MALTA

Court of Appeal
(Inferior Jurisdiction)

Hon. Judge
LAWRENCE MINTOFF

Sitting of the 24th May, 2023

Inferior Appeal Number 83/2021 LM

Sean Alexander Larkin
('the appealed party')

vs.

No Deposit Cars Malta Limited
('the appellant company')

The Court,

Preliminary

1. This appeal was filed by the respondent company **No Deposit Cars Malta Limited**, [hereinafter 'the appellant company'], from the decision delivered on the 18th May, 2022, [hereinafter referred to as 'the appealed decision'] by the Small Claims Tribunal, [hereinafter referred to as 'the Tribunal'], by means of which the Tribunal decided that the defendant company failed to grant possession of the vehicle to the plaintiff within the stipulated time and acceded

to the claim by condemning the defendant company to the payment of nine hundred and forty-six Euro (€946) with interest from the 26th January, 2021, being the date when the plaintiff **Sean Alexander Larkin** [hereinafter 'the appealed party'] sent the judicial letter to the defendant company. The Tribunal decided that all costs are to be borne by the defendant company, including the expenses of the judicial letter bearing number 106/21 filed under article 166A of Chapter 12 of the Laws of Malta.

The facts

2. The plaintiff had filed a claim on the 8th March, 2021, by means of which he claimed that he had effected payment of the sum of €946, being part of the price for the purchase of a vehicle, an Opel Corsa, according to an agreement signed by the parties and according to a receipt issued on the 23rd November, 2020. The plaintiff claimed that after the defendant company received this payment, it had failed to transfer the said vehicle, and it later also transpired according to the plaintiff, that it never had an intention to transfer the said vehicle to the plaintiff. In his claim, the plaintiff stated that he was expecting a refund of the deposit paid by him, together with legal interest.

3. The defendant company replied that the plaintiff had signed an agreement with it on the 23rd November, 2020, in order to be able to make use of a vehicle until he would have paid it off in its entirety, when the car would then be registered in his name. The company explained that a number of bills of exchange had been signed by the parties, and that the document presented by the plaintiff does not represent the agreement signed by the parties but is a

copy of the receipt issued to the plaintiff. The defendant explained that according to the agreement, the plaintiff would make use of the car until its price is paid in full, but the car would remain registered in the name of the defendant company or its representatives, and would only be registered in the plaintiff's name when it would have been paid in full. The defendant also said that the plaintiff had bound himself to present a valid driving licence prior to being granted possession of the said vehicle. The plaintiff had also been asked to fill in an insurance 'proposal form' so that an insurance policy could be issued before he was given possession of the vehicle. The defendant company said that despite repeated requests to the plaintiff to present a copy of his driving license as well as a copy of the said insurance proposal form, these were never presented and that it had explained to the plaintiff that it cannot grant him possession of the vehicle without first being given the aforementioned documents, as doing so would be in breach of the criminal laws of the country. Furthermore, the defendant company also held that the Tribunal does not have the necessary competence to order the rescission of the contract.

The merits of the case

4. The plaintiff presented an affidavit in which he claimed that during the month of November 2020, he was employed with "Net Entertainment", a company situated in Qormi, and on his way to work he would pass by the offices of the defendant company. He stated that at the time he wanted to buy a vehicle and therefore decided to visit this showroom to see what they had to offer. He said that he visited the showroom on the 23rd November,2020 and

