CIVIL COURTS

(FAMILY SECTION)

MADAM JUSTICE

JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)

Hearing of the 26th June 2023

Application no.: 112/2006 JPG

Case no.: 19

RM sive RL

Vs

IP

The Court:

Having seen the sworn Application filed by RM sive RL dated 28th of March 2006 *at page 1*; wherein after having made the declarations therein contained, Plaintiff requested the Court to:

1. *Declare the personal separation a mensa et thoro between the parties, for which Defendant is solely responsible for reasons above indicated;*
2. *To award the care and custody of the minor child BPto Plaintiff;*
3. *To award adequate maintenance for the minor child and for Plaintiff as the Court deems fit;*
4. *To order Defendant to consign to Plaintiff in a prescribed time all paraphernal property and objects abusively taken by Defendant and in default to condemn Defendant to pay the value thereof to Plaintiff according to valuations of experts to be appointed by the Court;*
5. *To terminate the community of acquests existing between the parties with the application in whole or in part of articles 48, 51-55 of the Civil Code;*
6. *To liquidate and divide the assets of the community of acquests as the Court deems fit and*

to order the publication of the deed of division on a prefixed date and time to be so scheduled by the Court, which deed is to be published by a Notary to be appointed by this Court;

7. *To Appoint a curator to represent Defendant in the event of his default on the relative deed of division;*
8. *To authorise Plaintiff to live in the matrimonial home, that is, 19/7B Mc Iver Street Sliema to the exclusion of Defendant.*

With Costs including the acts of the mediation 1219/2005WA including the application and additional reply of Plaintiff in the acts of the Precautionary Garnishee Order with number 204/2005 GC and the Warrant of Prohibitory Injunctions 202/2005GC and 203/2005GC and other procedures before this Court as diversely presided over against Defendant who is summoned to give evidence with reference to the oath.

Having seen that the application and documents, the decree and notice of hearing have been duly notified according to law;

Having seen Defendant's sworn reply and counter claim *at page 38 et seq* wherein having made the declarations therein contained, Defendant requested the Court to reject Plaintiff's claim with the exception of the declaration of irretrievable breakdown of the marriage for which Plaintiff is solely responsible and authorisation for the parties to live separately and the termination and the liquidation of the community of acquests with the application of Article 48, Chapter 16, Laws of Malta, against the Plaintiff;

In his Counter-claim, Defendant having made the declaration therein contained, requested the Court to:

1. Declare the personal separation between the parties, for which Plaintiff is solely responsible, that is, adultery, excesses, cruelty, threats or grievous injury committed by the Plaintiff against the Defendant as a result of which, the marriage irretrievable broke down.
2. To award the care and custody of the minor child BPjointly to both parties in the best interests of the child;
3. To award adequate maintenance for the minor child as the Court deems fit, which maintenance allowance shall be paid equally between the parties;

4. To condemn the Plaintiff the refund all monies received by Plaintiff as a maintenance allowance pendente lite;
5. To terminate the community of acquests existing between the parties and to order that the assets forming part of the community of acquests be divided in two portions that shall be assigned to the parties, which portion shall be composed as the Court may deems fit by establishing the date when Plaintiff shall be considered responsible for the separation and as such having forfeited every right to assets acquired chiefly by the industry of the other spouse according to law, and this by the appointment of experts to liquidate the community of acquests and to nominate a Notary to receive the relative act and a curator to represent the Plaintiff in the event of failure to appear on the same acts;
6. To apply Article 48 and/or 50 to 55 of the Civil Code, Chapter 16 of the Laws of Malta against Plaintiff;
7. To order Plaintiff to pay or consign to Defendant, all credits, paraphernal and dotal property and all gifts received from Defendant including the engagement ring that belonged to Defendant's mother;
8. To authorize Defendant to live in the matrimonial home to the exclusion of Plaintiff;

With Costs including the acts the Warrants and Counter-Warrants including the Warrant of Prohibitory Injunction 5/2006 and Garnishee Order with number 6/2006 in the names IP vs RL and the Counter Warrants of Prohibitory Injunctions 202/2005 and 203/2005 GC and the costs regarding judgment of the Civil Court, Family Section no. 61/2006 decided on the 31st of May 2006. Plaintiff is summoned to give evidence with reference to the oath.

Having seen the decree dated 17th October 2006 *at page 54* appointing of Dr Beppe Fenech Adami as Legal Referee;

Having seen the decree dated 28th February 2007 ordering that proceedings be conducted in the English Language *at page 72;*

Having seen the note filed by Dr Beppe Fenech Adami dated 15th March 2010 *at page 552* wherein he requested the Court to relieve him from duties as Legal Referee;

Having seen the decree dated 18th March 2010 *at page 553* wherein the Court upheld Dr Beppe Fenech Adami's request and appointed Dr Phyillis Aquilina in his stead;

Having seen the decree dated 11th January 2011 *at page 601* wherein the Court ordered that the proceedings and the acts filed to be conducted in the English Language;

Having seen that Plaintiff concluded her evidence on the 15th March 2012 as indicated in the minutes of the sitting dated 15th March 2012 *at page 607;*

Having seen that the parties agreed that the Community of Acquests ought to be liquidated as of the 31st October 2005 as evidenced in the note in the record of the proceedings dated 31st May 2012 at page *615;*

Having seen that as of the 4th December 2012, Dr Albert Libreri assumed the defence of the Defendant instead of Dr Lorraine Schembri Orland who was appointed to the Judiciary;

Having seen that on the 31st of January 2013 a judgment *in parte* was pronounced ordering the termination of the community of acquests existing between the parties *(vide fol 664 et seq);*

Having seen the minutes of the sitting dated 26th March 2015 at page 727 of the acts wherein the parties informed the Court that they had reached a partial agreement as indicated in Document RI at page 730 of the acts of the case. This agreement is to the effect that both parties agreed that the marriage shall be declared to have irretrievably broken down without attributing any responsibility to either of the parties; that the parties renounce irrevocably to the right to request maintenance from each other; that the Court and Legal Referee shall not take into account any evidence tendered by the parties relating to the responsibility of the breakdown of marriage or to the means of the parties and that the parties shall exempt each other from producing further evidence regarding these two aspects of the case. (Page 730 Email dated 11th March 2015 sent by Dr Libreri to Dr Sladden and the concurrence of Plaintiff to such agreement in the reply dated 16th March 2015 by Dr Sladden) which agreement was reiterated before this Court differently presided during the hearing of the 26th of March 2015.

The parties agreed that the issues still in dispute between them are the following:

1. *The claims by Defendant regarding items which Defendant claims are his sole property (mainly silver items).*
2. *Defendant claims that he suffered damages amounting to approximately Lm80,000 as a result of him being reported to the Inland Revenue Department by Plaintiff.*

3. The liquidation of the community of acquests.

4. Plaintiff claims regarding a life insurance on which premiums are paid by Defendant.

5. Plaintiff claims regarding health and educational expenses regarding their son BPwho finished his university studies during 2014.

6.The parties hereby agree that Plaintiff is being authorised to file the proper application to scrap Seat Cordoba, registration number BBL494; and that Plaintiff renounces to her undivided share of the vehicle Corando ABO 019 on condition that their son BPbe allowed to continue using the said vehicle.

7. Parties agree that the application number 285/14 for the partial revocation of warrant number 203/05GC filed by IP on the 16th December 2014 be upheld.

Having seen that the partial agreement reached and the above-indicated issues which are still in dispute were brought to this Court's attention during the sitting of the 7th March 2019 (see page 972 of the acts);

Having seen the minutes of the sitting dated 28th September 2022 at page 1655 wherein this Court as presided revoked the appointment granted to Dr Phyllis Aquilina and requested that she return the acts and evidence in her possession and proceeds to tax her dues so that she be duly reimbursed;

Having seen that in Plaintiff's final written submission at page 1660. Plaintiff renounced to her claim regarding the health and educational expenses relating to the parties' son BP. Therefore Plaintiff's outstanding claims at point number five (5) have been renounced.

Having seen Plaintiff's renunciation in her written final submissions at page 1680 and this with reference to her claim to her paraphernal property amounting to twenty five thousand, four hundred and twenty-one Maltese Liri (LM 25, 421) equivalent to fifty nine thousand, two hundred and thirty two euros (€ 59,232) which were invested by her for the acquisition of the matrimonial home in Mc Iver Street Sliema, since this property has been donated to the parties' son BP.

Having heard the evidence on oath;

Having seen the exhibited documents in the acts;

Having seen the notes of submissions filed by the parties;

Considers:

Audrey Ghigo representing HSBC Bank Malta plc testified on the 21st June 2006 at page 105 et seq. Witness explained that document marked as Doc AGA relates to an account in Plaintiff's name which is known as CFC. Said account with number 39036850451 is held in a foreign currency. It appears from the documentation that on the 6th October 2004, the total amount brought over to LM 649.23. The said account was opened in the year 2000 and was closed off on the 14th July 2005. Dok AGB relates to a savings account in Maltese currency was opened on the 16th September 1992 and was closed off on the 14th July 2005.

In **cross-examination,** witness explains that Dok AGB includes both credits and debits which related to the said account. Although the savings account is designated as a *savings repatriable,* funds which would have originated in Malta can nonetheless be deposited in the said account. Witness notes during her testimony that on the 4th July 2005 the sum of LM 26, 187 was withdrawn from the said account. Dok AGC relates to a fixed account in Maltese Liri which was opened on the 12th November 2002 and was closed on the 15th July 2005. This 24-month account was linked to the Paola Branch. Witness also exhibited Document AGD which relates to a fixed account linked to the Gzira Branch which was opened on the 19th May 2003 and was closed on the 15th July 2005. Doc AGE relates to another fixed account which was linked to the Gzira Branch. This account was opened on the 16th of December 2004 and was on the 4th July 2005. Witness exhibited a statement relating to a credit card facility, Dok AGF which was opened on the 19th July 2005 and was closed off on the 9th June 2006. Witness affirms that the funds in the fixed Account AGE, were withdrawn from the account in AGB on the same day. The same applies to account AGC in December 2004, wherein LM 5000 were withdrawn which were then deposited in the savings account AGB.

Rabbi Herbert Richer testified by means of an affidavit (vide Dok RHR1 at page SP 101 et seq) and explained that he has known Plaintiff since 1996 when she was trying to work as a sports therapist. Eventually he also got to know Defendant and the parties' son. Witness explains that sometime during the second half of 1997 the couple separated, and Plaintiff went to live in the Sliema flat with BP.

Sandra Kirkpatrick testified by means on an affidavit dated 22nd January 2007 (Vide Dok SK1 at page SP 103 et seq) and explained that she became acquainted with the parties sixteen (16) years ago when they travelled Australia. She recalls that at the time Plaintiff was working for a

hotel group and Defendant had accompanied her. Over the years witness became good friends with the couple and used to visit them in Malta almost every year. In her affidavit witness confirms that the parties had separated and then reconciled. Witness recalls that she visited Plaintiff in her flat in Sliema on a regular basis and confirms that no maintenance on the property was ever carried out. Apart from the few items of antique furniture, the flat was poorly furnished and many items of furniture still belonged to the time when RL was a student.

Kirkpatrick produced by Defendant in cross-examination on the 27th November 2019 (Vide SP 2191), explains that the parties where friendly with her cousin AC and therefore resided with her in Australia. Witness does not recall why the parties came to Australia, but after some time, Defendant returned to Malta whereas Plaintiff stayed on, and had left witness' residence to go and work in Queensland for work. Witness affirms that while Plaintiff was staying with her in Melbourne she was not working. Witness contends that she kept in contact with Plaintiff but not with Defendant.

Kirkpatrick produced by Defendant in cross-examination on the 25th May 2021 (Vide page SP 2218), witness could not recall the name of her boyfriend who had driven Plaintiff to North Queensland as she (Kirkpatrick) had had several boyfriends in that time period. She confirms that Plaintiff had furniture in her flat from her student days. She adds that the dining room table was actually garden furniture and in fact they used to joke about it because Kirkpatrick had an identical one in Australia.

Monique Gatt testified by means of an affidavit dated 11th January 2007 (vide dok MG1 at page SP 105 et seq) and explains that Herbert Ritcher had introduced her to Plaintiff. Witness confirms that Plaintiff left her husband in 1997 and at the time Plaintiff would visit her to ride the horses regularly. Witness testified that the flat in Sliema looked like a student's flat; her dining room consisted of an old wooden table with four (4) beach chairs, her bedroom wardrobe was just some wood knocked together without doors. A few years later, witness recalls IPbringing over an antique showcase which Plaintiff had lined with foil to cover the back as it was in a bad state. This showcase contained some cheap China and fancy glass. Gatt was sure that it never contained an antique Maltese silver oil lamp, nor did she ever see such oil lamp in the flat.

Monique Gatt in cross-examination on the 10th June 2021 (vide page SP 2223), asked regarding the "antique Maltese silver oil lamp", and her declaration that the showcase "never contained" this antique object, witness replied that she could not remember.

Andrew Hooper testified by mean of an affidavit dated 25th May 2006 (vide dok AH1 at page SP 108 et seq) and explains that he met the couple when he had rented a small studio apartment in Gzira for a number of months between the years 2001 and 2002. He had in fact rented flat number 1 from Defendant for a monthly rental of LM 90. His stay was intermittent but covered a period of more than one year. Witness testified that the other two apartments, which he later discovered belonged to Plaintiff, were vacant except for a short period of around three (3) weeks when she had friends from abroad staying in one of these apartments. Witness adds that he saw Plaintiff again in 2005 and was allowed the use of one of her apartments free of charge. These apartments had no water nor electricity supply, as these had been severed on the demand of the Defendant. During his last stay Defendant's studio flat was occupied by a German lady.

SL, Plaintiff's sister testified by means of an affidavit dated 2nd March 2007 (vide Dok SL1 at page SP 296 et seq) explains that Plaintiff suffered from cancer and was operated and treated at the age of seventeen (17). Plaintiff had to undergo regular cancer screening ever since. She adds that Plaintiff had the two (2) tiny studio flats, were used to host family and friends who visited from abroad. Witness affirms that their mother and grandmother had been helping Plaintiff and herself financially over the years since their brother inherited the hotel and its surrounding land and forests. In the summer of 2006, witness was meant to stay in one of the tiny studio flats however, plans had to be changed since Defendant had severed the water and electricity supply to these flats. At the time, Plaintiff's matrimonial home was undergoing re-construction regarding the roof which had been declared unfit for human habitation.

Isabelle Grima, in representation of the Government Pharmaceutical Service within the Department of Health testified on the 5th February 2007 (vide at page SP 62) and filed a list (Dok IG1 at page 65) of all the contracts and tenders awarded to Defendant care of Convatec for the period 2002-2006.

Joseph Borg Cardona, in representation of Bank of Valletta, testified on the 5th February 2007 (Vide at page SP 63 et seq) and explained that from the searches carried out Defendant had six bank accounts and exhibited the relative statements for each accounts starting 1st January 2003. (Vide Dok JBC1-JBC5 at page SP 66 et seq)

Audrey Ghigo in representation of HSBC Bank Malta plc testified on the 26th February 2007 (Vide page SP 289 et seq) and testified that from the searches carried out no accounts were found

in Defendant's name the same was reiterated by ***Maria Attard in representation of APS Bank testified on the 26th February 2007 (Vide page SP 289 et seq)*** and ***Jeanette Lepre in representation of Lombard Bank Malta plc testified on the 26th February 2007 (Vide page SP 289 et seq)***.

Joseph Borg Cardona testified on the 26th February 2007 (Vide page SP 290 et seq) and filed a document DOK JBC 6 which consists of fourteen (14) pages regarding the swift payment order with number 20310715 dated 8th April 2003 as well as a withdrawal voucher dated 21st April 2003. The withdrawal voucher is a reversal entry for the swift payment order and the related documents. ***(Vide Dok JBC 6 page SP 291 et seq)***

Steve Aquilina on behalf of Enemalta testified on the 26th March 2007 (Vide page SP 295 et seq) and explained that the electricity meter installed in 90 Belevedere Street Gzira, was and is registered in the name of Defendant. On the 2nd February 2006 during a surprise inspection, the meter was found to have been tampered with. The meter was originally installed on the 30th March 1957. Defendant had paid a deposit of LM250 in payment of stolen electricity.

Architect Godwin Abela testified on the 28th May 2007 (vide page SP 303 et seq) and explained that he was commissioned by Plaintiff on two occasions to do professional works on an apartment at the top floor in a block of flats knows as Mc Iver Flats in Mc Iver Street Sliema. His first assignment was to consult and supervise the replacement of half the ceiling of a bedroom which ceiling had been subjected to water ingress from the overlying roof level washroom belonging to third parties, and the ceiling had to be replaced. These works were carried out and completed by third parties engaged by Plaintiff and his fees were paid for by Plaintiff. The second assignment consisted of the replacement of the entire roof of the flat barring the part already mentioned due to the precarious state of the roof which he had deemed beyond economical repair, together with some hefty structural repairs. These works, which were the result of lack of adequate maintenance, were also paid for by Plaintiff.

