult s.r.o. in virtue of which the accused appears to have introduced clients to the foreign company or acted as an intermediary between them, the Prosecution did not bring sufficient evidence to prove beyond a reasonable doubt that this agreement was concluded with a view to or with the intention of taking an active part in or promoting, constituting or organising, a criminal association and therefore for the purpose of committing the crime envisaged in Article 83A of the Criminal Code. Specifically, the Court is not in the least convinced that the accused entered into and or acted on the basis of this agreement with the aforementioned third parties, with the specific criminal intent of belonging to or actively participating in a criminal orgnisation and therefore of committing the said crime or any other crime for that matter, including the crimes of fraud or misappropriation. As already observed, the Prosecution failed to prove that the accused committed these other crimes. Although for the crime of consipracy to subsist, it is not necessary that the plan to commit the specific offence is carried into effect, nevertheless, on the basis of the very weak and insubstantial evidence brought by the Prosecution in this case, the Court cannot safely conclude that the accused conspired with Peter Kovac to commit any offences whatsoever and that the mode of action of the commission of the crime was also agreed upon.

Consequently, the accused shall not be found guilty of any of the charges brought against him.

For all these reasons, the Court does not find ALEXANDROS KONSTANTINOS ANASTASIOU guilty of any of the crimes with with he is charged and

consequently acquits him from all charges brought against him in these proceedings.

This acquittal however is without prejudice to any civil rights pertaining to Joseph Farrugia and Acorn Distribution Limited, Ambrose Muscat, Alan Briffa and Ready to Move In Limited, Fabio Grima, Raymond Grima and Grimax Limited, and Joseph Quattromani, John Debono and Tower Manor Limited, for the payment or reimbursement of any amounts they may have paid to the accused.

DR. RACHEL MONTEBELLO
MAGISTRATE.