after having a good look around, he chose a second-hand Opel Corsa. The plaintiff said that he spoke to a certain 'Sean', who explained that the company employed a scheme whereby the vehicle purchased could be paid in monthly instalments, until the full price of the car is paid up. He also said that under this scheme, the vehicle would remain registered under the defendant company, until the total payment is settled by the purchaser, and once the total payment is effected, the defendant company would give the purchaser authorisation to register the vehicle in his name. The plaintiff added furthermore that he was told that he needed to pay the price of €946 for the licence plates, insurance and for the initial deposit, and he was also requested to hand over the money so that the Burmarrad office of the defendant company would prepare the contract, while the plaintiff was expected to make his way from Qormi to Burmarrad to pick up a copy of the contract. The plaintiff said that while he was still in the Qormi office, he was handed a piece of paper with the company logo and he was also told that he would get a receipt for the money paid once he arrived in Burmarrad and signed the contract. He was also assured that this is standard procedure for the company. The plaintiff said that upon reaching the Burmarrad offices, he was handed a copy of a contract which seemed quite vague to him, and a certain 'James', the company accountant, kept on distracting him while he was reading the contract. He said that James reassured him that any damages on the vehicle would be repaired by the defendant company prior to handing it over to the purchaser and proceeded to write a declaration to this effect on the 'contract'. Despite this, the plaintiff claimed that the contract was not signed by any representative of the defendant company. The plaintiff also pointed out that according to the terms explained

to him, the contract should have been a Hire-Purchase Agreement, since according to the agreement he would pay a total price of €9,000 for the vehicle in instalments and not at once. The plaintiff said that when he requested a receipt for the money paid by him, he was handed what seemed like a receipt, only to discover later that the amount stated on the receipt is of one cent. The plaintiff said that James reassured him that he would receive the vehicle within fourteen days. He said that when the fourteen days passed, he tried to contact the defendant company on numerous occasions, but the phone was never picked up, all messages remained unanswered, until eventually he decided to show up at the company's headquarters. He said that this time he was again greeted by 'Sean', who informed him that there were some problems with the previous owners of the vehicle and that they couldn't register the vehicle on the company's name, so he was advised to choose another car. The plaintiff said that he did choose a different vehicle but was then advised to go back to the Buarmarrad offices to sign yet another contract on this new car. He said that he went to Burmarrad the next day, accompanied by a friend. He said that 'James' was there and he had a contract ready for him to sign, but he was quite sceptical about entering into another agreement with the defendant company, so he refused to sign the new contract. He did however ask what had happened to the money already paid by him. The plaintiff said that James started to get frustrated by the questions asked by him, and asked him rather aggressively whether he wanted the car or not. The plaintiff said that he informed James that he wanted the original car he had chosen, however at that point another company representative showed up and James and this representative both started insulting the plaintiff and using derogatory remarks. The plaintiff said

that subsequent attempts at contacting the company were futile and all his messages remained unanswered. Finally, he decided to make one final trip to Burmarrad, to see whether he would be given the vehicle, or his money back. He said that some representatives of the defendant company tried to send him on a wild goose chase by making him go to Qormi. The plaintiff said that instead of going to Qormi, he sought the advice of a lawyer, who sent the defendant company a judicial letter, and this in view of the fact that the amounts owed to the plaintiff are liquid, certain and due. The plaintiff explained that the defendant company replied to this letter, by saying that it was the plaintiff who refused to provide a copy of his driving licence and the insurance contract. The plaintiff said that it was the defendant company's obligation to insure the vehicle on their name and to register the purchaser as the designated driver with the insurance company.

5. The plaintiff presented copies of his correspondence with the defendant company, a copy of the judicial letter, as well as copies of other documentation in support of his claims.

6. **Shawn Camilleri**, in his affidavit stated that he is employed as a salesman with the defendant company, which is in the business of importing and selling cars in Malta. He said that he is based in the Qormi showroom, and his job is to show clients around and help them choose a vehicle. He said that in November 2020, the plaintiff had walked into the showroom and asked to be shown a number of vehicles within his budget range. Eventually the plaintiff chose an Opel Corsa, and decided to purchase it. The witness said that he explained what the process to purchase a vehicle involves, and that if the plaintiff wanted to