Alexandra La Rosa testified by means of an affidavit dated 14th May 2007 (Vide Dok ALR1 at page SP 305) and explained that she met Plaintiff in 1992 when she was working at Travel Trade Ltd. At the time Plaintiff was working for a German tour operating company named Jahn Reisen which formed part of the LTU Group and was represented in Malta by Travel Trade. During her time at Travel Trade, witness recalls that Plaintiff had set up and organized a small business venture for Defendant through her contacts within the LTU Group, sailing holidays for German

tourists using the sailing boat belonging to the couple. Thereafter, witness had set up a company in the same line of business in November 1994, and witness started assigning Plaintiff some conference work.

Herman Buhagiar testified by means of an affidavit 9th April 2007 (Vide Dok HB1 at page SP 307) and explained that he was offered an assignment with Alliance Cruises which is part of Island Ferries Limited, run and directed by MP, IP and JP. In July of 2001 Plaintiff was massively involved within the whole operation and also used to attend the weekly Monday meetings between the directors at Mr CP's residence. Apart from her work within this operation, witness recalls that Plaintiff used to be on board the Mecklenburg behind the bar during all the full-day operations, and occasionally even till the early hours of the morning. At that time, the couple seemed to be the brains behind the whole operation. The witness recalled that Defendant was receiving a Captains' fee of fifty Maltese Liri (Lm 50) for every charter of the MV Mecklenburg.

Inspector Stephen John Gatt testified on the 19th June 2007 (Vide page SP 311) and exhibited all police reports lodged by Plaintiff against Defendant and also those lodged by Defendant. (Dok SJG 1-SJG 7 at page 313 et seq)

Joseph Caruana, administrator within the Water Services Corporation testified on the 19th June 2007 (vide page SP 312) and explained that from searches carried out it appears that the account relating to the property 10 Tibet Ta Xbiex, is registered on Defendant's name. Witness explains that he has no information relating to who lived in the property, and that there were no outstanding amounts due.

Maria Gatt in representation of APS Bank Limited testified on the 17th January 2008 (vide page SP 337) and explained the same was reiterated by the bank had no accounts pertaining to IP Limited.

Jeanette Lepre in representation of Lombard Bank Malta Plc testified on the 17th January 2008 (vide page SP 337) and ***Audrey Ghigo in representation of HSBC Bank Malta Plc testified on the 17th January 2008 (Vide page SP 337)*** that they had no accounts pertaining to IP Limited.

Maria Therese Busuttil testified on the 17th January 2008 (vide page SP 337 et seq) and explained that from the searches carried out it appears that the company IP Limited had seven (7) bank accounts ***(vide doks at page SP 339 et seq)*** in the name of the company, some of which are

still operative.

Anna Debattista, Director for the Procurement of Health Care Services within the Ministry for Social Politics testified on the 19th June 2008 ***(vide page SP 464 et seq)*** and explained that between 2002 and 2006 Defendant was awarded one tender on the 9th June 2006.

Katrina Buhagiar in representation of Banif Bank Malta plc testified on the 23 of June 2010 (Vide page SP 602) that the bank had no accounts pertaining to Plaintiff, the same was reiterated by ***Dr Mark Sammut in representation of APS Bank Ltd testified on the 23 of June 2010 (Vide page SP 602)***.

Audrey Ghigo in representation of HSBC Bank Malta plc testified on the 23 of June 2010 (vide page SP 602) and explained that from the searches carried out Plaintiff had seven (7) bank accounts and exhibited the relative documentation pertaining to these accounts (Dok HSBC1-HSBC7- vide fol SP 604 et seq).

Romouald Attard in representation of Bank of Valletta plc testified on the 23 of June 2010 (Vide page SP 603) and explained that from the searches carried out Plaintiff held no bank accounts in her name but Plaintiff had a Platinum Visa Supplementary Card with number 418875000271 6021 which was till active. The principal card-holder is a third party.

Romouald Attard re-produced on the 25th February 2014, (Vide page SP 960 et seq) filed a statement of the transactions carried out by the supplementary card-holder, namely Plaintiff. This supplementary card was issued on the 29th April 2009.

Jeanette Lepre in representation of Lombard Bank Malta plc testified on the 23rd of June 2010 (Vide page SP 603) that the Bank held no bank accounts pertaining to Plaintiff were found, the same was held by ***Noel Paris in representation of Volksbank Ltd testified on the 31st May 2012 (Vide page SP 831)***.

George Camilleri in representation of the Employment and Training Corporation testified on the 10th July 2012 (Vide page SP 842) and exhibited Plaintiff's full employment history and her current employment status, together with a full employment record indicating Plaintiff's past and present employment status in Malta. ***(Vide docs at page SP 844 et seq)***

LP Quentin Tanti on behalf of the Malta Financial Services Authority and the Registrar of Companies testified on the 20th January 2016 (Vide page SP 1183) and explained that the company IP Limited (C 16722) was registered on the 13th September 1994 and exhibited Documents QT1 to QT5 ***(Vide doks at page SP1185 et seq)***. Asked whether there was a change in the shareholding between the 17th August and the 31st October 2005, witness affirms that there was no such change. The shareholders remained IP with 499 shares and JP for 1 share. With regards to Buccaneer Services Company Ltd, witness stated that it was registered on the 10th June 2005 and was struck off on the 29th July 2015. Witness exhibited the relative documents marked QT6-QT11. ***(Vide docs at page SP 1373)***.Witness explained that the initial shareholders were SP with 250 A Shares, IP with 250 B Shares and JP with 250 C Shares.

With regards to Alliance Cruises Ltd (C 26702), witness explained that it was registered in the 14th July 2000. The initial shareholders were MP with 250 Ordinary A shares, IP with 250 Ordinary B Shares and JP with 250 C Shares. Witness adds that there was no change in shareholding until the 31st of October 2005. Witness exhibited the relative documents marked QT12 to QT15. ***(Vide docs at page SP 1522)*** With regards to Island Ferry Three Company Limited (C 11944) this was registered on the 26th September 1990. Defendant was registered as a shareholder for 250B shares by resolution dated 11th July 2000. The said resolution increased the share capital. However there was no other change till 31st October 2005. Witness exhibited the relative documents marked QT16 to QT19. ***(Vide docs at page SP 1522)***

LP Quentin Tanti on behalf of the Registrar of Companies testified on the 17th May 2017(Vide page SP 1831) and exhibited a legal copies of the Memorandum and Articles of IP Limited, Doc QT1 (page SP 1833), Alliance Cruises Ltd Doc QT2,(page SP 1845) and Island Ferry Three Company Ltd (Doc QT3) (page SP 1857)

Michael Savona, on behalf of the Merchant Shipping Directorate within Transport Malta testified on the 17th May 2017 (Vide page SP 1831) and exhibited legal copy of the transcript from the Register of MV Carlos I, MV Carlos II, pleasure yacht Selin. Witness explained that MV San Carlos I is owned by IP Ltd and was provisionally registered on 21st March 2002 and permanently registered on the 17th February 2003. The boat is not operational. MV Carlos II was provisionally registered on the 6th March 2003 and permanently registered on 15th December 203. Its owner on the 17th May 2012 is Island Ferry Three Company Ltd. It is also a non-operational boat since it does not have a CVC certificate. SY Selin was provisionally registered on the 25th September 1995 and permanently registered on the 25th April 1996. Today it is registered in the

name of IP Ltd. The boat is operational. ***(Vide docs at page SP 1873 et seq)***

Dr Robert Vassallo on behalf of the Ports and Yachting Directorate and Director of Ports produced by Defendant, testified on the 14th June 2017(Vide page SP 1878) and explained that San Carlos I and II are currently berthed at Marsamxetto Port. The CVC of San Carlos I expired on the 14th March 2012 and that of San Carlos II Expired on the 29th July 2011 in order that a CVC to be granted, a certificate and survey report is required together with a photo of the vessel, health certificate in respect of sanitary facilities, confirmation of mooring, valid marine insurance cover, valid certificate of registration, CVC application form Memorandum and Articles of operating company.

Michael Savona produced by Defendant on the 14th June 2017 (Vide page SP 1878) explained that the boat San Carlos II was bought at a judicial auction on 26th November 2002 which was then marked as CB02. Witness exhibited a copy of the notice of the judicial sale together with the boat's CVC Dok MS4 (page SP 1880). The boat SY Selin, was initially bought by Plaintiff in virtue of the Bill of Sale Dok MS5 (page SP 1883), from Anatolia Yachting Co Ltd, on the 26th April 1991. Plaintiff then transferred this boat to IP Lt1d in virtue of the bill of sale Doc MS6 (page SP 1884) on 25th September 1995. The boat was always registered on the name of IP Ltd. San Carlos I was bought in virtue of a deed published in the records of Notary Doctor Margaret Heywood dated 30th March 2001, Doc MS7 (page SP 1885). The corresponding bill of sale was also exhibited and marked as Doc MS8 together with the CVC Doc MS9. (page SP 1887.)

Legal Procurator Quentin Tanti on behalf of the Registrar of Companies reproduced, testified on the 14th June 2017(Vide page SP 1879) further to the testimony tendered on the 17th May 2017 exhibited two form Ts and a Form H marked as Doc QT4, QT5 and QT6. (Vide page SP 1888 et seq). The first form T which the registry received on the 11th February 2000 and was resubmitted on the 20th March 2000 indicating a transmission of 200 ordinary shares in Island Ferry Three Co Ltd from MP to JP. QT5 is another Form T received on the 14th July 2000 and resubmitted on the 6th September 2000 showing that I ordinary share was transmitted from PP to MP. Doc QT6 is a form H re submitted in 6th September 2000 by means of which 250 ordinary shares in said company were allotted to IP. This document is dated 11th July 2000. There was no change in shareholding in Island Ferry Three Co Limited until October 2000. Witness exhibited annual returns for this company for the years ending 2000-2005. Witness exhibited another Form T for IP Ltd received on the 21st January 2013 in virtue of which 1 ordinary share was transferred from JP to BP.

CP, Defendant's elder sister testified by means of an affidavit at page 767 and explained that Defendant's first marriage ended since his wife and her brother's best friend had an affair. She affirms that Defendant was always a good attentive father to his daughter Hannah from his first marriage and adapted his working hours around his daughter's needs. He also managed to create a strong bond between BPand Hannah. She adds that Defendant had borrowed essential navigational aids from her husband Arthur for *Embla*, which Defendant had acquired with his own funds. At the end of the summer, Defendant had found a buyer for *Embla* and organized the settlement via Deutsche Bank account in Germany. *Selin* was then bought using the funds which had been directed to the German account from the first sale.

CP in cross-examination[1] on the 17th April 2018, witness CP confirms that the declarations made in her affidavit with regards to Embla are declarations of fact which are her own recollection. Witness also affirms that even though she was not present when Defendant gave Plaintiff the engagement ring she mentions in her affidavit, she knew that this ring was given to Plaintiff and used to see Plaintiff wearing it. Witness confirms that the watch she refers to in her affidavit is a fine dress watch, which Defendant used to wear on certain occasions. Witness explains that she does not remember the furniture in the flat but remembers a table, chairs and old and antique chest of drawers with a showcase on top. Witness adds that with reference to the chest of drawers, witness states that she noticed that there were deep marks on this item of furniture. With regards to the wartime Deutsche Marks, witness contends that she had seen them and that her father had told her that he was giving them to Defendant. The last time she saw them was ten years ago.

Witness explains that the ring in question had belonged to their mother, and had been given to Defendant on the occasion of his marriage to his first wife. This ring with triple diamonds had been returned to Defendant by his first wife after the separation and had been given to Plaintiff as an engagement ring. The Vacheron Constantin watch also belonged to their mother who had expressed the wish to donate these two watches to her sons IP and JP. Defendant had taken all the pieces of silver and antique furniture given to him by her parents to *Qui si Sana* in 1998. Amongst these items was a large Maltese silver traditional oil lamp, a sterling silver tea pot and sterling silver coffee pot, a large sterling silver tray and two sterling silver entrée dishes, silver soup ladle. Defendant's favourite piece of furniture was badly damaged with what appeared to be have been hammer marks and engraved scratches.

[1] Vide pages SP 2084 et seq.

JP, Defendant's younger brother testified by means of an affidavit at page 771 and explained that Defendant and himself were in business together. He stated that *Embla* was bought by Defendant with Defendant's funds and money borrowed from his family. All the funds were then converted into US Dollars as per seller's request. In fact, the vessel was bought in cash. He adds that the vessel was then registered in Plaintiff's name, and Defendant had sailed the vessel from Turkey to Malta. After a few months Defendant had then found a buyer for *Embla* and had bought *Selin* from the same chartering company. *Selin* was also registered in Plaintiff's name. Eventually, witness contends that *Selin* was then sold to the company IP Limited since Plaintiff was requested to pay hefty duty on the boat. Following the sale to IP Limited, it was the company that paid the duty due on the boat.

In his affidavit witness recalls that they collected seven (7) pieces of furniture, Defendant's personal belongings such as laptop etc, and two pieces of silver items from the matrimonial home. Witness affirms that the old Maltese silver oil lamp and the large silver tray were no longer in the matrimonial home.

JP in cross-examination on the 28th November 2018 (Vide page SP 2138) confirms that Defendant had received from their parents a large silver antique oil lamp, just under a metre in height, a Vacheron Constantin watch, a large silver tray, and some coffeepots and teapots in silver, together with other items in silver and furniture. Some of these items were in Electro Plated Neikel Silver. The lamp however, was purely silver. The EPNS items were a coffee pot and perhaps a teapot. The cutlery set they each got was a pure Maltese Silver 912 cutlery set which included spoons, teaspoons, knives, forks etc, a full set of 12 items each. Witness affirms that he knows this because he received similar items. The silver tray was used when they were invited over to the parties' residence. Witness affirms that after Defendant left the matrimonial home, witness was invited to the residence for a cousins' get together, however, he never saw these silver items in the premises.

Raymond Bonello, engineer, with alliance Cruises Limited testified by means of an affidavit at page 776 and explained that sometime late in September of 2005, Defendant had asked for his help in collecting his belongings from his residence in *Qui si Sana* and to replace a lock to the washroom. Witness confirms that he went along to Defendant's residence and recalls that nothing was broken. Witness remarks that some of the belongings seemed to be clearly and recently damaged with scratches and what seemed to be hammer marks.

In cross examination on the 24th October 2018, (Vide page SP 2128) witness confirmed that he spent seven (7) years working full-time with Alliance Cruises as an engineer and worked full time as the only engineer on the Macklenburg, Carlos I and Carlos II. Witness confirms that he only went to the parties' residence on that one occasion. Witness contends that with regards to the date of this visit, said date had been suggested by Defendant. Witness recalls that they only took furniture which he had helped them carry down into the van. Witness recalls seeing the scratches and dents on the furniture which was a sort of sideboard with glass in front. Witness denies having removed any light bulbs or fittings from the flat and he did not see the others doing this but he was not with them all the time, nor did they take a mattress with them. Witness declares that they had spent less than an hour in the flat. Witness does not recall unloading these objects and furniture at Defendant's new residence in Ta' Xbiex. Witness affirms that when he went to the Notary to take the oath the affidavit was written, he read through it and was happy with the contents and signed it. Witness affirms that his discussion with Defendant took place before he went to the Notary. Witness declares that he neither heard nor saw any person breaking any glass.

Notary Margaret Heywood, Defendant's sister in law testified by means of an affidavit at page 780 and explained that she is married to Defendant's brother JP. Witness remembers that after her mother-in-laws' death, Defendant was given various silver items including a large silver oil lamp, a large silver jug, and an antique *vetrina*. She adds that on one occasion she, together with her husband helped Defendant carry the silver items and stored them in his father's house for a while. Eventually he had taken these items back to Qui si Sana after Defendant and Plaintiff reconciled.

In cross examination on the 28th November 2018(Vide page SP 2137) Heywood confirmed that she does not remember the individual silver items which were in the vetrina except for the silver oil lamp and the silver jug which were large. Witness recalls that these were in the vetrina with other silver items. The oil lamp was a traditional Maltese lamp around 50cm in height whilst the jug was less high and wider and is positive that these items were silver items, as similar items with the watermark indicating that these were silver were given to her and her husband as well. During re-examination witness affirms that she is sure that the two particular items she mentioned earlier were at the parties' matrimonial home but due to their size, they could have been somewhere else in the house and not in the vetrina. The witness also contends that her brothers were given the silver and the watches, whilst her husband's sisters received the jewellery. These items were also in Ta'Xbiex.

