



**CIVIL COURT  
FIRST HALL  
THE HON. MADAM JUSTICE ANNA FELICE**

**Today 14<sup>th</sup> December, 2023**

**Sworn Application No: 552/2020 AF**

**L-Avukat Dottor Cedric Mifsud a nom u in  
rappreżentanza tas-socjetà estera Adria Yachting N.V**

**VS**

**Stephan Christoph Schlosser ta' nazzjonalità Svizzera  
detentur tal-passaport numru F2801638**

**u b'digriet tas-26 ta' Awwissu 2020, Dr. Justine Scerri  
Herrera giet mahtura Kuratrici biex tirrappreżenta lill-  
istess Stephan Christoph Schlosser**

The Court:

Having seen the sworn application filed by the plaintiff nomine which reads as follows:

*Is-socjetà estera Adria Yachting N.V. registrata gewwa Cas Coraweg 40, Willemstad, Curaçao, hija s-sid tal-bastiment S/Y ADRIA, registrata taht il-bandiera marittima ta' Curaçao, Olanda (certifikat ta' registrazzjoni hawn anness u mmarkat bhala Dok. A).*

*Fid-19 ta' Gunju tas-sena 2012, is-socjetà rikorrenti awtorizzat lil Stephan Christoph Schlosser detentur tal-passaport numru F2801638, sabiex jikkmanda l-bastiment S/Y ADRIA u sabiex jirrapprezenta lis-socjetà rikorrenti fil-konfront ta' kull persuna u awtorità f'dak kollu li jirrigwardja l-bastiment, ekwipagg, passiggieri u lilu nnifsu bhala l-Kaptan tal-istess bastiment. Din l-awtorizzazzjoni saret permezz ta' dikjarazzjoni hawn annessa u mmarkata bhala Dok. B.*

*Nhar id-9 ta' Ottubru tas-sena 2019, is-socjetà rikorrenti tterminat dan il-ftehim b'effett immedjat (kopja tat-terminazzjoni hawn annessa u mmarkata Dok. C) u ghaldaqstant Stephan Christoph Schlosser minn dik il-gurnata ma baqax igawdi izjed awtorità la illi jikkmanda l-bastiment S/Y ADRIA u lanqas li jirrapprezenta lis-socjetà rikorrenti.*

*Ghaldaqstant l-intimat kellu jirritona l-bastiment S/Y ADRIA lura lis-socjetà rikorrenti bhala s-sid tal-bastiment. Madanakollu l-bastiment baqa' fil-pussess ta' Stephan Christoph Schlosser u sal-gurnata tal-lum baqa' ma giex irritornat lis-sid tal-bastiment.*

*Ghaldaqstant l-intimat Stephan Christoph Schlosser qiegħed jikkupa proprjetà ta' haddiehor, minghajr l-ebda permess u/jew awtorizzazzjoni, għad-dannu tas-socjetà rikorrenti.*

*Ghaldaqstant nhar is-26 ta' Gunju tas-sena 2020, is-socjetà rikorrenti intavolat mandat ta' arrest kawtelatorju ta' bcejec tal-bahar numru 785/2020 ai termini ta' Artikolu 855 tal-Kap. 12 tal-Ligijiet ta' Malta, fil-konfront tal-intimat Stephan Christoph Schlosser rigward il-bastiment S/Y ADRIA stante li minkejja n-notifika ta' terminazzjoni ta' awtorizzazzjoni mis-socjetà rikorrenti, l-intimat baqa' jiddetjeni l-bastiment S/Y ADRIA minghajr ebda awtorizzazzjoni.*

*Intalbet din il-Qorti sabiex:*

- 1. Tordna li l-intimat m'ghandux jibqa' fil-pussess tal-bastiment S/Y ADRIA u li l-bastiment S/Y ADRIA ghandu jirritorna lura ghand is-socjetà attrici bhala s-sid tal-bastiment.*
- 2. Tiddikjara li l-intimat Stephan Christoph Schlosser huwa responsabbli ghad-danni kollha li s-socjetà attrici nkorriet minhabba l-fatt li l-bastiment S/Y ADRIA baqa' detenut mill-intimat minghajr permess u/jew awtorizzazzjoni.*
- 3. Tillikwida d-danni sofferti mis-socjetà attrici bhala s-sid tal-bastiment S/Y ADRIA minhabba l-fatt li l-bastiment baqa' detenut mill-intimat Stephan Christoph Schlosser minghajr permess u/jew awtorizzazzjoni.*
- 4. Tikkundanna lill-intimat Stephan Christoph Schlosser ihallas lis-socjetà attrici d-danni li jigu hekk likwidati.*

*Bl-ispejjez kontra l-intimat li jibqa' minn issa ngunt ghas-subizzjoni.*

Having seen the documents annexed to the sworn application.