proceed with the purchase he needed to pay the deposit, as well as the insurance fee, licensing fees and VAT, as well as the first bill of exchange. The witness said that he explained to the plaintiff that the contract to be signed was that of hire-purchase, and that the vehicle would be transferred to his name following payment of the last bill of exchange. The witness said that the plaintiff paid him the amount of €150, which he passed on to the Finance Department of the company in Burmarrad, and asked the plaintiff to go to Burmarrad to sign the contract. The witness said that he then proceeded to mark the car as 'Sold'. He said that the plaintiff proceeded to visit the showroom again on the 3rd December, 2020, and he had informed him that the vehicle was not yet ready to be taken out, and that the fourteen days had not yet lapsed. The witness said that the plaintiff kept on insisting that he needed the vehicle there and then, and he offered him an alternative vehicle which had already been registered. The witness said that the next day he was contacted by James from the Burmarrad offices, who asked him whether he had said something to annoy the plaintiff, as the plaintiff had turned up drunk at the Burmarrad offices and was acting aggressively. The witness said that the Opel Corsa originally selected by the plaintiff was still in the showroom waiting to be picked up once all documentation is in order.

7. **James Spiteri** in his affidavit said that he is employed as a finance executive with the defendant company. He said that in this role he prepares contracts of hire purchase and other agreements entered into by the company, and he also looks after the insurances of the company vehicles. The witness said that the plaintiff called at his office on the 23rd November, 2020, and he had

handed him the contract after he explained it to him. He denied interrupting the plaintiff while he was reading the contract. This witness confirmed that plaintiff did sign the contract, and he said that he had paid him some money towards the insurance, license, and registration expenses. He also said that he informed the plaintiff that the vehicle would be ready within fourteen days. The witness said that the plaintiff turned up at the showroom on the 4th of December, 2020 and started insisting that he wanted the vehicle, or his money back. He said that he explained to the plaintiff that the vehicle was not ready to be picked up, and that he could choose any other vehicle, and sign a contract on another vehicle, but the Opel Corsa was not ready yet to be taken out by the purchaser. The witness said that on that day, the plaintiff seemed intoxicated and his attitude was quite aggressive. The witness said that he tried to explain to the plaintiff that he could not allow him to drive away with the car when the insurance documents were not yet in order, and he then proceeded to ask the plaintiff to leave the premises because of the state he was in. He also said that after that episode he tried to contact the plaintiff to go and pick up the vehicle, but that the plaintiff failed to do so.

8. **Thorne Mangion** confirmed James Spiteri's version of events, and confirmed also that the Opel Corsa originally chosen by the plaintiff is still in the showroom waiting to be picked up.

9. During the plaintiff's cross-examination, he claimed that he first let the fourteen days pass before contacting the showroom, and that he only called at the defendant company's offices when he could not establish any form of

contact with anyone within the company. The plaintiff did confirm that he declined the offer to choose another vehicle.

The appealed decision

10. The Tribunal made the following considerations in its judgment:

"... After having heard the witnesses and seen the evidence submitted, the Tribunal considers, that although the vehicle was to be handed over within fourteen days, when the plaintiff went back to the showroom after ten days he was told that the paper work to transfer the vehicle were not ready since it was an imported vehicle that had not yet been registered with Transport Malta. He was offered another vehicle that was already registered with Transport Malta since this would be a faster transfer. When plaintiff was asked to sign another contract he refused and according to the representatives of defendant company became aggressive and was asked to leave the premises. The plaintiff tried to contact the company by sending text messages after the fourteen days were up and these were ignored. Defendant company claimed that they were waiting for a copy of his driving license and insurance however it resulted from their evidence that they had been given a copy of the driving license. Although during cross-examination of James Spiteri held on the 10th November, 2021, reference was made to a hire purchase agreement this was never presented by the defendant company and in the following sitting the parties declared that they had concluded their evidence. The case was adjourned for judgment after the parties were given the time to file a note of submission. A note of submissions was filed by the plaintiff on the 26th January 2022, which was followed by a note of submissions filed by the defendant company on the 17th February, 2022. On the 14th February, 2022 an application was filed by defendant company to file the documents referred to both in the reply filed and during cross examination in November 2022. The Tribunal did not accede to this request since this was evidence that could have easily been presented at an earlier stage and such request should not have been made after having declared the evidence had been closed and the case been been adjourned for judgment.