Rachel Zammit Tabona, Defendant's other sister, testified by means of an affidavit dated 4th

October 2018 at page 861(Vide page SP 2131) and confirmed her sibling's testimony. Witness adds that the large antique oil lamp, large antique silver tray and a solid gold Vacheron Constantin watch were removed by Plaintiff from the matrimonial by the time Defendant started packing to move out and were never seen again. The witness also adds that they kept the parties' horses at their home.

In cross examination on the 11th December 2018, Rachel Zammit Tabona (Vide page SP 2144) attests that she remembers the facts which she related in her affidavit. Witness recalls that Defendant had paid for Embla in cash from his own earnings, because that was the only way in which he could buy it at the time. Witness does not remember the purchasing price and nor the currency in which the price was paid. Embla was bought in June of 1990 and was sold in November of that same year. Witness confirms that she was not present for any of these transactions but Defendant had told them all about these transactions. With regards to Selin, witness affirms that Defendant had told them that he had used the proceeds of the sale of Embla to purchase Selin. Witness confirms that Defendant had travelled with the cash to purchase Embla.

Witness describes the silver oil lamp she mentioned in her affidavit as being around three-quarters of a metre high, and as being quite narrow and dainty. The lamp also had a sort of shield/silver shade on it. The silver tray was quite big around three quarters of a metre in length with two handles on the sides and scalloped on the edges and remembers these items in the parties' Ta' Xbiex home. Witness does not recall ever going inside the Qui Si Sana flat.

HM nee P, Defendant's daughter from his previous marriage, testified by means of an affidavit at page 974. She explains that she was about five (5) years old whenever Plaintiff came into her life. She affirms that her father had for a long time planned to visit Australia and his best friend AC in November of 1989, and eventually ended up travelling on this trip to Australia with Plaintiff after having just met her. Her father returned to Malta from this trip in mid-January 1990 whilst Plaintiff came sometime later in 1990. Witness recounts that one of her earliest memories of Plaintiff is when she had caught Plaintiff looking in the mirror and witness, who at the time was still a girl, had asked Plaintiff whether she was pregnant. The witness also recalls Plaintiff wearing her mother's engagement ring, and also a set of pearls which were given to the witness as a Baptism gift by her aunt and uncle. The witness also remembers the silver items which were given to her father. She also recalls the car her father had bought for Plaintiff's birthday, a Seat Cordoba which they had collected from Gozo. The witness recalls going to Sicily with the boat and it was always her father who would pay for everything. Witness affirms that Plaintiff used to claim child

support for her brother from Germany, when she was already receiving children's allowance here in Malta.

Frank Baldacchino testified by means of an affidavit dated 19th June 2012 (Vide page SP 834) and explained that he has known Defendant since 1994 when he was given the keys for 90 Belevedere Street Gzira and started working on the renovation of the old building. Witness recalls that Defendant was there for much of the time doing all the plumbing, electrical works, plastering and painting. He also made the furniture for the first storey, including the construction of the beds and open shelved wardrobe, and kitchen unit as well as the tiling of all the bathrooms on all levels. Witness contends that at times he also helped him. Defendant had told him that he had donated the airspace to his future wife. Witness affirms that Defendant was also on premises to supervise the workmen as well as to carry out the works above mentioned on all three levels.

Witness contends that out of the three properties, Defendant's was the one that was the leased least.

AC testified by means of affidavit dated 19 June 2012 (vide page SP 836) and explained that he and Defendant has been good friends since 1975. Witness recalls that following Defendant's separation from his first wife, he had suggested that Defendant take a holiday and visit him in Australia. Defendant finally did this in 1989, with witness' financial help. In November of 1989 witness recounts that Defendant had made the long awaited trip to Australia accompanied by Plaintiff who at the time was his girlfriend. Both had stayed at witness' place in Brighton East which he shared with his cousin Sandra Kirkpatrick. The couple had spent six weeks there. Witness recalls that Plaintiff went to Queensland with Kevin, Sandra Kirkpatrick's then current boyfriend.

After circa six (6) months in Australia, in April 1990, Plaintiff returned to Germany. Defendant joined her in Germany. Weeks later, the couple moved to Malta. In 1992 Witness moved back to Malta and it was about that time that Plaintiff wanted to purchase a property in Malta and had in fact found one in Qui Si Sana. Plaintiff had told Defendant to find a way to enable her to buy it as the law at the time prohibited foreigners from owning property below a certain value. Defendant at the time did not manage to get a loan and thus, Defendant was loaned the money from Plaintiff and got permission from the central bank to purchase the property in his name. Sometime in 1994 IPbought premises in Gzira which he restored and used as a store for his Medical Device products. Before marriage, IPhad decided to donate the airspace of this property to RL. Witness affirms that

Defendant put a lot of time and work in this project and also undertook a lot of manual work. In a short time-frame, the two studio apartments were ready to receive Plaintiff's paying clients.

In 1990 IP bought Embla with money partly loaned from his family and by the end of the same year IP, he sold Embla and bought Selin, a 30" Beneteau. Witness recalls the silver items some of which were gifts received during his first marriage, items which he has seen both in the Ta Xbiex residence as well as in the apartment in Qui Si Sana. Witness contends that IP had also told him that well before he married Plaintiff, during a visit to Germany in 1990 circa, Plaintiff had suggested that Defendant opens a bank account in Germany to avoid paying tax in Malta, which Defendant had done through Plaintiff's friend, Gerhard Renner. Defendant had also told witness that Plaintiff kept her earnings, and placed them in her account abroad while Defendant's earnings belonged to both of them. When Defendant left the matrimonial home in late September 2005, he had told witness that all his silver items were missing and that Plaintiff must have taken them away from the apartment in Qui si Sana.

AC in cross examination on the 21st February 2022 (vide page 1223 et seq) confirmed that he had helped Defendant financially to enable his trip to Australia as he was his best friend. At the time Defendant was going through a separation with his first wife and witness had told him that whenever he wanted to come to Australia he would be very happy to help him out financially. Witness does not recall whether he had purchased the flight tickets for Defendant but confirmed that Defendant was staying at witness' property in East Brighton, a property he shared with his cousin Sandra Kirkpatrick. Witness confirmed that at the time Defendant worked as a Medical Rep for Convatec and his employer was Squidmires Convatec. Witness affirms that Defendant might have been employed by his brother in Malta since Defendant's family were originally the agents for Convatec.

Asked about Plaintiff, witness explains that they had become friends as she was a very easy going and friendly person. He adds that one would feel at ease around her. Witness contends that Plaintiff had travelled to Australia for medical purposes. Witness adds that before going to Sydney, Plaintiff had gone to the Northern Territory and Queensland. Witness recalled having spoken on the phone with Plaintiff whilst she was at hospital but he had never visited her. Witness does not recall having a one-to one conversation with Defendant about the operation but they would have talked about it together, and that at the time he must have called the hospital landline to talk to Plaintiff. Witness contends that Defendant wished to remain in Australia to support Plaintiff but he could not do so because of work commitments and because of his daughter

Hannah.

Asked about Kevin, witness believes that Kevin lived in Port Melbourne which was not too far from where he lived. Witness does not recall Kevin being Sandra's boyfriend but he could have been. Witness recalls an episode where Defendant had called him and had told him that he wanted to speak to Plaintiff, and witness had found Plaintiff at Kevin's place being intimate on a bunch of big cushions. Witness explains that Plaintiff and Kevin were very close to one another and that their shoulders were touching. Asked about the trip Plaintiff took with Kevin to Queensland and Northern Territory, Witness contends that they went to these locations together before she went to Sydney. Witness explains that he did not know that Plaintiff had a job at the Grand Northern Hotel. All he knew was that she was going to New South Wales for an operation and there had been no mention of any job.

Asked why he never shared his suspicions about Plaintiff and Kevin to Defendant, witness contends that he did not want to rock the boat. Asked about the tension between the brothers IPand MP witness contends that MP was a very difficult person and MP and IPdid not get on well together. MP and his wife did not like Plaintiff either and made their life difficult. Witness does not recall that MP and his wife filed opened a court case against Plaintiff but would not be surprised if they had. With regards to the works carried out in Plaintiff's flat, the witness explains that Defendant gave Plaintiff the airspace and they built on two floors. Defendant did the tiling and plastering, while managing the trades persons, plumbing, electricity in the kitchens and the wardrobes. Witness attests that he even helped Defendant with construction of some of the wardrobes. Witness affirmed that Defendant constructed the wooden furniture in all the flats. Witness explains that he used to be on the premises everyday and they used to talk all the time. This was between 1992 and 1996, since in 1996 he went back to Australia. Witness declared that the flats in Gzira did not take long to be furnished and that in 1994 whilst he was in Malta, the flats were already being let out, to family and friends.

With regards to *Embla,* witness affirms that Defendant had told him that it was his family that had loaned him the money to purchase the boat. When he sold *Embla*, he used the funds to buy Selin. With regards to the silver items, witness does not recall the exact date but recalls having seen these items the last time he was there. Witness affirms that Plaintiff moved to *Qui si Sana* in October 1997 when they had separated. Witness affirms that Plaintiff was not happy living in Ta Xbiex. Witness testified that he visited Malta on numerous occasions and used to visit the couple in their *Qui si Sana* flat though not as often as when they lived in Ta Xbiex. Witness affirmed that

witness' mother had given them a cake knife, silver trays, a tea set and probably some silver spoons. These items where in a showcase in the Ta Xbiex apartment. Witness affirms that with regards to the bank account opened by Defendant in Germany, this was done through Plaintiff's friend, but could not confirm whether Defendant was at the time receiving a salary or working on a commission basis.

When **re-examined,** witness confirms that he was in Malta for a constant period between 1992 and 1996, and went back to Australia in 1996. He adds that he had visited Malta several times, at least once every two years and used to spend between two to four months in Malta. In the year 2009 up to 2016 he visited Malta every year. In 2009 his father died and IPtook over. Witness does not recall whether Defendant was employed or working on commission basis, but Convatec at the time was dealing with government tenders and therefore he was certain that the commissions were fairly good. Witness also confirmed that while he was in Malta after 1996, he visited the couple both in Ta Xbiex and in *Qui si Sana.*

In **re-examination witness,** affirmed that he does not recall the year in which the couple split up. Witness dismissed the suggestion that prior to 2005 his periods in Malta were shorter because he had young kids in Australia, but affirms that on occasion his family came along with him and they had stayed in Ta Xbiex where they had a house, which house was sold in 2012. Witness adds that if and when his wife went to Munich, the children would stay with their mum in Munich. Witness testified that Defendant always received commissions as a sales representative of Convatec, even when he was employed with his brother MP.

Sylvia Grech testified by means of an affidavit dated 18 September 2012 (vide page SP 856 et seq) and explained that she used to frequent Defendant's mother's house on a regular basis as the house help and has known Defendant and his siblings for the past 27 years. Witness affirms that she used to clean Defendant's residence even during his first marriage and continued to do so throughout the years. Witness contends that Defendant had already planned to visit Australia and this was prior to his meeting Plaintiff. Witness recalls that in 1990 Defendant had gone with Plaintiff to purchase a sailing boat from abroad. Witness states that Defendant had confided in her that he had borrowed money from his family. Witness confirms that she was always paid by Defendant and Plaintiff never paid her herself except perhaps of two occasions in fifteen (15) years but Defendant used to think ahead and leave the money under an ashtray on the dining room table. In 1992 Defendant had told her that Plaintiff wanted to purchase property in Malta but could not do so legally at the time. Eventually Defendant had bought the property in his name. However,

Plaintiff had started making money with this apartment very early on and she had asked Defendant to make the easiest and cheapest furniture to make the place easily rentable. In fact the flats were rented in December 1992. Witness affirms that she knows about this as she was asked to clean the apartments before and after the first guests. The apartments kept being rented out. Eventually Defendant purchased the house in Gzira to use as a store for his business and he had told her that he had given the airspace to Plaintiff before they got married. Witness affirms that Defendant did all the work in the building including electricity, plumbing, furniture, plastering and painting. Once the apartments were ready, Plaintiff did not waste any time and rented each separate floor. Witness was again asked to clean these two separate apartments several times. Witness confirms that it was only the top two floors that were rented out. Witness affirms that it was Defendant who paid her for her cleaning services of Plaintiff's two studio apartments.

Witness explains that she clearly recalls the silver items belonging to Defendant including the antique furniture and that Defendant had bought a new car for Plaintiff on her birthday.

In cross-examination on the 16th January 2019 (vide page SP 2069), witness confirmed that with regards to the silver items she mentions in her affidavit, witness remembers these items because she used to clean them at Defendant's mother's house, and at Defendant's Ta Xbiex residence. She also cleaned the same items in the Qui si Sana flat. Witness contends that these items include: a big silver lamp more or less 50cm high which was kept on the wardrobe in the main bedroom in the Qui si Sana flat. Witness recalls that the lamp was not covered and she used to clean it. It appeared to have been placed on the wardrobe as an ornament, a big silver soup bowl having more or less a 50cm diameter which was placed close to the lamp.

In cross-examination on the 12th February 2019 (vide page SP 2173 et seq) witness added that besides the silver items she indicated in her previous testimony, there was also a silver ladle which Defendant had received as a wedding gift from a friend who lives in Australia when he married his first wife. There was also a silver tray which was kept in the kitchen. Witness affirms that she used to clean both of these items as well. While the parties resided in the Qui si Sana residence, witness used to go and clean as often as Defendant would ask her to do. Witness also testified that she saw IPdoing all the works she mentioned in the third paragraph on page 4 of her affidavit as she used to go to the Gzira tenements even at building stage. To her knowledge the garage and the first studio flat belonged to IPand the overlying two apartments belonged to Plaintiff.

Plaintiff testified by means of an affidavit dated 5th February 2007 (Dok RML1 a fol SP 110 et

seq) and explained that she is a German citizen and was brought up in Germany where she lived with her family. Her parents owned and ran a hotel close to Munich where they were brought up. Plaintiff completed hotel management apprenticeship and a five (5) year university Social Studies Degree. She then worked in several hotels in Germany, South Africa and Australia and also worked with children in German schools and in an Educational Centre in America. In her affidavit Plaintiff recalls that in 1988, after having finished a two-year assignment with Resort Hotels in South Africa, she travelled to Malta to attend an English course and towards the end of her stay she met Defendant. Her next work assignment involved a four (4) month contract for Great Northern Hotel in Australia and Defendant had asked her if he could come along with to visit his friends who lived there. They flew together to Australia and spent 6 weeks with his friends. It was during that time that they fell in love and Defendant had asked her to come and live with him in Malta. Defendant returned to Malta and contacted her in Germany once she had finished her four (4) month contract in Australia. He had asked her to come to Malta and live with him and to apply for a job in tourism in Malta.

In 1990 Plaintiff came to Malta and started working for a German Tour Operator and Airline and gave up her hotel management career. At the time they lived in IP's basement flat in his father's villa in Ta'Xbiex. Soon after the parties decided to have a child together and BPwas in fact born on the 1st August 1991. At the time Plaintiff was the main breadwinner. Following their first separation in 1997, Plaintiff affirms that in 1998 they had reconciled. Eventually on the 4th of September 2005, Plaintiff had discovered a number of emails relating to financial matters and realized that Defendant was not poor at all but a very rich man with substantial bank deposits oversees. On the 17th September, Defendant had asked her to evacuate the flat and while she was out of the flat, Defendant together with his brother JP, removed most of the furniture and other items, including her personal belongings. Plaintiff lodged a police report.

Plaintiff affirms that when she met Defendant in 1988, Defendant was working as a medical representative for a company owned by his brother MP and did not earn a lot. During the first years of their relationship, she was forced to maintain the family. During these first years together she had managed to persuade Defendant to leave his job with his brother and acquire the agency of the goods he had been selling. In fact they managed to achieve this together and Plaintiff contends that she was instrumental in all of this. Plaintiff contends that she was never told what income this business generated for the family and it was only in 2005 that she discovered that Defendant was making considerable commissions from this venture, which commissions he was secretly transferring to a German bank account which she had helped organize for him but to

which she had been denied access.

In 1990, Plaintiff had suggested that they should try and make some money from sailing. She had convinced Defendant to purchase a small second hand sailing boat in Turkey and sailed over to Malta with her own personal funds from Germany. The profit from this venture was kept by Defendant and when Plaintiff had asked for her share, Defendant replied that he had invested the money in doing up their first boat Selin. Originally this boat was registered in her name but around the date of their marriage in 1995, Defendant had forced her to transfer the ownership to the company IP Limited which he had registered before their marriage to avoid having to pay substantial amount of tax on the boat once married. At the time Plaintiff was not allowed to seek independent advice and had to believe him.

