



COURT OF MAGISTRATES (MALTA)
MAGISTRATE DR. LEONARD CARUANA LL.D., M.A. (FIN. SERV)

Notice No.: 22/2023 LC

FABIO MARINELLI
(ID 0120256A)

VS

BSTARTERS LIMITED
(C-82957)

JUST ONE STAR LIMITED
(C-82620)

Today, the 30th October 2023

The Court,

Having seen the application of the plaintiff submitted on the 30th January 2023 wherein the Court was requested to order and condemn the defendants, or either one of them, to pay and refund unto plaintiff the sum of twelve thousand Euro (€12,000.00), or any other sum that is liquidated by this Honourable Court, which sum represents a loan *brevi manu* that was made by plaintiff on the 1st February 2018 to defendant companies, upon their request and for their benefit, as shall result during the hearing of these proceedings.

With costs, including the costs of the judicial letter dated 19th October 2022 bearing reference number 2635/2022, and with legal interest against defendant companies, whose representatives are being summoned under oath.

Having seen that the defendant companies were notified with the procedure of the publication and affixation in accordance with Article 187(4) and (5) of Chapter 12 of the laws of Malta so that the defendant companies were notified on the 24th May 2023;

Having seen that during the sitting of the 29th May 2023 the defendant companies were called numerous times and failed to appear and neither did they submit their replies to the case until that date;

Having seen that during the sitting of the 16th October 2023 the defendant companies were called numerous times and failed to appear and subsequently the Court authorised the plaintiff, on his request, to present the questions and statements to the defendant companies, which questions and statements were submitted *seduta stante* and were approved by the Court;

Having seen that in the questions and statements of the defendant companies, the plaintiff requested the defendant companies to prove, with their oath, that they are debtors of the plaintiff for the indicated sum and for the reasons contained in the present notice;

Having seen that the case was deferred to today for the Reference to Oath of the defendant companies;

Having seen that in today's sitting, the defendant companies did not appear for their Reference to Oath and to answer to the plaintiff's demands;

Considered;

That it results that the although the defendant companies were duly notified with the acts of the proceedings, as above mentioned, they chose not to submit any Reply nor to appear for this judicial call by the plaintiff;

That in terms of Articles 698(2) and 702 et seq of Chapter 12 of the Laws of Malta, the plaintiff requested to effect the Reference to Oath of the defendant companies and consequently requested the Court's authorisation to submit the Questions and Statement in their regard.

That the Reference to Oath is a procedure that has very serious consequences on the defendant's position if he or she fails to appear in Court. As was held in the case **Dr John Buttigieg LL.D, M.P. vs Michael Marletta**¹, *"il-materja tas-subizzjoni hija materja delikata u deċiżiva peress li biha jekk il-parti tonqos li tidher, il-kapitoli jittieħdu bħala konfessati u l-konvenut ikun impedit li jagħmel appell amenokke ma jiġġustifikax il-kontumaċja tiegħu."*

Moreover, it was held in the judgement **Stephen Vella et v. Bollicine Limited**² that:

"jibda biex jigi osservat illi in linea ta' principju l-kapitolu hu fatt processwali li jgib mieghu effetti specifici, espressament

¹ **Dr John Buttigieg LL.D, M.P. vs Michael Marletta**, Qorti Court of Appeal, (Inferior jurisdiction), 11 November 1986

² **Stephen Vella et v. Bollicine Limited**, Court of Appeal (Inferior Jurisdiction) 9 January 2008 (Appeal No. 161/2005/1)

*prevvisti u determinati mil-ligi taht il-Kapitolu 12. Ara Artikoli 698 (2) u 702 (3). Minnhom huwa dezunt illi l-kapitolu hu mezz dirett biex jipprovoka konfessjoni gudizzjali f' min lilu jigi deferit ta' fatt sfavorevoli ghal kapitolat u ta' vantagg ghall-parti li eskogitatu. Jinghad fid-decizjoni fl-ismijiet “**Anthony Borg -vs- Samwel Veneziani**”, Appell Inferjuri, 28 ta' April 1998, illi “din ic-cirkustanza hi hafna rilevanti ghaliex tfisser illi bin-nuqqas tal-konvenut appellat li jidher biex jikkontesta l-kapitolu, saret prova positiva li l-ammont rekalmat mill-attur kien dovut lilu ghal ragunijet minnu pretizi u dana bl-ammissjoni – anke jekk negattiva fis-sens ta' non kontestazzjoni – ta' l-istess konvenut.*