The Tribunal thus decides that the defendant company failed to grant possession of the vehicle to the plaintiff within the stipulated time and accedes to the claim and condemns defendant conmpany to the payment of nine hundred and forty six euro

(€946) with interest from the 26th January, 2021, being the date of the official letter. All costs are to be borne by defendant company including expenses of official letter number 106/21 filed under art. 166A of Chapter 12 of the Laws of Malta."

The Appeal

11. The appellant company filed its application on the 3rd of June, 2022, whereby it requested this Court to uphold its grounds of appeal and to revoke, annul and cancel both the decree delivered by the Small Claims Tribunal on the 22nd April, 2022 and the judgment delivered on the 18th May, 2022, thus rejecting plaintiff's claims with costs.

12. The appellant's grievances are that (i) the Tribunal's judgment is null due to non-observance of article 730 of the Code of Organisation and Civil Procedure; (ii) the lack of competence of the Tribunal to decide Larkin's claim since this was not merely a 'money claim' but a judgment about the validity of the agreements entered into between the plaintiff and the defendant company, and that (iii) the Tribunal's decree of the 20th April, 2022 should be quashed and the documents referred to in the defendant company's applicataion of the 14th February, 2022 should be admitted at this stage of the proceedings. Furthermore the appellant held that (iv) the Tribunal acted contrary to the rules of equity, and that such action has prejudiced the rights of the defendant company, which should have never been condemned to refund the money claimed.

13. The appellant company explained that the judgment appealed from and delivered by the Tribunal on the 18th May, 2022 is null due to non-observance

of article 730 of the Code of Organisation and Civil Procedure. It held that the Tribunal in this case did not refer to the plea of lack of competence raised by itself, and neither did it give a decision on this particular plea by means of a separate head of judgment. The appellant held that this brings about the nullity of the judgment appealed from.

14. The second ground of appeal raised by the appellant is that the Tribunal lacked the competence or jurisdiction to decide on the appealed party's claim, since this was not merely a 'money claim', but the claims raised required a determination or a judgment about the validity of the agreements entered into between the appellant company and the appealed party. The appellant company held that from the evidence produced, it transpired that the money paid by the appealed party to the appellant was part of an agreement by means of which the appealed party acquired a vehicle on hire purchase terms from the appellant company. It further held that it requested that this agreement be exhibited in the acts of the proceedings after the evidence stage had closed, but the Tribunal had refused its request. It further held that independently of the fact that this agreement was not allowed to be exhibited, it results that the parties are in agreement that a hire purchase agreement has been reached with respect to a particular vehicle. The appellant company explained that the value of this vehicle was of €9,000, and payment was made by plaintiff on account of the amount due, in terms of the agreement. The appealed party is now requesting a refund, however the appellant company argued that this is not merely a money claim, since the Tribunal was requested to determine whether the agreement is to be dissolved or rescinded prior to determining whether a

refund is due. The appellant company held that the Tribunal could not decide the appealed party's claim without first determining whether the agreement between the parties is valid or whether it is to be dissolved, and that such determination does not fall within the remit of the Tribunal. The appellant company held that therefore the Tribunal should have declared itself not competent to take cognizance of the appealed party's claim.

15. The third ground of appeal raised by the appellant company is that the Tribunal's decree of the 20th April, 2022 should be quashed and that the documents referred to in the appellant company's application of the 14th February, 2022 should be admitted even at this stage of the proceedings. The appellant held that despite the fact that the appealed party made reference to a hire purchase agreement with regard to a particular vehicle, and despite the fact that this agreement was referred to by various witnesses, this agreement was not presented in the acts of the proceedings. The appellant company held that this incident was unfortunate and a mere oversight on its part. It further held that proceedings held in front of the Tribunal are not governed by the same strict rules of procedure as the Superior Courts, and that since a decision based on equity had to be reached, the Tribunal should have allowed it to present this agreement. The appellant company expressed surprise at the appealed party's opposition to the production of this document, and held that by denying it the opportunity to present this document as evidence, the Tribunal was hampering the search for truth. The appellant thus urged this Court to allow the production of the said document in view of the ample reference made to it during the proceedings before the Tribunal.