During 1990 or 1991 a second venture related to sailing which Plaintiff had set up "Fly and Sail" for the German market in conjunction with the German tour operator with whom she was working. This involved a number of hours sailing which was always done by Defendant while Plaintiff took care of logistics. Defendant kept all the profit and had told her that he invested the money in the boat which was now registered in the company's name. In 1992 Defendant had asked her to bring funds over from Germany to purchase some property in Malta. It was only after she had found the flat in Sliema, that Defendant told her that this property could not be registered in her name because the value was lower than that allowed at law for a foreigner to purchase property. She brought in the money, and Defendant convinced her to purchase the property in his name. Later on in the marriage this property as donated to BP, whilst Plaintiff was bestowed with the right of usufruct over it.

With regards to the property in Gzira, Plaintiff contends that at the time they needed a property which could be used for the storage of the medical products. They had found a tiny town house in Gzira which as Plaintiff suggested could be converted into a garage on the ground floor to be used for the medical products and a small studio flat on top which she helped in doing up. In return she asked him to donate the air space to her measuring around 30sq metres. This was just before their marriage. Plaintiff affirms that she had used her own funds to construct two very small apartments to allow her to host her family and friends from abroad. Since Defendant wanted compensation for the work he had done, Plaintiff stated that Defendant would take the rent on the rare occasion she would manage to rent the property. Defendant on the other hand, rented his apartment regularly and always kept the income himself. Plaintiff also explains that she had heard that each brother had originally invested LM 35,000 in Alliance Cruises Limited. Eventually

Plaintiff discovered that Defendant had personally bought another boat San Carlos I which was registered in the name of IP Limited even though it was paid by money belonging to the community of acquests. In the first years of the venture Defendant had asked her to get involved which she willingly did and also worked in the bar whenever she had free time from her part time work as an independent conference organizer. Plaintiff asserts that Defendant was funding the purchase of the boats belonging to Alliance Cruises from monies belonging to the community. Plaintiff states that Defendant deposited some £311,062 over a period of eight years. Defendant also held 499 shares out of 500 shares in a company named IP Limited, 250 ordinary shares out of a total of 750 shares in Buccaneer Services Company Limited, 250 shares out of a total of 750 shares in Island Ferry Three Company Limited and 250 shares out of a total of 750 shares in Alliance Cruises Limited. Defendant also used to charter San Carlos I owned personally by him to the company Alliance Cruises Limited which he owned with his two brother for Lm 2000 per year. Defendant also used to earn around LM800 a month from Alliance Cruises most of which was paid directly in cash. During the marriage, Defendant had also taken out a policy with Scottish Provident International for the both of them which policy, as at 18th June 2006 had a value of £14,389.72. Plaintiff explains that it was Defendant who would take care of their tax returns and he would constantly complain that she was declaring too much income and that this would prejudice his position.

Plaintiff testified on the 4th May 2011 (Vide page SP 736) and explained that her parents used to own a hotel in Germany and had both passed away. To date the hotel is owed by her brother. As part of the inheritance Plaintiff asserts that she had received DM 100,000 in 1999. At the time she was married to Defendant. (Vide Dok RL/W) After that Plaintiff affirms that she used to receive constant financial help from her mother who used to give her money both before and during the marriage. Plaintiff recalls that one time her mother gave her DM 10,000 and DM 4000 another time. Before marrying Defendant Plaintiff had executive posts in hotels for a total of eight years. She was also working on specific assignments outside Germany and had a high income. With reference to Doc RL/DB1, Plaintiff contends that she had this account before the marriage and still uses this account for her day-to-day expenses as she did during the marriage. Through this account, Plaintiff paid BP's insurances for Germany and any other bills. The monies in this account were mainly derived from her work and income. Once in a while Defendant would transfer some money such as €1000 to make up for the insurance expenses she was paying.

With reference to Doc RL/KK1, Plaintiff explains that she had kept these monies in cash with the hope of buying a house with Defendant to make their marriage work however she ended up living

on these monies which she had before the marriage. Plaintiff contends that she was instructed by Defendant to transfer the amount of DM 26,866 in the name of Mehmet T Erda to buy the vessel MY Selin before their marriage. The boat was bought in her name but Defendant made her transfer it to IP Limited just before they married. She was never refunded for these monies. The money transfers in Doc RL/MM1 are the monies she had deposited in her German Account which she had transferred to her Malta bank account before marriage. With these monies she bought the flat in Qui Si Sana which Defendant made her purchase in his name which eventually was transferred to BP, their son.

Plaintiff was **cross-examined** on multiple occasions during the course of the proceedings.

Her work and the Start of the relationship with Defendant:

Plaintiff confirms that she met Defendant towards the end of her stay in Malta and just before leaving for Australia where she had managed to get a job at the Great Northern Hotel. She explains that she came twice to Malta. During the first instance she had attended at a language school and then came back a second time which was probably in 1989 and not 1988 as stated in her affidavit. The first six weeks spent in Australia at Sandra Kirkpatrick's residence were a holiday. Subsequently, Defendant returned to Malta while she stayed for a while with Sandra and then travelled up North to the Great Northern Hotel where she spent circa four (4) months working. Plaintiff denies that she went to Australia because Defendant was going there for a holiday. During cross–examination, Plaintiff confirmed that before arriving in Australia she was in South Africa and then went to Malta and stopped in Germany from where she left for Australia.

Plaintiff affirms that she had to return to Germany after her stay in Australia. This was in early April 1990.

With regards to the nature of her work Plaintiff described that she used to be assigned to different hotels to gain experience in the field and she used to request a reference letter from each hotel. In 1988 she was working from South Africa. After South Africa, she came to Malta where she spent 2 to 3 months. She also travelled to India and then to Australia. Plaintiff recalls that Defendant flew back to Malta from Melbourne and that after leaving Australia she went back to Germany. Plaintiff recalls that Defendant had tried to get Plaintiff to come back to Malta however, the hotel industry at the time was not to her liking. It was then that she became interested in tourism.

During her testimony Plaintiff confirmed that they had stayed at Sandra Buttigieg nee Kirkpatrick's house in Melbourne. Plaintiff also denies having had a relationship with a person named Kevin while in Australia, since this Kevin was in a relationship with Sandra Buttigieg nee Kirkpatrick. Plaintiff insists that Kevin only gave her a lift up North to the Great Northern Hotel.

Health

Plaintiff denies that she had a miscarriage and affirms that it was Defendant's first wife who had a miscarriage. Plaintiff insist that her cycle was fine and in fact she got pregnant shortly after coming back from Australia but had gone for treatment targeting her cancer. With reference to the testimony tendered by AC, Plaintiff explained that she was able to get pregnant very easily, however, at the time she had the coil, which she had removed after she left Australia.

She adds that in Australia she was getting treatment for her cancer which treatment could also help her to get pregnant. In fact, when she removed the coil she got pregnant shortly after. She confirms that while in Australia she was receiving immuno-therapy treatment in a private clinic in Sydney, where she also worked. Plaintiff contends that she does not recall whether it was her German gynaecologist or her South African gynaecologist who had referred her to this facility in Sydney. At the time, Plaintiff affirms that AC could not have called her since she did not have a mobile phone. However she explains that she does not recall events regarding much of the time spent there due to Echo Syndrome with which she was diagnosed by a psychologist following the break-up of her marriage.

Employment in Malta

Plaintiff affirms that after marriage, she had stopped working on a full-time basis. Although she had done some small jobs along the way, she did not have a work permit and it was only in 1999 after having solved the issues relating to the registration of their marriage in Malta that she was registered as self-employed.

The Account in Germany

Plaintiff explained that she did not like hoteliering in Malta and had the possibility to run a hotel in Germany with her brother. Therefore, she had suggested to live in Germany to Defendant.

Defendant at that suggestion, had expressed his wish to open a German bank account and she had gotten him in touch with her bank. Eventually, Defendant did open this account, an account which was solely on his name and remained solely on his name, even after the marriage. This occurred in September 1990 after the trip in Australia.

Plaintiff contends that Defendant was not forthright with her in that he did not wish to live in Germany and had only manifested this over the years. Plaintiff confirms that she had introduced him to her friend Gert Renner, who had then opened Defendant's bank account in Germany, however Plaintiff affirmed that she was not present when this occurred. The relative bank statements were not sent to Malta but to a common acquaintance.

Plaintiff testified that she did not know the use for this account. Asked whether she has referred to this account as holding black money, Plaintiff contends that she did not believe that Defendant had "black money". It was only in 2005 when she saw the Bank slips that she confirmed that the German bank account was still open and that she realized that it contained a substantial amount of money.

Plaintiff explained that she never asked Defendant where the money was coming from, since the only time she enquired, Defendant informed her that it was not her business. Asked whether she was aware that Defendant had any business in Germany, Plaintiff affirmed that she did not. She only knew that he was employed by an English Company called Convatec. However, Plaintiff also recalled that there was a time when Defendant was doing business with a German company located in Malta that is, *Sail and Fly* where he took clients on day-charters on his sailing boat. Plaintiff adds that this was when she had just had their baby but never saw any of this money. This venture lasted around two to three summers. With regards to Convatec, Plaintiff affirmed that it was only in 2005 that she discovered how much he was being paid. The slips she found referred to commission but she has no idea as to whether there was a salary as well.

Asked about Gerhard Renner, Plaintiff explains that he is the husband of one of her best friends and as a result also a friend of hers. Renner worked at Deutsche Bank, where she also banked. Plaintiff confirms that she had introduced Defendant to Gerhard Renner since Defendant wanted to open an account in Germany since he was giving her the impression that he was going to relocate to Germany. Plaintiff recalls having introduced Defendant to Renner after their trip to Australia. Plaintiff denies that this was a suggestion she made in order to have Defendant's commission diverted in the German Bank Account. She adds that she thought that Defendant was

poor and it was only later that she realized that in fact he was quite well off.

Plaintiff confirms that she knew about the account in Germany but had no access to it. Plaintiff confirms that there were a few times when Defendant transferred some money from his account into her account. All she knew was that if he had sent her €2000 or €1500, this money came from that account.

Payment of Family Expenses:

While Defendant paid the water and electricity bills, the school bill, she paid for all the foods, the clothes and the things for the baby. When BPprogressed to University it was Plaintiff that paid for the tuition fees. On holidays, where she took her son to visit her parents, it was Plaintiff who used to pay for everything. She contends that she financed all the other expenses from money she had earned before the marriage, from money her family sent her and from her inheritance. Plaintiff explains that she only worked on a part-time basis in Malta as an airline representative and a tour operator and confirms that at the time she banked with Mid-Med overseas. Plaintiff affirms that it was only after 1998, that Defendant gave her two hundred pounds monthly (Lm 200) for the family's daily needs and prior to that she had to use her money.

Asked about the bank account held in her son's name, Plaintiff affirms that her son's account was not at DeutschBank but at Sparkasse, Rede Burge Qonto, where her parents lived and where BPhas his account. She also affirms that she also used to have an account there. She recalls having opened BP's account very early as she remembers taking him to the bank and BPwanting to sign like his mummy. She affirms that her aunts used to give him money whenever they visited and BPwould want to put this money in his account. Plaintiff confirms that the account is in BP's name but he is not allowed to take any money out. It was she who had the authority to withdraw money from the account. Defendant could not withdraw money from this account and nobody ever did until BPturned eighteen (18).

Confronted with the fact that in spite of a Court order to submit a copy of her bank accounts, Plaintiff had insisted that she could not get these bank statements. Plaintiff affirms that the money she had in Germany was withdrawn and brought to Malta, and she closed her accounts in Germany and her money is now held in banks located in Malta. Plaintiff also states that she has an account in Regensburg. Asked to indicate the amount in this account, Plaintiff affirms that she does not know the balance.

The Vessels:

With regards to the acquisition of the Vessels, Plaintiff affirms that she had given Defendant money to purchase Selin, and had recalled that she had subsequently given him a loan which could have went towards the acquisition of Embla. Plaintiff declares that she never got any money back but cannot recall whether Embla or Selin was the first boat Defendant had acquired. She adds that she was never asked to sign even after the marriage when Defendant had acquired the commercial boat. She also recalls that Selin was possibly in her name and just before they got married. Defendant had suggested to transfer the boat to the company to avoid taxes. Plaintiff does no recall that Embla was sold and that the sale price funded the purchase of Selin but explained that boats were Defendant's hobby which he had abandoned because of his first wife.

Plaintiff explained that while in Australia, they met a ship charterer who had vessels in Turkey. She had suggested that Defendant resumes his hobby but at the time he had no money, thus she gave him a loan for the Selin. At the time she did not question her husband's decisions and motifs since she trusted him. However when he sold Embla she had asked him to share the profit but he had told her that he would be using the money to upgrade Selin. With regards to the third boat, Plaintiff does not recall it being in her name, nor that it was sold to Darmanin.

Gzira Property

Plaintiff insists that with regards to the studio flats in Gzira, she had paid for the construction of her studio flats. Defendant had donated the air space, but only helped her physically with regards to the finishes of these flats but definitely not financially. Plaintiff adds that while Defendant had built some furniture himself, she had also brought furniture from Germany which furniture had belonged to the hotel in Germany.

Plaintiff contends that Defendant used to cut off the provision of water and electricity to her flats in Gzira. This occurred since 1997 when they first separated. She confirms that whenever she would rent the property she would keep the rent just like Defendant used to do. Asked whether people would transfer the rent due to her German account, Plaintiff affirms that she does not recall where they paid her. Most of the times the property was rented to family and friends. Plaintiff confirms that this property and that belonging to Defendant were advertised for rent and that both their phone numbers were indicated.

Matrimonial Home

Plaintiff affirms that she had wanted a matrimonial home as she was not happy living in Ta Xbiex. For this purpose, Plaintiff had chosen an apartment in *Qui si Sana* which she wanted to purchase. The price of the flat was below the capping accorded to persons holding an AIP permit. At the time, and thus she could not have purchased it herself. Defendant could not get a loan at the time and thus, Plaintiff purchased the apartment with the money she had saved up in Germany and also with money sent to her by her parents. However, because of this issue, this property was on Defendant's name. Plaintiff contends that she later found out that since she had a son from a Maltese national she could have had an exemption and have the matrimonial home solely in her name.

Plaintiff confirms that eventually the property was donated to their son and Plaintiff was given the right of usufruct. Plaintiff had paid the donation tax. Plaintiff did not recall that the donation had to wait under Defendant's daughter turned 18 to renounce to any possible rights in terms of the donation. The property was bought or the price of LM 18,500 in 1990 or 1991. Plaintiff does not recall if the transfer onto BP's name happened after the parties reconciled for the first time after their first separation but contends that it was she who wanted to include the right of usufruct in the event that she and Defendant would separate again. Plaintiff affirms that Defendant lived in the flat with her from the end of 1998 till 2005 when he left home for Holland.

The Computer:

Plaintiff explains that even though the couple shared the same computer, they each had a separate account and that she only had access to her account. She never had reason to be suspicious of her husband and it was only after Defendant blocked her account that she became suspicious. When their friend unlocked her account, this friend only copied whatever Plaintiff told him to copy. However, on that occasion, Plaintiff affirms that she found the transfer slips of all the money, and documentation evidencing his extra-marital affairs. She admits that she had printed a few things. She eventually made copies of all this but kept them herself. Plaintiff denies having sent these documents to the Commissioner of Inland Revenue but affirms that Defendant had many enemies. However, all the documentation was exhibited in Court proceedings which were instituted against

Plaintiff.

Defendant's silver items:

With regards to the silver Defendant had inherited and brought over to *Qui si Sana,* Plaintiff explains that there were two candle sticks, and a fruit bowl. However, she affirms that Defendant had taken all the silver when they had separated the first time and took them to his father's where he left most of it. With regards to the maid, Plaintiff contends that the maid did not come to Sliema, excepts perhaps once or twice and that the help came whenever she was not at home. Plaintiff also asserted that she remembers Defendant's father dividing the silverware amongst the siblings but she denies that she was in involved in Defendant's choice of the silverware.

Defendant on the 4th February 2009 (vide page SP 472 et seq) and exhibited a statement prepared and confirmed by VA Bonello, a certified public account with regards to his personal accounts and those of IP Limited. (Dok VAB1- VAB3 at pages SP 475 et seq) He explained that the statements presented refer to the period between 1998 till 2007 in the case of his personal income whereas the statements for IP Limited are for the years 1995-2007. Defendant contends that for the years 1995-1997 details for such years are no longer available in his computer. Also Convatec had advised him that they do not hold information about him for that period.

Defendant testified that he had paid the amount of Lm 85, 427 to the CIR in settlement of income tax arrears due. He explained that while in employment with Convatec he had commissions deposited in a German bank account after having received such from Germany he used to send a cheque to Germany for deposit. Plaintiff had knowledge of these transactions and also of the amounts of commission received.