In tema, kemm id-duttrina legali kif ukoll il-gurisprudenza, issoktaw jaffermaw, u jikkawtelaw ukoll, illi tali prova wehida mhux necessarjament u bilfors ghandha tiddemostra l-fondatezza tal-pretensjoni ta' l-attur in kwantu dak l-istat migjub in essere bil-kapitolu ma ghandux ifisser li qed jintroduci derogi ghall-principju tal-piz tal-provi. Kif rilevati mill-Qorti ta' l-Appell kolleggjali fil-kawza “James Trapani et - vs- Vincent Cilia” (28 ta' April 2000), “il-kapitoli jitqiesu konfessati pero` dan ma jfisserx li l-Qorti kienet obbligata toqghod fuq dik il-prezunta ammississjoni. Dik il-prova kellha tigi evalwata u meqjusa flimkien ma' kull prova ohra li sa dak l-istadju setghet kienet diga` prodotta quddiem il-Qorti. Dan ghaliex kif gja nghad is-subizzjoni setghet tintalab f' kull parti tal-procedura”;

Naturalment, l-apprezzament relattiv ta' dik il-prova b' dak il-kapitolu hu rimess ghall-poter diskrezzjonali tal-Qorti adita mill-mertu, u f' dan il-kaz, tajjeb jew hazin, l-ewwel Qorti dehrilha li setghet tigbed il-konkluzjoni illi l-fatt dedott mill-atturi kien ghaliha suffragat bil-prova kostitwita mill-kapitolu;”

Therefore, although the plaintiff submitted the Questions and Statements against the defendant companies, this does not automatically imply that the plaintiff's request have been satisfactorily proven according to law.

In fact, in the case **Tabib Dr Antonio Zammit et vs Francesco Pace et**³ it was held that:

“Huwa veru li l-kapitoli, meta s-subent ma jkunx wieġeb għalihom u ma jkunx iġġustifika l-kontumaċja, għandhom jitqiesu bħala konfessjoni. Imma dana ma jfissirx li l-Qorti hija obligata toqgħod dejjem duq dik il-preżunta konfessjoni. Is-subizzjoni hija sempliċi mezz ta’ prova, u għandha tiġi eżaminata u valjata flimkien mal-provi l-oħra kollha tal-kawża’ b’mod illi, jekk il-kapitoli ma jkunux konfaċenti mal-provi l-oħra tal-kawża, u l-Qorti jidrilha li għandha tagħti prevalenza lil dawk il-provi l-oħra, il-konfessjoni preżunta derivanti mis-subizzjoni għandha ċċedi quddiem dawk il-provi l-oħra.”

Therefore, in light of the above, the Court will now examine the evidence submitted by the plaintiff to substantiate his claim.

Considered;

That in the sitting of the 16th October 2023, the plaintiff Fabio Marinelli explained that the sum he is requesting represents a loan which was requested by Marco Zucco, a friend and colleague of his. Marco Zucco, at the time, was a director of the defendant company BStarters Limited. The understanding was that the loan had to repayed within one year and was interest free. He stated that the

³ **Tabib Dr Antonio Zammit et vs Francesco Pace et**, Civil Court, First Hall, 28 June 1952.

loan was never paid back. The plaintiff contacted Marco Zucco numerous times in order to find a way forward but notwithstanding numerous promises, the funds were never returned. From the documents he submitted it results that Just One Star Limited is the sole shareholder of BStarters Limited. He said that to his knowledge, Just One Star Limited had the intention to pay off the debts of BStarters Limited.

The plaintiff stated that the funds were forwarded through bank transfer and in fact he submitted a copy of the bank transaction. He also submitted an email dated the 17 July 2022 sent by Marco Zucco to his auditor wherein he confirms the loan with the plaintiff and that he reached an agreement with him for its payment. Finally, the plaintiff confirmed on oath that the sum being requested in these proceedings is still due to him.

That from the evidence produced, the Court finds that the Questions and Statements submitted by the plaintiff are consonant to his present claim and therefore the Court sees no reason why not to uphold the plaintiff's demands.

Considered;

That in his claim, the plaintiff requests the legal interests on this sum. Article 1141(1) of the Civil Code stipulates that *"Where the obligation is of a commercial nature, or the law provides that interest is to run ipso jure, interest shall be due as from the day on which the obligation should have been performed."*

That the plaintiff confirmed that the loan was intended for use by the company BStarters Limited. This also results from the bank transfer slip which clearly indicates that the funds were transferred to BStarters Limited on the 1st February 2018.

Article 5(e) of the Commercial Code stipulates that any transaction relating to commercial partnerships are to be considered as acts of trade. This renders the present loan as a commercial loan and therefore Article 1141(1) of the Civil Code is applicable.

Moreover, from the testimony of Fabio Marinelli it results that the loan for to be paid in one year, therefore the loan should have been repaid on the 1st February 2019.

Decide:

Therefore, on the basis of the above, the Court is deciding this case by upholding the plaintiff's request and consequently condemns the defendant companies, *in solidum*, to repay the plaintiff the sum of twelve thousand Euros (€12,000) with legal interests running from the 1st February 2019 till the day of effective payment.

With costs of the present proceedings and of the judicial letter dated the 19th October 2022 (Number 2635/2022) to be exclusively borne by the defendant companies, *in solidum*.

Ft.Dr. Leonard Caruana
Magistrate

Sharonne Borg
Deputy Registrar