16. The fourth ground of appeal is that according to the appellant company, the basis for the Tribunal's decision seems to be the fact that the vehicle was not delivered to the appealed party within fourteen days. Furthermore, the appellant company claimed that the Tribunal held that it was not taking cognisance of the agreement signed between the parties. The appellant claimed that from this it should be clear that the Tribunal was not acting in accordance with equity, and that it is indeed regretful that the agreement referred to by the parties was not exhibited. The appellant company claimed that the Tribunal acted against equity when it failed to take cognizance of the fact that the plaintiff ignored the fourteen day time period, but acted in a manner which should have suggested that he was at fault, since from the evidence produced it should have resulted clearly that the appealed party turned up at the showroom after ten days and caused a scene. It held that had the Tribunal acted in equity, it would have taken cognizance of the real proof, and even if it chose to discard it, it should have considered the fact that the plaintiff was in breach of the very same terms he was basing his court case on. Finally, the appellant company held that the Tribunal could not base itself on something which does not result from a written agreement or from the law, as this led to a breach of the company's rights. The appellant company held that it should never have been condemned to refund any money allegedly due to the appealed party, since the appealed party was at fault and it is not true that there was a time period agreed upon. It further held that even if it transpires that a time period was agreed upon, failure to adhere to the time-period imposed should not automatically mean that the agreement between the parties is rescinded or annulled, or that a refund is due.

The appealed party's reply

17. The appealed party stated in his reply, that the decision given by the Tribunal is just and merits confirmation. He held that the defendant company never pleaded that the Small Claims Tribunal does not have jurisdiction to hear and determine his application, but on the contrary it pleaded that the Tribunal did not have competence to rescind the contract between the parties. The appealed party held that in his claim he never requested the Tribunal to rescind the contract, but he simply asked the Tribunal to order the defendant company to refund him the sum of €946. He held that the said sum of money was paid in relation to licensing and insurance fees, and a partial deposit on the vehicle was paid, and that the defendant company is to blame for the fact that the vehicle was not delivered to him as agreed. This despite the fact that the appealed party had paid the sum of money he is now claiming back.

18. The appealed party held that the first ground of appeal raised by the appeallant company is null in view of what article 9 of the Small Claims Tribunal Act stipulates with respect to the manner in which proceedings before the Tribunal are regulated, and the fact that the Tribunal is not bound to follow the procedural rules of Cap. 12 of the Laws of Malta.

19. The appealed party held the opinion that the Tribunal followed the principles of equity and justice when hearing the parties to this case, including the cross-examinations and the written declarations submitted. He said that the Tribunal's decision to reject the defendant company's application to submit further evidence exactly before judgment was delivered, was fair and just,

considering that the defendant company had ample time to submit all its evidence before the Tribunal declared the evidence stage closed. This should also be seen in the light of the fact that the written submissions made by the defendant were not filed within the stipulated time-frame.

20. The appealed party claimed that the vehicle was not delivered to him within the fourteen day time frame, because the defendant company could not honour its obligation, and instead it asked the plaintiff to choose another vehicle and sign the relevant documentation. The appealed party said that this was stated by James Spiteri himself in his testimony, when he admitted that the vehicle in question was never delivered to the plaintiff, and is still in the company's possession. The appealed party held that in terms of article 1438(2) of the Civil Code, the contract between the parties was terminated *ipso jure* since the vehicle was never delivered to the plaintiff. The appealed party further held that even though this article stipulates that termination of the contract shall take place in favour of the seller, the plaintiff in this case had every right to institute these proceedings to be refunded the amount he paid for a vehicle that was never delivered to him. It is clear, according to the appealed party, that as a consequence of the rescission of the contract between the parties, each party should be placed in the *status quo ante.*

21. The appealed party further held that from the evidence submitted, it is clear that the defendant company failed to deliver the vehicle within the stipulated time-frame as agreed between the parties, since it was not in a position to deliver the said vehicle. The appealed party said that the Tribunal's reasoning was correct in that the defendant company not only failed to deliver

within the time-frame agreed upon by the parties, but also by offering another vehicle to the plaintiff, an offer which he refused. He also said that the court application filed by the defendant company to submit further evidence was also frivolous, since the defendant company should have annexed with its reply any documents it wanted to bring to the attention of the Tribunal.