Defendant testified with reference to the oath on the 28th October 2010 (Vide page SP 688) and confirmed that the amounts indicated on the document Convatec are amounts which have been recieved directly from Convatec. Defendant confirms payment of these commissions. Asked to explain a discrepancy in figures between the payment value appearing on the statement which Plaintiff present and the commission which Convatec state to have paid him for the year 1999, Defendant explains that Convatec would effect payment of commissions only following receipt of payment from the Government of Malta. This payment could have been delayed and therefore at one point in time he would have received commissions for different years. He also received reimbursement of expenses which he would have forked out in the course of the execution of his

duties. With regards to the abridged financial statements of IP Limited for the years 2001, 2002, and 2004, Defendant explains that for the years, mentioned IP Limited was not receiving any payment from Convatec.

Defendant testified with reference to the oath on the 1st December 2010 (Vide page SP 692). Defendant was asked to explain the discrepancy between the abridged accounts of IP Limited to 2006 and the commission paid by Convatec for the same year, Defendant explained that at that relevant time £89,070.43 (Pound Sterling) amounted to LM 55,669. During this year IP Limited reported a turnover of LM 35,025, whilst he himself reported a turnover of LM 20,644 which together amount to LM 55,669. The difference represents expenses.

At this time IP Limited owned and maintained a boat San Carlos I which was chartered to Alliance Cruises Ltd. Payments were sometimes made and sometimes not. In 2005 no payments for this charter were received but were received later. In 2005 IP Limited incurred only expenses in regard to this boat but did not receive any payments. At one particular time when Alliance Cruises Ltd was in difficulty, this boat was chartered at LM 1 for a year.

On the 22nd March 2011 (vide page SP 695), Defendant declared that he has no excel sheets for expenses which IP Limited and himself paid on behalf of Convatec. Subsequently on the 23rd of March 2011 Defendant filed excel expense sheets which he managed to retrieve from his own personal backup files. These list the expenses made by IP Limited on behalf of Convatec and for which he has been in his own personal capacity reimbursed (Dok IP1) These date to expenses between 1995 and 2005. Defendant contends that besides these expenses there have been other expenses which would not have been reimbursed by Convatec. Defendant also exhibited documentation – bank statements for his accounts with BOV which indicate entries for the reimbursements. (Dok IP2 at page SP 722) Defendant explains that the expenses made were not reimbursed individually but were amassed and reimbursed collectively.

Reproduced on the 13th October 2011, Defendant (Vide page SP 751) *inter alia* confirmed that he lost his passport for the years between 1997 and 2005. Defendant filed Doc IPX containing the receipts and and/or copies of cheques relative to the expenses listed in Doc IP1 (vide page 733). He explains that he presented copies of cheques only with regard to those expenses for which he did not find the receipts.

Reproduced on the 19th January 2012 Defendant (Vide page SP 797) clarified that it was the

passport previous to the one issued on the 30th September 1997 that he had lost, the one which was issued on the 12th November 1993. His new passport was issued on the 4th June 2007.

Defendant testified on oath on the 5th July 2017 (Vide page SP 2000) and exhibited copies of the annual returns for IP Limited for the years 1996-2006 (Doc AB1-AB11 at page SP 2004 et seq). Defendant declared that these copies were obtained directly from the MFSA. Defendant explains that in June 1990 together with Plaintiff went to Turkey with cash at hand to purchase the boat Embla. The cash belonged to him and he was the one who paid for it. Embla sailed to Malta and in November 1990 it was sold to Anton Valentino. The purchase price was transferred to Plaintiff's bank account in Germany. After selling Embla, Defendant concluded the purchase of Selin, which happened in April 1995 and used the same arrangement for its registration. The money to pay for Selin was transferred from Plaintiff's account in Germany, and the price was paid by means of two bank transfers using the money acquired from the sale of Embla. In September 1995 Selin was transferred to IP Limited since custom authorities had wanted Plaintiff, who at the time was considered a foreigner, to pay tax on the boat, which she did not want to do and so the boat was transferred to IP Limited, which paid the tax.

Re-produced on the 17th October 2017, (Vide page SP 2075) Defendant explained that he had given Plaintiff an engagement ring with three diamonds some time before their marriage, which ring was given to him by his mother. His brother had given an identical one to his wife. His brother also had an identical watch to the one Defendant mentions in his testimony. Defendant contends that he expects to have the ring returned. Defendant also makes reference to the diamond he had purchased from Diamonds International for Plaintiff, certificate of which was issued in Plaintiff's name which diamond was bought for seven thousand, five hundred and twenty three euros and eighty eight cents (€ 7523.88).

Defendant goes on to explain that San Carlos II was bought by Island Ferry Three Co Ltd which is still its owner. It was paid by the company. Alliance Cruises Ltd which was registered during their marriage, was the operating company of all the boats for commercial purposes. Island Ferry leased San Carlos II to Alliance Cruises Ltd and IP Limited leased San Carlos I to Alliance Cruises Ltd which lease was terminated in 2009.

Defendant IP also testified by means of an affidavit at page 784 et seq. In his affidavit he explains that Gerthard Renner was a close friend of his wife RL, and he had first met Renner in Germany when the parties were on their way to Australia. This was November 1989. At the time

the parties were in a relationship but not yet married. During their stop in Germany, they had met with Plaintiff's family and some of her closest friends, amongst these were Renner and his wife. Plaintiff at the time had suggested that Defendant ought to open a bank account in Germany in the branch were Gert worked. At the time, Defendant did not take this suggestion up. Following this stop, Defendant recalls that they departed for Australia where he stayed for two months. Plaintiff had stayed for a total of four months. On her return trip to Malta from Australia, Plaintiff stopped once again in Germany.

Defendant had in fact travelled to Germany from Malta to meet her. During this time they had once again met with Gerd and this time they had arranged for a meeting at the bank. During this meeting Defendant had agreed to open a bank account with a GBP denomination in his sole name. Defendant recalls that Gerd had suggested to indicate his neighbour's address instead of a Maltese postal address, so that no documentation would be forwarded to Malta. In fact the address of a certain Klaus Schneider was indicated on the relative paperwork. Schneider was a good friend of Gerd's and RL's. Defendant affirms that the scope of this account was to ensure that no monies would be coming to Malta but would instead be deposited in this bank account to avoid tax issues. Defendant contends that Plaintiff was present for the meeting and even acted as an interpreter since Gerd did not speak English very well.

At the time of the setting up of the account in Germany, Defendant had already been working for Convatec Limited since 1980, that is for almost ten years prior to the start of his relationship with Plaintiff. Convatec Limited was a company registered in England whose scope of business at the time was the manufacture and distribution of medical devices. His brother MP was their representative in Malta through his company K&M Limited. Eventually in 1990 following the sale of the British mother company, Convatec re-organised its structure and Defendant became their sole representative in Malta. At the time, that is circa1990/1991, Defendant stopped earning a salary and started working on a commission basis. This commission was being paid into the bank account in Germany.

With regards to BP's health insurance, Defendant explains that this was set up by Plaintiff with the help of a friend of hers who worked as an agent for AX insurance in 1991 when BPwas born. This was a policy with endowment and the *premia* were always paid through this account in Germany. When BPreached a certain age, he had in fact collected the sum payable from this endowment policy.

Defendant confirms that all the debts and penalties which he had to pay to the tax department in Malta for the years 1999-2005, were paid from this German account. Defendant contends that since Plaintiff knew about this, one half of the payments that he had to pay to the tax department should be attributed to her half share in the computation of the liquidation of the community of acquests.

In his affidavit Defendant recounts that he had donated to Plaintiff the airspace overlying his first floor house at number 90 Belvedere Street Gzira, just before they got married. Defendant denies that Plaintiff was involved in the works carried out in the house at first floor level which was in actual fact acquired by IP Limited. With regards to the two studio flats belonging to Plaintiff, Defendant contends that Plaintiff paid for the construction expenses and he made all the works related to electricity, plumbing, plastering and painting as well as the manufacturing of the furniture. Her two apartments were constantly being rented out and all the income from such rentals was kept by Plaintiff. When the apartment was being rented to foreigners Plaintiff would instruct them to pay the rental in advance in one of her foreign accounts. Plaintiff used to works as a hostess with several companies. During such periods Defendant would not see Plaintiff for long periods of time and he would have to stay home and look after BP.

With regards to income tax declarations, Defendant contends that Plaintiff would not declare every income when he filed their joint tax return.

With regards to the matrimonial home, Defendant explains that Plaintiff had in fact paid for the acquisition of the property, however, the transfer was made in Defendant's name. At the time Plaintiff could not obtain an AIP permit to acquire in her name as a foreigner since the purchase price was well below the threshold of the AIP requirement. In 2002, the property was subsequently transferred to their son BP, whilst Plaintiff was given the life usufruct of the said property.

In his affidavit Defendant contends that Plaintiff was never involved in boating and denies her claims that she was involved in convincing him to purchase a small second hand boat. Defendant affirms that it was always his dream to own a boat and the simple reason that the boat he purchased in 1990 was in Plaintiff's name since at the time it was difficult to export foreign currency without a foreign exchange permit. Defendant affirms that it was he who found and purchased the vessel with his own money. Defendant also denies that it was Plaintiff who bought the second car, but it was he who did so but registered the said car in her name as it was a birthday present from him. Defendant also categorically denies that he had asked Plaintiff to bring all of her funds to Malta.

Defendant also asserts that it is not true that he was complaining that she was declaring too much income but whatever Plaintiff declared was her choice.

Defendant was **cross-examined** on multiple occasions during the course of the proceedings.

Start of the Relationship

Defendant confirmed that he met Plaintiff towards the end of 1989 and had left for Australia with Plaintiff on the 1st of November and returned to Malta on the 15th of January since he had to return to work. The possibility of living in Germany was discussed however, Defendant insists that it was never his intention to live in Germany because his daughter Hannah resided in Malta. With regards to the late registration of BP's birth, Defendant contends that Plaintiff refused to sign the relative applications because she was still entertaining the idea of relocating to Germany despite the fact that Defendant had always indicated that this was not an option open to. Plaintiff however, managed to have BP's birth registered in Germany, whereas BP's birth in Malta was registered in 1994. At the time the parties were not yet married.

Defendant affirms that when he met Plaintiff's parents their hotel business had already closed down. He affirms that Plaintiff was not getting on with her brother because of his wife or girlfriend and she was also very disappointed that her parents bequeathed the hotel to her brother whereas she and her sister were left with a relatively small inheritance. As a result of this situation, Plaintiff refused to set up business with her brother and in fact had removed various pieces of furniture from the hotel to use in the Gzira properties.

The transition from being employed to becoming self employed*:*

Defendant explains that he worked with K&M from the 5th February 1979 to the 28th February 1981. This company belonged to his brother MP who was the Director of the said company which acted as the representative in Malta for Convatec. Defendant continues that he resumed his position within this company in 1981 up until 1992 after having stopped for a short while due to illness. As from the 1st of May 1992 up until 31st December 1994, Defendant continued doing this job without his brother after Defendant was appointed as the sole representative of the company here in Malta. Eventually Defendant confirms that he delved into the boating industry, where he worked as a Captain on the MV Macklenburg. However, at the time, this generated no earnings since the San Carlos I was chartered out to gain mileage. Defendant calculates that he chartered

the boat four times a year earning € 500 for each charter. Defendant confirms that he became a captain in the year 2000. Defendant recalls that he delivered circa six (6) boats during the marriage. During cross-examination reference was made to Defendant's role as a consultant, however Defendant affirms that no additional pay was given for such consultancy however, his expenses were paid off by the company to whom he rendered the consultancy services.

The Account in Germany:

Defendant insists that the account in Germany was not opened with the intention of settling in Germany. He confirms that he was introduced to Gert Renner by Plaintiff who was an account holder in the same bank. This account with number 324667 was opened on the 20th September 1990. At the time of setting up the account he used to deposit his end of year bonus which was deposited from abroad in this German Bank account. This bonus in fact did not go through his brother's company K&M. Eventually when Defendant became the sole representative of the company in Malta, he needed a foreign bank account to carry on business with the foreign company. Defendant reiterates that the setting up of this account was Plaintiff's suggestion. Defendant confirmed that on the 2nd January of the year 1995 he was registered as working on a self-employed basis. Defendant recalls that it was Gert's suggestion to indicate a German postal address other than a Maltese one. In fact it was only in 2007 that a Maltese postal address was indicated. That is why he never had any paperwork relating to this account. At this time, the account was closed off after Defendant had withdrawn all the money to pay the dues owed to the Maltese Income Tax Department.

The property in Gzira:

Defendant testified that Plaintiff had developed the airspace he had donated prior to their marriage into two studio apartments. These two studio apartments were being rented out and the income received from the rentals were being deposited in Plaintiff's personal account. Defendant affirms that Plaintiff's family and friends stayed in his apartment while Plaintiff rented hers.

Companies and Assets:

Defendant explains that the vessel MV Macklenburg, is owned by Island Ferry 3 Company Limited and the shareholders of the said company were Defendant and his brothers in equal shares. Defendant contends that the boat was not valued for sale purposes and eventually the vessel was

scrapped and sold by Transport Malta in 2010 since monies were owed to Transport Malta. Defendant recalls that Transport Malta impounded the vessel and it was sold by public auction. Island Ferry Company Limited was given an insignificant sum of circa two thousand euros (€2000) since the outstanding bill to Transport Malta was substantial.

With regards to San Carlos I, Defendant contends that in the past San Carlos 2 was owned by Island Ferry 3 Company Limited. Although there was a promise of sale on the San Carlos 2, this promise of sale did not go through. San Carlos 2 was also demolished as per court decree and no money was received. San Carlos I is owned by IP Limited whose shareholders are Defendant and his son. Defendant affirms that Plaintiff was never a shareholder and that the company as set up prior to the marriage. San Carlos one was also sold by auction but since there was nobody, Defendant bought it himself to be able to scrap it for one euro (€1).

BP's insurance and school fees:

With regards to the *premia on BP's Health Insurance,* Defendant asserts these were paid via his bank account in Germany and that the policy was set up on Plaintiff's initiative, nonetheless Defendant insist that he has always paid the said *premia.* Defendant adds that it may have been the case that Plaintiff paid them but he reimbursed her for said payments. With regards to BP's tuition fees, Defendant contends that he has always paid the relative fees, although it might be the case that the school tuition fees were paid late in 2006 since had already left the matrimonial home at the time.

Considers:

It appears that the parties met towards the end of the year 1989, while Plaintiff was visiting Malta for the second time. The parties travelled together to Australia where they spent a number of months. Shortly after Plaintiff's arrival to Malta, Plaintiff became pregnant with the parties' son, BP who was born in 1991. Eventually the parties contracted marriage on the 17th August 1995 in Riedenburg Germany. The marriage was subsequently registered in Malta (vide the marriage certificate, reg. number 1265/1998 *at page 7* of the acts).

From the acts of the case it appears that the parties had already separated *de facto* in 1997 but reconciled shortly after. The parties parted ways definitively in 2005 and have been *de facto* separated ever since.

Deliberates:

The Court notes that these proceedings were filed in 2006. The Court observes that in the sworn application and counter-claim, the parties put forth requests relating to the care, custody, maintenance of the then minor child BP, including requests relating to access rights. The Court notes that the parties' son, BP is now an adult, and thus all requests pertaining to care, custody, maintenance and access, go beyond the scope of the law. Therefore this Court abstains from taking cognisance of Plaintiff's second and third request and of Defendant's second and third request at set out in his counter-claim.

As indicated in the preliminary section of this judgment, during the sitting dated 26th March 2015 *at page 727* of the acts the parties had informed the Court as then presided that they had reached a partial agreement:

> ***This agreement is to the effect that both parties agreed that the marriage shall be declared to have irretrievably broke down without attributing any responsibility to either of the parties; that the parties renounce irrevocably to the right to request maintenance from each other; that the court and legal referee shall not take into account any evidence tendered by the parties relating to the responsibility of the breakdown of marriage or to the means of the parties and that the parties shall exempt each other from producing further evidence regarding these two aspects of the case. (Page 730 Email dated 11th March 2015 sent by Dr Libreri to Dr Sladden and the concurrence of Plaintiff to such agreement in the reply dated 16th March 2015 by Dr Sladden) which agreement was reiterated before this Court during the hearing of the 26th of March 2015.*** [2]

The parties agreed that the issues still in dispute between them were the following:

> ***1. The claims by Defendant regarding items which Defendant claims are his sole property (mainly silver items).***

[2] Vide minutes of the sitting dated 26th March 2015 at page 727 of the acts wherein the parties informed the Court that they had reached a partial agreement as indicated in Document RI at page 730 of the acts of the case.

2. Defendant claims that he suffered damages amounting to approximately Lm80,000 as a result of him being reported to the Inland Revenue Department by Plaintiff.