22. Finally, the appealed party held that until today, the defendant company has never summoned him through judicial acts to execute the agreement signed between the parties, which further shows that the defendant company's intentions were never to find the truth, but only to run away from its obligations.

Legal considerations

23. This Court shall now proceed to consider the grievances raised by the appellant company in its appeal filed on the 3rd June, 2022, by means of which it is requesting this Court to revoke, annul and cancel both the decree given by the Tribunal on the 22nd April, 2022, as well as the judgment delivered on the 18th of May, 2022.

The first grievance: nullity of the judgment due to non-observance of article 730 of the COCP

24. The appellant is of the opinion that the judgment delivered by the Tribunal is null due the non-observance of article 730 of Cap. 12 of the Laws of Malta, which states that:

> "Any plea to the jurisdiction of the court or to the capacity of the parties, and any plea of compromise, arbitration, res judicata, prescription, or nullity of acts, shall be determined under a separate head, either before, or together with the decision on the merits."

25. The appellant claimed that in this case the Tribunal failed to decide on the plea of lack of competence raised by itself, and hence there was no decision on this matter given under a separate head of judgment. The Court observes that the plea raised by the appellant was that the Small Claims Tribunal does not have the competence to order the rescission of the contract. It has to be stated however that the plaintiff in this case never claimed that he was after the rescission of the contract, and he only asked to be refunded the money paid by him after the defendant company failed to honour its obligations in terms of the agreement between the parties. The Court deems it pertinent to point out that article 9(3) of the Small Claims Tribunal Act stipulates that:

> "No proceedings before the Tribunal shall be invalid because of the non-observance of any formalities if there has been substantial compliance with this Act or any rules made thereunder."

26. It is also pertinent to point out that proceedings before the Small Claims Tribunal are meant to be summary proceedings, and ideally the matter is heard and decided on the same day of the hearing. The law also stipulates that a hearing shall take no longer than one sitting, and that prior to the filing of an appeal by an aggrieved party, notice of the appeal is to be given to the adjudicator at the time the decision is given. None of the dictates of the law were observed in this particular case, and indeed in the vast majority of cases, because it is widely accepted that expediency should not come at the expense

of frustrating the interests of justice. The legislator sought to create a system by means of which claims which do not exceed the threshold established by law can be decided as expeditiously as possible, away from the formality and rigidity often employed by the Courts of Justice. In this case, the Tribunal gave a decision based on the claims and pleas raised before it. It is evident that the plea pertaining to the Tribunal's lack of competence was not upheld in this case, and that the Tribunal saw it fit to continue hearing the witnesses of both parties with the ultimate aim of delivering judgment. Moreover this Court is of the opinion that there was no need for the appellant company to raise the plea of lack of competence of the Tribunal, as the claims made by the plaintiff, the appealed party in this instance, never sought to have the contract, if indeed there was one, rescinded. In view of these considerations, the first grievance raised by the appellant is being refused.

The second grievance: the issue of competence or jurisdiction of the Tribunal

27. The appellant further claims that the Tribunal had no competence or jurisdiction to decide on the appealed party's claim, as this was not merely a monetary claim. It held that the claims raised by the appealed party require a determination or a judgment about the validity of the agreements entered into between the parties, since the appealed party is requesting a refund of money disbursed by him. The appellant insists that prior to arriving at a conclusion, the Tribunal first had to determine whether to dissolve or rescind the contract, and this before determining whether a refund is due.