3. The liquidation of the community of acquests.

4. Plaintiff claims regarding a life insurance on which premia are paid by Defendant.[3]

In light of the above partial agreement reached by the parties, this Court underscores that this judgment shall be solely limited to addressing and determining the above issues and shall not delve into a consideration of which of the parties is responsible for the breakdown of the marriage together with the legal consequences generally associated with the determination of fault. This Court underscores in its deliberations that it has only taken cognizance of the evidence pertaining and relating to the outstanding issues which still remain in dispute and has summarised the pertinent testimonies in so far as these testimonies touch upon the issues which have yet to be determined and testimonies which are pivotal to the credibility or otherwise of the witnesses concerned.

In light of the above partial agreement, and similarly to the requests relating to the care and custody, maintenance and access of BP, this Court shall abstain from taking further cognizance of the first request limitedly insofar as the attribution of fault is concerned, and abstains from taking cognizance of the fifth request insofar as the applicability of article 48,51 and 55 of the Civil Code is concerned. The same applies limitedly to the first request of the counter claim in so far as the question of fault is concerned, and the fifth request of the counter claim in its entirety.

Also in relation to this aspect, the Court has seen that in his note of submissions Defendant affirms that Section 5 and the vast majority of Section 6 of the Plaintiff's note of submissions are irrelevant to this case, in light of the partial mutual agreement reached by the parties on the 26th of March 2015. The Court has thoroughly analysed the indicated sections of Plaintiff's note of submissions, and shall abstain from taking cognisance of the sections indicated hereunder. [4]

[3] Claim 5 and claim 6 have been renounced by the Plaintiff in her final note of submissions.

[4] The relative sections of the Note of Submissions filed by Plaintiff are the following: Section 5: Introductory paragraphs on pages 23- 24; Paragraph a on page 24; Paragraph c on pages 25-26; Paragraph d on page 26-29; and Section 6: Paragraph i on page 30-33; Paragraph iii on page 35.

The Court also notes that in her note of submissions *at page 1660 et seq*, Plaintiff renounced to her claim for a contribution from the Defendant for her son's health expenses and his tertiary education. Plaintiff affirms that she is proud of having funded her son's tertiary education. Therefore Plaint's claim for her son's health expenses and tertiary education shall not be addressed.

The Court also notes that Plaintiff is voluntarily renouncing to any claim and/or credit she might have in respect of the paraphernal funds she utilized for the acquisition of the property in Qui Si Sana, which eventually became the matrimonial home. Plaintiff explains that this property as eventually transferred by title of donation to the parties' son, and thus, she does not seek to pursue this matter further. As a result, this Court shall not take cognizance of paragraph 53 in Defendant's note of submissions.

Article 1320 of the Civil Code provides:

> ***The community of acquests shall comprise –***
> ***(a) all that is acquired by each of the spouses by the exercise of his or her work or industry;***
> ***(b) the fruits of the property of each of the spouses including the fruits of property settled as dowry or subject to entail, whether any one of the spouses possessed the property since before the marriage, or whether the property has come to either of them under any succession, donation, or other title, provided such property shall not have been given or bequeathed on conditions that the fruits thereof shall not form part of the acquests;***
> ***(c) saving any other provision of this Code to the contrary, the fruits of such property of the children as is subject to the legal usufruct of any one of their parents;***
> ***(d) any property acquired with moneys or other things derived from the acquests, even though such property is so acquired in the name of only one of the spouses;***
> ***(e) any property acquired with moneys or other things which either of the spouses possesses since before the marriage, or which, after the celebration of the marriage, have come to him or her under any donation, succession, or other title, even though such property may have been so acquired in the name of such spouse, saving the right of such spouse to deduct the sum disbursed for the acquisition of such property;***
> ***(f) fortuitous winnings made by either or both spouses, and such part of a treasure trove found by either of the spouses, as is by law assigned to the finder, whether such***

spouse has found the treasure trove in his or her own tenement, or in the tenement of the other spouse, or of a third party:

Provided that such part of the treasure trove as is granted to the owner of the tenement shall belong entirely to the party in whose tenement the treasure trove is found

This article explains the assets that comprise the community of acquests whilst Article 1334 (1) denotes the assets that fall within paraphernal property. Indeed, **"all the property which is not included in paragraphs (a) to (f) of article 1320 or is not dotal, is paraphernal**."

Damages allegedly suffered by Defendant in light of the Inland Revenue Investigations:

Throughout the proceedings Defendant has on many occasions alleged or insinuated that it was Plaintiff who had reported him to the Inland Revenue Department and therefore, is expecting Plaintiff to pay monetary damages to the tune of LM 80,000. In his testimony Defendant explained that many of the documents he had saved and backed up on his computer relating to the commissions received from Convatec and the relative deposits made in his German bank account. These documents have been found in the Authorities' possession, and this after Plaintiff had accessed Defendant's computer account when she had asked an IT technicIPto give her access to her account on the parties' computer.

This Court has also had the opportunity to hear Plaintiff testifying about this account and observes that Plaintiff has consistently rebutted this allegation. In her testimony Plaintiff explained that the couple shared the same computer however, they each had a separate user account. Plaintiff recalled that she never had reason to be suspicious or dubious of her husband's business transactions or his fidelity, and it was only after Defendant had started to act strangely and skipping lunch and dinners at home, and after having blocked her account, that she started having such doubts. She affirmed that when the IT technicIPunlocked her account, he had only copied items that Plaintiff requested. Plaintiff affirms that she also found the transfer slips of all the money transfers, and documentation evidencing his extra-marital affairs. In her testimony, Plaintiff, while admitting that she had printed a few things and eventually made copies of all this, strongly contended that she kept all this to herself, albeit forwarding a copy of this documentation to her lawyer for possible use in the separation proceedings and this contrary to what Defendant submits in his note of submissions. Plaintiff categorically denied that she was the one that sent these documents to the Commissioner

of Inland Revenue but affirmed that Defendant had many enemies, and all the documentation was exhibited in the Criminal Court proceedings which were instituted against Plaintiff.

The Court recalls that as declared by both parties in their respective testimonies, the parties filed a joint income tax return for quite a number of years. In this respect, Plaintiff claims that Defendant used to criticize her for declaring excessive income, whereas Defendant affirms that Plaintiff did not declare all her income. The parties seem to have adopted the same *modus operandi* in so far as the income from the rents of the Gzira properties were concerned, as they both used to deposit the said rent in their respective accounts without declaring the said income as affirmed *ex admissis* by Plaintiff.[5] Thus, and in light of these considerations, this Court holds that it would certainly not have been in the Plaintiff's interest to denounce Defendant to the Inland Revenue Department since she would have lost a substantial amount of money that would have otherwise pertained to the community of acquests. Moreover, it is this Court's considered opinion that Defendant failed to submit concrete evidence which, on a balance of probability, proves in any way that Plaintiff denounced Defendant to the Inland Revenue Department.

In his testimony, Defendant contends that since Plaintiff knew about the fact that he was receiving his commissions in the German bank account, one half of the payments that he had to pay to the Inland Revenue Department should be attributed to her half share in the computation of the liquidation of the community of acquests. Conversely in her testimony, although Plaintiff admits that she had introduced Defendant to her friend Gert, that she knew about the existence of his account, and that she had on occasion been the recipient of transfers of funds from this account, Plaintiff denies that it was on her suggestion that Defendant opened the relevant bank account in Germany and denies that this was done in order for Defendant to evade tax. While Defendant contends that Plaintiff was actually present for the meeting with Gert at the bank and acted as an interpretor, Plaintiff affirms that she does not recall this, and categorically denies knowing Defendant's intent.

The Court notes that both parties agree that Plaintiff did not have access to this account, that this account was solely on Plaintiff's name and that the said account was opened prior to the parties' marriage.

---

[5] *Dr Albert Libreri: So when you rented them and there was electricity what happened to the rent?*
RL: I kept the rent like Mr P kept the rent when he rented his own
Dr albert Libreri: And did you ever declare it as part of your income
RL: No I did not declare it and neither did Mr P declare it. (Cross examination conducted on the 27th April 2022 vide fol 1248 of the acts)

Although this Court is mindful that the timeline outlined by Plaintiff in her testimony of the years as the events in the parties' lives unfolded, might not have been perfectly accurate, it is this Court's considered opinion that Plaintiff was not aware of Defendant's true intentions when Defendant opened the German bank account. Although this Court understands that the account in question was opened by Defendant years before Convatec began paying him in commission, he initially began utilizing this account by depositing his end of year bonus of the said account, as a trial run to test the logistics of the procedure. The Court finds Plaintiff's testimony credible whenever she reiterates that she never enquired about the family's financials because she had learned over time, that whenever she did, she was utterly ignored by her husband.

It is this Court's considered opinion that there is no legal basis for damages to be awarded by this Court as a result of an alleged or factual maladministration by a spouse of the community of acquests in a suit for the liquidation and division of the community of acquests. Consequently, the Court denies Plaintiff's request for half of the sum of EUR 185,000 that Defendant paid to the Inland Revenue Department in Malta. In the same manner, this Court denies the request by Defendant for this Court to deduct from Plaintiff's share of the community of acquests, the amount Defendant paid in tax and penalties on the income deposited in the German bank account as a result of Plaintiff's alleged denunciation, as this request is void of legal and factual foundation. **Indeed, the tax in question was due and had to be paid. Consequently, the essential value of the community of acquests decreased by that amount.**

Paraphernal Property and Claims

Plaintiff's claim re MY Selin

In this regard, Plaintiff contends in her note of submissions that it was she who in April of 1991 had funded the purchase of the yacht MY Selin. Plaintiff explained that she had advanced the sum of twenty five thousand, five hundred and eighty two deutschmarks (DM 25,582) to Defendant from her German account, which vessel is to this date still in the Defendant's possession and the relevant loan is still outstanding to this present day.

Defendant conversely, affirms that Plaintiff's claim is once again unfounded and contradicted by the evidence produced in these proceedings. Defendant contends that in June 1990 he had acquired the vessel with the name of Embla for the price of LM 9000, circa € 21, 276.60. The said sum was

paid in cash, and the vessel was registered in Plaintiff's name. In November 1990, Embla was sold for the price of 55,000 DM that is circa € 28,000. The funds were deposited in Plaintiff's account and then used these funds to pay for MY Selin which was also registered in Plaintiff's name. Defendant explains that at the time, as a Maltese citizen he would have been obliged to disclose the origin of the funds to the Maltese Authorities. It would not however, have been considered suspicious if Plaintiff sold a vessel without monies being paid into a local bank account, with no trail of funds, since she was a foreign national and therefore it would not have been unusual that the monies be deposited in a foreign bank. However, when the boat was brought to Malta, it became apparent that Plaintiff would have had to pay tax because she was not a Maltese national. It was therefore decided that the vessel be transferred to IP Limited who paid all the relative tax payments. At the time, Defendant underscores that Plaintiff made no demands for payment because the money used had never been hers but Defendant's.

Michael Savona testified that MY Selin was provisionally registered on the 25th September 1995 and permanently registered on the 25th April 1996. Today it is registered in the name of IP Ltd. The boat is operational. He confirmed that it was initially bought by Plaintiff in virtue of the Bill of Sale Dok MS5, from Anatolia Yachting Co Ltd, on the 26th April 1991. Plaintiff then transferred this boat to IP Ltd in virtue of the bill of sale Doc MS6 on 25th September 1995. The boat was always registered on the name of IP Ltd.[6]

Several members of Defendant's family gave evidence about the origin of funds for the purchase of Embla. Indeed, CP held that Defendant had found a buyer for *Embla* and organized the settlement *via* Deutsche Bank account in Germany. *Selin* was then bought using the funds which had been directed to the German account from the first sale. Similarly, JP, Defendant's brother affirmed that after a few months from Embla's acquisition, Defendant had bought *Selin* from the same chartering company. *Selin* was also registered in Plaintiff's name. Eventually, witness contends that *Selin* was then sold to the company IP Limited since Plaintiff was requested to pay hefty duty on the boat. Following the sale to IP Limited, it was the company that paid the duty due on the boat. Rachel Zammit Tabona attests that with regards to Selin, Defendant had told them that he had used the proceeds of the sale of Embla to purchase Selin.

Throughout the testimony tendered by Defendant, Defendant explained that in June 1990 together with Plaintiff went to Turkey with cash at hand to purchase the boat Embla. The cash belonged to him and he was the one who paid for it. Embla was sailed to Malta and in November 1990 it was

[6] (Vide xhieda Michael Savon a fol SP 1831 et seq, SP 1878 et seq)

sold to Anton Valentino. The purchase price was transferred to Plaintiff's bank account in Germany. After selling Embla, Defendant concluded the purchase of Selin, which happened in April 1995 and used the same arrangement for its registration. The money to pay for Selin was transferred from Plaintiff's account in Germany, and the price was paid by means of two bank transfers using the money acquired from the sale of Embla. In September 1995 Selin was transferred to IP Limited since custom authorities had wanted Plaintiff who at the time was considered a foreigner to pay tax on the boat, which she did not want to pay and so the boat was transferred to IP Limited, which paid the tax.

The Court observes that during her testimony Plaintiff could not recall with certainty which of the two yachts was first acquired but insisted that it was she who had given the Defendant the money to purchase the vessel.

The Court notes that DOK N at page SP 213 attached to Plaintiff's affidavit evidences a transfer tramite Deutsche Bank between Plaintiff and a certain Mehmet T. Erda on the 12th April 1991, for the amount DM 3,032,50 including the relative charges from account number 3845617. Document M at page SP 212 which includes details written in ink, and is dated 23rd April 1991, the Court understands that the said document shows a transfer of funds from Plaintiff to Defendant to the tune of DM 25,500. Copies of these documents are also found at page 576-578 of the acts and were marked as Doc RL/BB3, Doc RL/DB 6 and Doc RL/DB4 which were filed by means of a note dated 12th April 2011 by Plaintiff. The document at page 576, Doc RL/BB3 shows the payment effected by Plaintiff to Mehmet T. Erda for DM 26.866, and is dated 26th April 1991. Another payment to the said individual of DM 3,032. 50 was also effected prior to this payment on the 12th April 1991. A receipt of DM 25,500 at page 578, Doc RL DB4 shows payment effected by Plaintiff to Defendant.

The Court observes that Doc RL/BB 3 at page 576 et seq while addressed to Plaintiff, and in the English Language designates a confirmation of the transfer of the sum of 26,866DM to Mehmet T. Erda on the 26th April 1991 for MY Selin. Doc RL/DB6 at page 577 on the other hand indicates that the transfer to the same Mehmet T. Erda of 3, 032.50 DM effected on the 12th April 1991 had been transferred from the account with number 3845617(00) which has been shown to be Plaintiff's account. Doc RL/DB4 at page 578 also shows that the transfer happened from account with number 38,45617 for the amount of 25,500.

Doc RL/DB5 shows a deposit which has been made in account 324666760 of DM 25,5000

between 22nd April 1991 and 22nd May 1991.

In examining the two versions given by the parties, this Court is comforted with bank documents of funds originating from Plaintiff's German bank account to the Defendant to the tune of twenty five thousand, five hundred deutschmarks (25,500 DM) apart from the transfer of three thousand and thirty two point fifty deutschmarks (3032.50 DM) to Mehmet T Erda. These banking documents are contrasted by Defendant's and his family's assertions which are devoid of any documentary proof. Indeed no evidence has been produced by Defendant on the cost of Embla, on the alleged loan by his mother, and the alleged sale of Embla. Reassured by the banking documents, this Court holds that Plaintiff's origin of the paraphernal funds for the purchase of MY Selin is proven according to law.

Thus, and in light of the above considerations, Defendant is to refund the sum of twenty eight thousand, five hundred, and thirty two point fifty deutschmark (28,532.50 DM)[7] to Plaintiff which is equivalent to fourteen thousand, five hundred and eighty eight point forty-four deutschmarks (€14,588.44) and not €25,582 as indicated in Plaintiff's submissions.

Vacheron Constantin Watch

In her submissions, Plaintiff contends that it is rather hard to believe Defendant's claim, when Defendant himself is not even sure of the make of the watch in question, and this with reference to Defendant's testimony wherein he had first mentioned the Vacheron Constantin and then a Rolex. Plaintiff affirms that it is even harder to believe, Defendant's allegations, when it results that Defendant did not file a police report in respect of this alleged loss. Plaintiff also adds that Defendant's testimony was also conflicting in relation to the value of the said watch and that he failed to provide any kind of documentation to prove the valuation of the watch.