28. The Court, having seen the acts of the proceedings, reiterates that at no point did the appealed party request a rescission of the contract. He merely requested the Tribunal to order that the money paid by him be refunded back to him, in view of the fact that the appellant company failed to honour its obligations and failed to deliver the vehicle the plaintiff sought to purchase. The appellant company has made it amply clear that the Tribunal did not have a copy of the agreement signed by the parties, and hence it is evident that the plaintiff merely sought to recover the money disbursed by him so that the parties revert to the *status quo ante,* in view of the non-fulfilment of the appealed party's obligation. The Court would like to remind the parties that in this case the appellant company had made it clear to the appealed party that it could not fulfil its obligation because there were issues with the prior owner of the vehicle the plaintiff sought to buy, which meant that one of the main elements needed for there to be a valid contract, is missing. In the absence of the object of the contract, and in view of the fact that the appellant company sought to get the appealed party to agree to purchase an alternative vehicle, something which he refused, it became evident to all that the contract had fallen through as the 'object' in this case either had ceased to exist, or it could no longer be transferred. It was for this reason that the appealed party sought to recover the money disbursed by him as consideration for the acquisition of the Opel Corsa he had contracted on. The Court therefore is going to reject this grievance too, as it is clear that the only outstanding issue between the parties at this point is the reimbursement of the money paid by the appealed party on account of the sale of an object which he was later told could not be transferred to him. The Court is not inclined to accept the position of the appellant company

that in this case the vehicle could not be transferred to the plaintiff because he had called at the showroom before the fourteen-day time period had elapsed. The Court would also like to point out that there is a discrepancy in the dates given by Shawn Camilleri and James Spiteri, with Camilleri saying that the appealed party called at the showroom on the 3rd of December, 2020 whereas Spiteri claimed that this episode took place on the 4th of December, 2020. Had this really been the case, the matter could have been resolved much more amicably, and there would not have been the need to offer an alternative vehicle for sale to the appealed party. One would also expect the appellant to make the appealed party aware of any issues regarding the transfer of the said vehicle, so close to the date when the vehicle was meant to be transferred to him. The evidence produced however shows that not only did the appellant company not communicate with the appealed party in any way, but that they refused to answer his calls and messages. In view of these considerations, the second grievance is being refused as well.

The third grievance: the decree of the 20th April, 2022 should be quashed

29. The appellant company is of the opinion that the production of the hire-purchase agreement signed by the parties should be admitted at this stage of the proceedings, and that the Tribunal was wrong in not allowing it to produce the said document after it filed an application with this particular request. Furthermore it held that the fact that this document was not produced before the Tribunal was a mere oversight on its part.

30. The Court would like to point out that the appellant company sought to produce the said agreement before the Tribunal, when the case was already adjourned for judgment, long after the Tribunal had declared the production of evidence stage concluded, and after the appealed party had already submitted his note of submissions. In its decree the Tribunal noted that the appellant company had ample time to produce the said document before, and thus refused the appellant's request. This Court, as a court of revision, cannot admit or accept the production of evidence which had not been produced before the court of first instance, particularly when it has been manifestly proven that the said document was in the possession of the appellant company all along. Here the Court makes reference to the judgment delivered by the Court of Appeal (Civil Superior Jurisdiction) on the 17th June, 2019, in the names **Maria Dolores Falzon *vs.* Monica Debarro et**, where it was held that:

> *"... id-dokumenti prodotti fl-istadju tal-appell jingħataw piż biss jekk tali dokumenti ma jkunux disponibbli fl-ewwel istanza. F'dan ir-rigward din il-Qorti tagħmel referenza għall-insenjament mogħti minn din l-istess qorti fis-sentenza parzjali mogħtija fit-28 ta' April, 2014 fil-kawża fl-ismijiet **"Olive Garden Investments Ltd v. Salvu Farrugia et":***
>
> *8. Dwar il-pożizzjoni legali relattiva għat-talba għall-isfilz ta' provi dokumentali ġodda annessi mar-rikors tal-appell, din il-qorti tosserva li, filwaqt li huwa minnu li kif rilevat mis-soċjetà attriċi teżisti ġurisprudenza preċedenti fis-sens li bis-saħħa ta' dak li jgħid l-Artikolu 145 tal-Kap. 12, l-appellanti għandu l-fakoltà li jippreżenta dokumenti mar-rikors tal-appell tiegħu, iżda din il-qorti f'sentenzi aktar riċenzjuri irriteniet li l-interpretazzjoni korretta tal-istess artikolu, konformi mal-funzjoni ta' din il-qorti bħala qorti ta' reviżjoni, hi li filwaqt li dak l-artikolu jippermetti li jiġu materjalment prodotti dokumenti mar-rikors tal-appell, b'danakollu l-piż li jkun jista' jingħata lil tali dokumenti minn din il-qorti jkun jiddependi fuq jekk l-istess dokumenti kinux disponibbli u allura produċibbli fl-ewwel istanza.*

9. Fir-rigward din il-qorti diġà kellha okkażjoni tirribadixxi fil-kawża Emanuel Zammit vs Charles Polidano (fn 13 1224/97), deċiża fil-31 ta' Jannar, 2014 li "filwaqt li huwa minnu li parti appellanti tista' tressaq dokumenti mal-appell tagħha, dawn id-dokumenti m'għandhomx ikunu provi ġodda li setgħu faċilment ġew prodotti fl-ewwel istanza, għax kif qalet din il-qorti fil-kawża Schembri vs Schembri, deċiża 22 ta' Frar, 2013: "il-funzjoni ta' din il-qorti hija waħda ta' reviżjoni, intiża sabiex tirrevedi dak li jkun sar quddiem l-ewwel qorti, u mhux li tisma' provi ġodda li setgħu ġew prodotti quddiem l-ewwel qorti.' Il-provi kollha jridu jingħiebu quddiem l-ewwel qorti, u jekk parti tonqos li tagħmel dan, ma tistax, wara s-sentenza, tipprova tressaq provi ġodda biex twaqqa' l-argumenti li l-ewwel qorti, fuq il-provi prodotti użat biex waslet għall-konklużjoni tagħha."

Based on the above-quoted judgments, the Court is rejecting this grievance as well.

The fourth grievance: delivery of the vehicle

31. The appellant company held that the Tribunal acted against equity when it failed to consider that it was the plaintiff who ignored the fourteen-day period agreed upon between the parties, and that he had shown up at its offices after ten days and caused a scene. It further held that failure to adhere to the time-period agreed upon should not mean that the contract is automatically null or should be rescinded.

32. The Court here would like to point out that the Tribunal considered all circumstantial evidence surrounding this case prior to arriving at its decision. In this case, all the witnesses who gave evidence before the Tribunal, agreed that a second vehicle was offered for sale to the appealed party, and that he declined this offer. This means that the appealed party is right in asserting that the appellant company never intended to sell him the vehicle of his choice and on

which he had paid the money he is now seeking to reclaim by means of these proceedings. The appellant company in fact informed the appealed party that there was a problem with the vehicle he had chosen because there were issues with its transfer from its prior owner. This means that one important component in this agreement, the object of the sale, was removed from the equation as the appealed party was told that the car of his choice could no longer be transferred or sold to him as agreed, but that he was free to choose another car instead. This fact alone makes the claim raised by the appellant company that the delay in honouring its obligation was due to the fact that the appealed party failed to present it with his driving licence and with a duly filled-in insurance policy seem vacuous, as despite these alleged shortcomings, the appellant was prepared to contract the sale of an alternative vehicle to the appealed party. In view of all these considerations, the Court is rejecting the fourth grievance as well.

Decide

For the above reasons, the Court decides to reject the appellant company's appeal, and confirms the appealed judgment in its entirety.

All expenses in respect of the proceedings in both instances shall be borne by the appellant company.

Read.

Hon. Dr Lawrence Mintoff LL.D.
Judge

Rosemarie Calleja
Deputy Registrar