Defendant attests that he consistently testified that his mother had given him a Vacheron Constantin watch, and this was also confirmed by his siblings, his daughter and his brother's wife. Although Defendant concedes that he did in fact make reference to a Rolex, the context in which it was mentioned during his testimony of the 17th May 2018, was not as Plaintiff attempted to portray with her selective reference to the evidence. Defendant makes reference to Doc IPX2 , a valuation from the 23rd October 2017 of "an identical watch" that had been given to Defendant's brother JP, which indicates the watch was valued at € 24,000. (vide page SP 2110)

[7] DM 25, 500 + DM 3032.50

The Court makes reference to Defendant's testimony dated 17th May 2018 at page 834A et seq of the acts, wherein Defendant was being cross examined by Plaintiff with regards to Defendant's previous testimony dated 18th May 2016. Defendant is asked about the handmade men's watch and he replies that it was a Vacheron Constantin. Eventually the line of questioning made reference to the list of items indicated in Doc X1 (page SP 1743) which Defendant states were missing when he went to collect his possessions from the matrimonial home. Confronted with the fact that the watch, together with the silver lamp and other silver items were not included in the report filed by Defendant to the police, Defendant affirms that at the time he could not remember what was missing, while he was attempting to pack his belongings. In this testimony Defendant recalls a particular night wherein:

IP: I got home and found that my wife no longer lived there, my son no longer lived there, because she decided from her wisdom, she did not discuss it…
Judge: Did you take any objects in the night in question?
IP: No
Dr Sandra Sladden: No, do you recall going to the police station at around four o' clock and filing your own statement?
Judge: Four o'cock in the morning?
Dr Sandra Sladden: No that same day..
Judge: at 4pm
Dr Sandra Sladden: Yes
IP: I don't recall.
Dr Sandra Sladden: Okay on that same day at four o'clock you went to the police station and
IP: I don't recall
…
Dr Sandra Sladden: I
Dr Sandra Sladden: Is the same Vacheron Constantine[in the report] you mentioned in your Doc X1?
IP: I made a report for a watch missing, which was her watch, she gave me as a Rolex, claiming it was a Rolex, claiming it was a Rolex, she told me that it was stolen because she got stopped in a roadblock and she said they stole it from you when you were in the car, and I said I didn't even know it was in the car, it was an original Rolex only to find out later on that it was not an original Rolex.

Dr Sandra Sladden: So here you are referring to another watch
IP Which was her watch
.....

IP: The only watch that I can recall going to the police station with is the one where she gave back to me herself, to tell me that it was a Rolex and I….

It is this Court's considered opinion that from this extract of Defendant's testimony rather that that reproduced by Plaintiff in her respective note of submissions, it is apparent that Defendant here was making reference to a second watch; and only seems to recall filing a police report with regards to this second watch: a Rolex which appears to have been given to him by Plaintiff.

With regard to the Vacheron Constantin Watch

It is however, this Court's considered opinion that Defendant failed to provide convincing evidence that he had in fact been given the Vacheron Constantin watch. Indeed Defendant failed to provide any photographic evidence, showing Defendant actually wearing the said watch, other than photos of his brother's watch and an evaluation of his brother's watch. Neither did Defendant proffer evidence showing the insurance thereof and the valuation given by his Insurance Agent. It is safe to presume that a watch of the value cited by Defendant, that is twenty four thousand euros (€24,000), would be adequately insured.

Silver Items:

Prior to delving in the merits, this Court affirms that it has not taken cognizance of the letter dated 16th December 2015 marked as Doc BB, expressly marked as having been sent without prejudice, where reference to has been made by Plaintiff in her submissions.

The Court observes that in her submissions, Plaintiff affirms that the witnesses produced by Defendant do not even agree on the description of these items and nor do they agree on where and when said items were found in the matrimonial home and when they ceased to be there. Defendant on the other hand, contends that despite Plaintiff's declarations, the fact that these items were gifted to Defendant by his parents or other relatives was confirmed by his siblings, friends,

daughter and his helper.

In his submissions, Defendant in particular lists the following items: a large Maltese silver oil lamp, a large Maltese silver tray with handles and an edged design, a large coffee pot and a large tea pot. Defendant exhibited a valuation for the large silver oil lamp, a photo of which was exhibited in the acts of the case and marked Dok AZ2 (at page SP 2074) which was valued at approximately LM 20,000 that is, circa forty seven thousand, two hundred and eighty one euros and thirty two cents (€ 47,281.32). With regard to the other items, the Court notes that in his submissions, Defendant requested that since there is no official valuation, the Court should estimate the items as antique Maltese silver and that the Court should establish *arbitrio boni viri* total value of € 90,000, that is € 42,718.53 for the silver tray, and the coffee and tea pots.

The Court notes that although there was exhibited photographic evidence of some of the silver items claimed by the Defendant as his paraphernal property, the Defendant failed to request the Court to appoint an expert to give a valuation thereof based of photographic evidence. The Court furthermore finds that there is no evidence that the silver items were indeed antique items and is of the opinion that the value cited by Defendant for the silver items to the tune of EUR 90,000 is exorbitant and bears no relationship to market value prices. Indeed, there was evidence to the effect that some of the items were not silver but only silver plate[8]. The Court notes furthermore that no evidence has been proffered that these items had been insured and therefore no insured value was proffered by Defendant. The Court therefore, orders Plaintiff to return the said silver items, within a month from the date this judgment becomes a *res judicata.* In default, Plaintiff shall pay Defendant the sum of EUR 5,000 *arbitrio bon viri.*

Three diamond ring:

With regards to the three diamond ring, the Court notes that Plaintiff did not address this item of jewellery in her note of submissions, apart from a scant mention in page three of her submissions, when addressing other paraphernal objects indicated by Defendant. The Court has seen the affidavit produced by Defendant's daughter Hannah (vide page SP 974), wherein she explained that the ring in question belonged to her grandmother, Defendant's late mother, and had once belonged to her mother, Defendant's first wife. This ring served as her engagement ring, which was eventually returned to Defendant after the breakdown of their marriage. This version is also

[8] Vide evidence at page 774, evidence of JP.

confirmed by witness CP in her cross-examination, who affirms that despite the fact that she was not present whenever Defendant gave Plaintiff the ring, she had seen Plaintiff wearing it and knew that Defendant had given Plaintiff the ring that once belonged to his mother, the very same ring that had served as his first wife's engagement ring. The Court notes that this has also been the stance Defendant has taken throughout his testimony.

It also appears to this Court that Plaintiff never referred to this ring in her testimony and has not contradicted Defendant's assertions. It is this Court's considered opinion that since the ring in question is Defendant's paraphernal property, the said ring is to be returned to Defendant. Thus and in light of the said consideration, this Court orders Plaintiff to return the said ring within a month from when this judgment becomes a *res judicata.* In default, and should this time-frame lapse, the Court is estimating the value of the ring at two thousand euros (EUR 2000) *arbitrio viri* which shall be paid by Plaintiff to Defendant.

The Old Currency:

This Court observes that in her note of submissions Plaintiff affirms that Defendant does not even specify as to whether the German Deutschemarks were coins or paper currency, where they were held if at all in the matrimonial home, nor did he give any indication as to their value. Plaintiff adds that Defendant did not even bring forward any proof in support of the claim that these were taken from him by Plaintiff, and that apart from Defendant it was only CP who mentioned these Deutschemarks during her testimony of the 17th April 2018 before the Legal Referee, testimony which according to Plaintiff is solely based on hearsay and should be disregarded. (at page SP 2084 et seq)

On the other hand, in his note of submissions, Defendant contends that in his testimony he adequately explained that these consisted in three English silver coins and a collection of 18 pre-war Deutsch marks which were sequentially numbered. From the testimony produced it appears that these belonged to Defendant's father and were then given to Defendant. Defendant makes reference to his testimony dated 17th October 2017 (vide page SP 2075). Thus, Defendant contends that Plaintiff's argument that no evidence regarding these items was produced, is therefore entirely unfounded.

The Court notes that no attempts at an evaluation of the said currency were effected by Defendant and therefore this Court, in the light of the fact that the condition of these notes is not discernible,

is evaluating the same in the amount of EUR 200 *arbitrio boni viri.*

Diamond given to Plaintiff in 2005:

The Court observes that in paragraph 54 of his note of submissions, Defendant makes reference to the diamond he had given to Plaintiff in the year 2005, that is just a few months prior to their *de facto* separation. Defendant invokes articles 1810 and 1812 of the Civil Code, which provides that donations made between spouses, are null unless authorized by the Court, unless the gift is of small value.

Defendant contends that the diamond in question was bought for the price of seven thousand, eight hundred and three euros and thirty one cents (€ 7,803.31) and thus is not of small value. Therefore, since there was no authorization, the donation is null and thus Plaintiff should be ordered to return the diamond or order Plaintiff to pay the said sum of € 7803.31. Plaintiff makes no reference to said item in her submissions.

In his testimony dated 18th May 2016 before the Legal Referee, Defendant explained that[9]:

"In January 2005, Plaintiff wanted a diamond for her birthday. I got a diamond from Pio Azzopardi Sapphire Jewellers in Sliema. She did not like it and I had to return it. I then got a diamond numbered with a certificate which I put in her name, from Diamonds International in Valletta. ***There was also a valuation for round LM 1000 to LM 3000****. I gave it to Plaintiff unmounted. Eventually on her direction I had it mounted on a pendent at Diamond's International. I have seen the pendent on Plaintiff after separation, I believe with a different mounting."*

The relative articles of the Civil Code provide:

> ***1810. (1) Any donation made by one of the spouses to the other spouse during the marriage, without the authority of the court, is null, even if such donation is reciprocal or remuneratory.***
>
> ***(2) If there be such authority, however, one of the spouses may make to the other spouse, a donation of present property, or of present and future property, or of such***

[9] Vide testimony at page SP 1741.

> ***property as the donor may leave at the time of his death; and to any such donation the provisions of article 1806 shall apply***
>
> ***1812. The authority of the court mentioned in the last two preceding articles shall not be required with regard to presents or manual gifts of small value, regard being had to the circumstances of the donor.***

In this regard the First Hall Civil Court in ***John Vassallo vs Moses Vassallo*** decided on the 16th January 1957 held that:

> ***Donazzjoni bejn il-mizzewgin hija nulla; jekk tkun saret minghajr l-awtorizzazzjoni tal-Qorti kompetenti; imma din l-awtorizzazzjoni mhix rikjesta meta si tratta minn rigali jew donazjonijiet manwali u ta` valur zghir skond ic-cirkustanzi tad-donanti.***

The Court has seen that in accordance with Dok AZ1 (at page SP 2072), an email sent by DorIPBimbli from Diamonds International in relation to the purchase of the said diamond, the total retail price was in excess of nine thousand euros (€ 9015.81), however following a discount, Defendant had paid € 7803, a valuation that was not confirmed on oath.

Apart from the fact that the value of the diamond in Defendant's own word, was **between one thousand and three thousand maltese liri,** it is this Court's considered opinion that the term "circumstances of the donor" refer to the financial standing of the relevant donor. Although this Court agrees that the value of the diamond in question may be considerable to the ordinary man in the street, especially in comparison to the value of the donations indicated in local jurisprudence of the 1950s-1960s on the matter, it is this Court's considered opinion that Defendant's financial standing and background permitted Defendant to buy this diamond relatively easily, as it in fact transpired from Defendant's own testimony, where he simply went and bought Defendant another diamond as a gift for her birthday, after the first diamond he purchased was not to Plaintiff's liking. Therefore this Court holds that in light of the parties' financial circumstances, the ease with which this diamond was purchased, and the value of the diamond in question, the authority of the Court as envisaged in Article 1810 cannot be deemed to have been necessary. Therefore the donation in question is valid.

Life Insurance Policy:

In her affidavit, Plaintiff mentions that Defendant held an investment portfolio with Scottish Provident International. Plaintiff annexed a document, Dok Z at page SP 276 which corroborates her statement. The Court notes that Dok Z at page SP 276 is a letter addressed to Defendant from First Retirement Planning Ltd with Registration number 22067 with registered office 25, Villa Eden Princess Elizabeth Street Ta'Xbiex. The Policy is question appears to be one in a GBP denomination and was commenced on the 18th June 1996, that is after the parties' marriage. This portfolio totals the sum of fourteen thousand, three hundred and eighty nine sterling (GBP 14, 389) which is equivalent to seventeen thousand two hundred and sixty six euros (€ 17, 266).

The Court took note of Defendant's submissions in this regard in paragraphs 50-52 of his note of submissions, however, it does not share Defendant's argument. Thus, it is this Court's considered opinion that the amount indicated is to be equally divided between the parties and thus orders Defendant to pay Plaintiff the sum of eight thousand six hundred and thirty three euros (€ 8633).

Rental of Gzira Apartments

This Court has observed that the income derived from the rental of the Gzira apartments has throughout the pendency of the proceedings been a bone of contention between the parties. In her note of submissions Plaintiff affirms that it was Defendant who used to rent both his apartment in Gzira and even his maisonette in Ta Xbiex during the period Defendant was residing with the rest of the family in the matrimonial home in Qui Si Sana. She adds that Defendant gave vague and ambiguous replies, trying to insinuate that these rentals were being pocketed by Plaintiff, and thus requests that her share of this rental income is established by this Court *arbitrio bon viri.*

On the other hand, Defendant contends that the claim advanced by Plaintiff is unfounded and that she failed to sufficiently prove that Defendant was actually renting out his apartment on a regular basis. He adds that the acts of the proceedings show the exact opposite, namely that his property as hardly ever rented out and that for the most part, his property was occupied either by Plaintiff's friends or sometimes his daughter Hannah. Defendant contends that this version is amply corroborated by other witnesses. Defendant also affirms that in any case, it was Plaintiff who used to keep all her income to herself and even refused to answer any of the Court's questions about her income. He declares that any income from the rental of the said property as used for the benefit of the community and thus it is Plaintiff who is obliged to pay Defendant half of the rental income received by her and this Court should, *arbitrio bon viri,* establish an amount payable to Defendant

by Plaintiff of not less than ten thousand, five hundred euros (€ 10,500).

From the acts of the case, it appears that Defendant had acquired a first floor house, 90 Belevedere Street Gzira and a garage prior to the parties' marriage. By virtue of a public deed dated 29th July 1995, in the acts of Notary Dr Margaret Heywood (vide document at page 810 et seq marked as Doc IPX 3), Defendant donated the overlying airspace to Plaintiff on which two other apartments were built. Despite the fact that the parties, together with the witnesses they produced, have contest as to which party actually contributed towards the financing, the construction, finishing and furnishing of the said properties, it appears that, on a balance of probabilities, it was Plaintiff's money that financed the construction and finishes of the two top apartments, while Defendant contributed with manual labour.

What the Court will consider is whether the parties respective claims for a share from the income derived by each of the parties, from these rentals, is warranted or not.

Andrew Hooper produced by Plaintiff, held in his affidavit that he had rented flat number 1 from Defendant for a monthly rental of LM 90, while the other two apartments which he later got to know belonged to Plaintiff, were vacant except for a short period of around three weeks when she had friends from abroad staying in one of these apartments. Witness adds that he met Plaintiff again in 2005 and Plaintiff allowed him the use of one of her apartments free of charge. During his last stay Defendant's studio flat was occupied by a German lady. Plaintiff's sister,SL, testified that the two tiny studio flats Plaintiff had, were used to host family and friends from abroad.

AC, Defendant's best friend, affirmed that the flats in Gzira did not take long to be done up and that in 1994 while he was in Malta, the flats were being occupied but could not say whether family and friends were being charged any rent.

Sylvia Grech, the parties' cleaner, testified that once the apartments were ready, Plaintiff did not waste any time and rented each separate floor. She confirmed that it was only the top two floors that were rented out.

Plaintiff *inter alia* testified that most of the times the property was rented to family and friends. Plaintiff confirms that this property together with that belonging to Defendant were advertised for rent and that both their phone numbers were indicated.

In his testimony Defendant affirmed that Plaintiff's two apartments were constantly being rented out and all the income from such rentals was kept by Plaintiff. When the apartment was being rented to foreigners Plaintiff would instruct them to pay the rental in advance in one of her foreign accounts. Defendant affirms that Plaintiff's family and friends stayed in his apartment while Plaintiff rented hers.

The Court furthermore noted that there is evidence to substantiate the fact that the top flats' supply of water and electricity had been severed and that this state of affairs lasted for a substantial period of time.

After careful consideration of the evidence produced in this regard, it is this Court's considered opinion that neither party shall be ordered to pay the other any share from the income derived from the rental of the said properties since in the circumstances, it is probable that they largely cancel out each other and the evidence proffered by the parties in this regard is negligible as to value of rental and rate of occupancy.

San Carlos 1, San Carlos II – Mv Mecklenburg

With regards to the vessels indicated in sub heading above, Plaintiff contends that San Carlos I was acquired during the marriage but was registered in the name of IP Limited, and this without Plaintiff's consent. This company, according to Plaintiff, is nothing but a front to enable Defendant to carry on his personal business. Consequently Plaintiff has a legitimate interest in the assets of the company. The vessel today does not have any value and was since sold by judicial auction and bought by Defendant himself for a consideration of €1. Plaintiff is demanding twenty nine thousand, five hundred euros (€29,500) as her share of this asset.

With regards to the vessel San Carlos II, Plaintiff affirms that this vessel belonged to the company Island Ferry Three Company Limited, in which Defendant held one third of the shares. The said vessel was meant to be sold of the consideration of € 106,200, however the sale was not concluded and as a result, the vessel is today unseaworthy. Thus, Plaintiff is demanding seventeen thousand, seven hundred euros (€17,700) as her share from this asset.

With regards to the MV Mecklenburg, Plaintiff asserts that this vessel belonged to Island Ferry Three Company Limited of which Defendant was a one third shareholder with his two brothers. According to an email dated 3rd September 2005, (Doc CC with Plaintiff's affidavit) Defendant

was asking for a sum of € 650,000 for the sale of this vessel on the open market. This sale was not concluded. The vessel is totally abandoned and the brothers even neglected to pay the mooring and other fees. The vessel was eventually sold by court order in 2010. Plaintiff is claiming that her share from the said asset is one hundred and eight thousand, three hundred and thirty-three euros (€ 108,333).

Defendant on the other hand, maintains that Plaintiff's claims are unfounded. He adds that the vessel San Carlos I is owned by the company IP Limited which was set up before the parties marriage and Plaintiff did not bring forward any evidence to substantiate her allegation that this company is merely a front for Defendant personally. Defendant contends that the fact that the company was incorporated before the parties' marriage there can be no presumption that it was incorporated to deprive Plaintiff of anything that by law was hers. Nor did Plaintiff bring forward nay evidence which shows that this vessel was purchased using monies belonging to the parties community of acquests and not belonging to IP Limited. Thus this request ought to be rejected by this Court due to lack of evidence.

With regards to the vessels San Carlos II and MC Mecklenburg, Defendant explains that both vessels are the property of the company Island Ferry Three Limited and these vessels cannot be considered as forming part of the community of acquests, since the company has a separate and distinct legal personality, and any property owned by the company is the owned solely by the company and not by its shareholders. Shareholders are entitled to the payment of dividends payable from the company's net profits, thus Plaintiff's claim for a share of the property of the companies themselves is unfounded.

San Carlos I

From the evidence produced, it has been clearly established that the company IP Limited with registration number C 16722, a private limited liability company, which was incorporated registered on the 13th September 1994, that is prior to the parties' marriage (17th August 1995) and as such is paraphernal.

From the Memorandum of Association it transpires that Defendant holds 499 ordinary shares, whereas since January 2013, the parties' son BP holds 1 ordinary share in he company. As confirmed by Michael Savona, on behalf of the Merchant Shipping Directorate within Transport Malta during his testimony of 17th May 2017 San Carlos I is owned by IP Ltd and was

provisionally registered on 21st March 2002 and provisionally registered on 21st March 2002 and permanently registered on the 17th February 2003. Doc MS, a public deed of sale, in the acts of Notary Dr Margaret Heywood dated 30th March 2001, evidences that the sale of the vessel San Carlos I was effected by Defendant for and on behalf of the company IP Limited from a certain Carmel Muscat for the consideration of LM 19,500. (Circa € 45,422.78). This sale is also reflected in the bill of sale for San Carlos I.

In her note of submissions, Plaintiff makes reference to the reply filed in the acts of the application with number 43/2017 RGM. This Court has taken cognizance of all the acts pertaining to the said application. The Court notes that in the acts of this application following the same allegations made by Plaintiff, namely that San Carlos I was acquired using monies belonging to the community of acquests since the company IP Limited was registering a loss prior to and following the acquisition of the said vessel, Defendant, by means of a note dated 6th September 2017 at page 53, declared that IP had loaned the sum of LM 20,000 to IP Limited for the acquisition of the vessel San Carlos I and was personally repaid back throughout the four years that followed. Defendant also explained the financial arrangement for the repayment of the loan and exhibited the relative documentation to this effect, which evidence the repayment thereof (Vide pages 54-71). The Court has also seen the note filed by Plaintiff dated 11th October 2017, wherein she pointed out that Defendant had in actual fact admitted that the money utilized for the acquisition of the San Carlo I belonged to the community of acquests. The Court notes that Plaintiff did not produce any evidence which suggests or implies that this repayment was not effected, as declared by Defendant in the documentation referred to above, and as indicated by Defendant's counsel in the oral submissions (vide fol 84 et seq).

It is this Court's considered opinion that the asset in question belongs to the company IP Limited and as such, Plaintiff has no claims over the said vessel, irrespective of its value to date.

San Carlos II and MC Mecklenburg

MV Carlos II was provisionally registered on the 6th March 2003 and permanently registered on 15th December 2003. Its owner as at the 17th May 2012 is Island Ferry Three Company Ltd according to the testimony of Michael Savona. The San Carlos II is also a non operational boat since it does not have a CVC certificate.

Legal Procurator Quentin Tanti testified that Island Ferry Three Company Limited (C 11944) was

registered on the 26th September 1990 as evidenced from the documentation filed. Defendant was registered as a shareholder for 250B shares by resolution dated 11th July 2000, that is after the parties' marriage. The said resolution also increased the share capital of the company. PL Tanti also confirmed that there was no other change till 31st October 2005. The Court notes that no evidence has been exhibited as to when the vessel San Carlos II was purchased, namely whether is occurred prior to or subsequent to the parties marriage.

The Court observes that the assets and liabilities of a limited liability company are separate and distinct from those of its shareholders, as opposed to a person operating and conducting business as a sole trader. These assets therefore, belong to the company and not to its shareholders. Thus, the Court observes that Plaintiff can have no claim over San Carlos II, since its registered owner was Island Ferry Three Company Limited, nor can she have any claim over any proceeds from the sale of this asset, proceeds which belong to the company. The same applies to the Mv Mecklenburg.

However, the fact that Defendant became a shareholder in the company subsequent to the parties' marriage, and since the parties marriage was regulated by the community of acquests, Defendant's shares belong to the community of acquests and thus, Plaintiff is *opis legis* a shareholder of the company jointly with Defendant. This was explained in ***John Cauchi vs George sive Gino Cauchi et decided by the First Hall Civil Court on the 10th March 2016***,

> ***Ghalkemm l-ishma kienu rregistrat biss f'isem ir-rikorrent (appart dak il-wiehed rregistrat f'isem huh Michael Cauchi), dawn l-ishma kienu jaghmlu part mill-komunjoni tal-akkwisti illi kellhu ma' martu Rosette. Ladarba dawn l-ishma kienu jaghmlu parti mill-komunjoni tal-akkwisti l-ishma kienu taghhom it-tnejn jointly, u martu ghalhekk kienet opis legis membru tas-socjeta Geomike. Il-konsegwenza tad-divizjoni tal-komunjoni tal-akkwisti ghalhekk kienet illi hija ssir membru de proprio ghar-rigward tan-nofs illi huwa taghha minhabba l-komunjoni***

Therefore Plaintiff is entitled to half of the total shares owned by Defendant in the company Island Ferry Three Company Limited, that is 125 B shares. The same applies with regards to the company Alliance Cruises Ltd (C 26702), which was registered on the 14th July 2000, that is after the parties' marriage. Defendant IP owns 250 Ordinary B Shares, shares which belong to the

community of acquests and thus, Plaintiff is entitled to half of the total shares owned by Defendant in Alliance Cruises Ltd, that is 125 B Shares. With regards to Bucannier Company Limited formed on the 10th of June 2005, the record shows that the company was struck off on the 29th July 2015.

Rental/Charter of San Carlos I to Alliance Cruises:

In her note of submissions Plaintiff claims that Defendant was charging for the use of the vessel San Carlos I for the years 1st April 2001 to 31st March 2002 and 1st April 2003 to 31st March 2004 at the rate of € 2,000 per year, making a total income of € 4,000 of which the Plaintiff's share amounts to € 2000. Also, Plaintiff contends that Defendant was also receiving a yearly rental of Lm 5,900 for the lease of the vessel San Carlos I to Alliance Cruises Limited for the period 1st April 2000 to 31st October 2005 and that her share from the said rentals amounts to € 32, 508.

Defendant conversely, contends that Plaintiff's claims in this regard are absolutely absurd, since San Carlos I belongs to IP Limited and not to the community of acquests, a company which is paraphernal property of Defendant. Defendant maintains that is only the fruits of IP Limited that enter into the community, that is the dividends paid to shareholder and certainly not the gross income generated by the company through its business. This Court is in agreement with Defendant, as far as IP Limited is concerned. However, and in accordance with the laws regulating the community of acquests, Plaintiff is entitled to125 B shares of each of the following companies: that is Alliance Cruises Limited and Island Ferry Three Company Limited and the dividends thereof.

Bank Accounts:

On this matter Plaintiff contends that Defendant was regularly depositing the commissions received from the pharmaceutical firm for which he was acting as the local agent in his German bank account. Plaintiff maintains that Defendant in his testimony admitted to have received five hundred and seventy nine thousand, two hundred and seventy sterling (GBP 579,270) equivalent to six hundred and eighty three thousand, five hundred and thirty eight euros (€ 683,538), such that Plaintiff's share would amount to three hundred and forty one thousand, seven hundred and sixty nine euros (€ 341,769). (Vide testimony dated 28th October 2010 at page SP 688).

Defendant on the other hand states that Plaintiff's claim is baseless. Defendant affirms that it clearly results from the acts of these proceedings that it was he who took care of household expenses and any other expense incurred by the parties during their marriage, and therefore his income was used for this purpose. He adds that Plaintiff did not manage to adequately rebut this presumption and thus is not entitled to a refund of the monies earned by Defendant during the marriage, monies which are no longer in his bank account. Defendant points out that a third of the amount claimed by Plaintiff under this heading, is also being claimed as a refund that Plaintiff claims to be entitled to from the money used to pay the eighty thousand maltese liri (LM 80,000) equivalent to one hundred and eighty six thousand, three hundred and forty nine euros, eighty seven cents (€ 186,349.87) bill that was incurred from the Inland Revenue Department. Defendant contends that what Plaintiff is entitled to according to the law is half of the balance in Defendant's bank accounts on the date of the termination of the community of acquests.

Defendant underscores that it was Plaintiff who always kept her income to herself and Defendant was never given any information about Plaintiff's income. Defendant recalls that Plaintiff admitted to emptying her bank accounts when the parties had split up. Moreover, the documentation submitted by Plaintiff in relation to her bank accounts is incomplete as it shows no transaction history and gives very little information about Plaintiff's state of financial affairs during the marriage. Thus Defendant submits that this Court is to liquidate and amount due to him *arbitrio boni viri* of not less than € 250,000-300,000.

With regards to the local bank accounts held by the parties locally, the Court notes that the parties did not possess a single joint bank account. From the evidence produced it appears that Plaintiff held had seven (7) bank accounts with HSBC Bank Malta plc, whereas Defendant held six (6) personal bank accounts with Bank of Valletta plc. (Vide Dok JBC1-JBC5 at page SP 66 et seq) The Court has examined the bank statements exhibited and observed that in the years leading up to the year two thousand and five (2005), that is the year in which the parties separated and the date which the parties consider as the termination of community of acquests, withdrew amounts running into the thousands in single withdrawals, as opposed to their customary withdrawals. The Court has seen that Plaintiff withdrew the following amounts from their two main accounts: LM 9000 in 2003, Lm 8995 in 2004, LM 13,600 in 2004 and LM 26,187 in 2005. (Vide Dok HSBC1-HSBC7- vide fol SP 604 et seq). Defendant withdrew the following amounts in 2005, Lm 1,400, Lm 9,200, Lm 5000 and Lm 1,150. (Vide page SP 73, 74, 84) There was also the € 14,639.24 (vide page SP 63 and 67) transfer to BMS holdings. It is this Court's considered opinion that despite that narrated by the parties in their respective testimonies, both Plaintiff and Defendant

once again, adopted the same *modus operandi* wherein they withdrew substantial amounts of their savings, in an effort to obfuscate in preparation of these proceedings.

Therefore the record shows that Plaintiff withdrew the following substantial amounts:

LM 9000 in 2003;
LM 8995 in 2004;
LM 13,600 in 2004; and
LM 26,187 in 2005[10].

Total in LM: LM 57,782 which is equivalent to- one thousand and thirty four thousand, five hundred and ninety five euros and eighty five cents (€134,595.85).

Moreover, the record shows that Defendant withdrew the following substantial amounts in 2005:
Lm 1,400;
Lm 9,200;
Lm 5000;
Lm 1,150.[11]

Total in LM: 16,750 which is equivalent to thirty nine thousand euros and seventeen cents (€39, 017); together with the fourteen thousand, six hundred and thirty nine euros and twenty four cents (€14,639.24) transfer to BMS holdings.

Total of fifty three thousand, six hundred and fifty six euros and twenty four cents (€53, 656.24).

This amount has to be added to the amount of income/commission deposited in the German bank account to the tune of € 683,538 (Vide page SP 688) from which LM 80,000 equivalent to EUR 186,349.87 has to be deducted, being the tax and penalties paid by Defendant to the Inland Revenue Department in Malta. The final amount of income pertaining to Defendant therefore, amounts to EUR 497,188.13, to which must be added the sum above mentioned of EUR 53, 656.24, being the sum withdrawn from Defendant's bank accounts which amount to **five hundred and fifty thousand, eight hundred and forty four euros and thirty seven cents (€550,844.37), half this amount that is two hundred and seventy five thousand, four hundred and twenty**

[10] Vide SP 604 et seqq.
[11] Vide page SP 73, SP 74 and SP 84.

two euros and nineteen cents (275,422.19€) is to be assigned to Plaintiff.

Therefore, two hundred and seventy five thousand, four hundred and twenty two euros and nineteen cents (€ 275,422.19) is the amount Defendant shall pay to Plaintiff. Conversely, half the amount of EUR 134,595.85, that is sixty seven thousand, two hundred and ninety seven euros and ninety three cents (€ 67,297.93) is the amount Plaintiff shall pay to Defendant.

For these reasons, the Court:

1. **Pronounces the personal separation of the parties as a result of the irretrievable breakdown of the parties marriage and authorizes the parties to live separately from the one another;**

2. **Orders Plaintiff:**
   - **(i) To return Defendant's silver items, within a month from the date this judgment becomes a *res judicata.* In default, Plaintiff shall pay Defendant the sum of EUR 5,000 *arbitrio boni viri.***
   - **(ii) To return the three diamond ring given to Plaintiff as an engagement ring within a month from when this judgment becomes a res judicata. In default, and should this time-frame lapse, the Court orders Plaintiff to pay Defendant the sum of two thousand euros (EUR 2000) *arbitrio boni viri.***
   - **(iii) To return the three English silver coins and the collection of 18 pre-war Deutsch marks which were sequentially numbered to Defendant within a month from when the said judgment becomes a res judicata. In default, Plaintiff is to pay Defendant the sum of € 200 *arbitrio boni viri.***
3. **Orders Defendant to:**
   - **(i) Refund the sum of DM 28,532.50 to Plaintiff which is equivalent to fourteen thousand, five hundred and eighty-eight euro and forty four cents (€ 14,588.44) being the paraphernal funds given by Plaintiff to Defendant for the acquisition of the vessel MY Selin which was subsequently transferred to IP Limited.**

4. **Orders the cessation of the community of acquests between the parties and liquidates the same community as follows:**

i. **Divides in equal shares between the parties the life insurance policy/ investment portfolio with Scottish Provident International which totals the sum of GBP 14, 389 equivalent to € 17,266 and orders Defendant to pay Plaintiff her share that is eight thousand six hundred and thirty three euros (€8633);**

ii. **Assigns to Plaintiff half of the total shares owned by Defendant in the company Island Ferry Three Company Limited, that is one hundred and twenty five (125) B shares;**

iii. **Assigns to Plaintiff half of the total shares owned by Defendant in the company Alliance Cruises Ltd (C 26702), that is one hundred and twenty five (125) B Shares.**

iv. **Orders Defendant to pay Plaintiff the sum of two hundred and seventy five thousand, four hundred and twenty two euros and nineteen cents (€275,422.19) as cited above;**

v. **Orders Plaintiff to pay Defendant the sum of that is sixty seven thousand, two hundred and ninety seven euros and ninety three cents (€ 67,297.93) as cited above;**

5. **Authorises the parties to register the final judgment of personal separation in the Public Registry of Malta.**

6. **Plaintiff's requests which have not been withdrawn and all her pleas and all Defendant requests in his counter-claim which have not been withdrawn and all his pleas, have been decided according to the above.**

All Costs shall be divided equally between the parties.

Read.

Mdm. Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

Lorraine Dalli
Deputy Registrar