Having seen the sworn reply filed by the defendant which reads as follows:

*Flimkien ma' din ir-risposta l-mittenti qed tannetti l-mandat moghti lillha mill-assenti Stephan Christoph Schlosser sabiex tipprezenta din ir-risposta (Dokument JSH A).*

*Fl-ewwel lok u in linea preliminari r-rikors odjern li gie prezentat fir-registru ta' din l-Onorabbli Qorti fis-7 ta' Lulju 2020 huwa null peress li gie prezentat kontra l-intimat meta kien **assenti** minn Malta u dan kontra kull procedura stabbilita fil-kaz ta' persuna assenti mill-gurisdizzjoni ta' Malta. Ghalhekk m'hemmx dubju illi peress li l-intimat jghix il-Germanja kellha issir il-procedura li permezz taghha jitqabdu l-kuraturi deputati ghan-nom tieghu jew ahjar in vista li l-Germanja hija formanti parti mill-Unjoni Ewropeja n-notifka tieghu kellha ssir ai termini tar-regolament E.C 1393/2007. Konsegwentment l-azzjoni tar-rikorenti hija nulla u ma tistax tirnexxi.*

*Fit-tieni lok u ukoll in linea preliminari, l-esponenti teccepixxi **n-nuqqas ta' kompetenza** ta' din l-Onorabbli Qorti stante li l-assenti Stephan Christoph Schlosser mhuwiex wiehed mill-persuni didentifikati fl-Artikolu 742 tal-kodici tal-Organizzjoni tal-Kodici Civili li jaghti kompetenza lill-Qrati nostrana.*

*Fit-tielet lok ukoll b'mod preliminar jinghad illi l-intimat mhuwiex il-legittimu kontradittur f'din il-kawza u dan ghaliex it-talbiet tar-rikorrenti jikkoncernaw il-pussess u it-titolu tal-bastiment u ghalhekk semmai r-rikorrenti messu pproceda b'azzjoni **in rem** u mhux in personam u dan **skond l-Artikolu 742(B)(a) tal-Kap 12 tal-ligijiet ta' Malta** speċjalment in\_vista tal-kawzi tar-rikors promotur li jinkwadraw ruhhom propju taht l-artikolu 742B (a) tal-kapitolu 12 tal-ligijiet ta' Malta. In oltre jigi rilevat li l-mittenti Schlosser m'huwiex sid il-bastiment u lanqas ma hu impjegat ma sid l-bastiment u ghalhekk it-talbiet rikorrenti ma jistghu jigu qatt indirizzati lilu personalment.*

*Mhu veru xejn kif reklamta fir-rikors promotur li l-bastiment SY Adria jappertjeni lis-socjeta rikorrenti estera Adria Yachting NV u lanqas mhu veru li tali bastiment kien registrat*

*taht il-bandiera marrittima tal-Curacao meta gew intavolati l-proceduri odjerni.*

*Bla pregudizzju ghas-suespost jinghad illi l-mittenti **qatt** ma gie notifikat bid-dokument C anness mar-rikors promotur u cioe it-‘Termination Notice’ qabel id-data tan-notifika tal-mandat t’arrest tal-bastiment numru 785/2020, liema notifka saret lill-assenti mittenti f’idejn il-Kaptan Thomas Kemp nhar is-26 ta’ Gunju 2020.*

*Ir-rikorrenti qatt ma seta’ jipprezenta il-mandat t’arrest tal-bastiment numru 785/2020 fl-ismijiet premessi u wisq inqas fir-rikors odjern fl-istess ismijiet numru 552/2020 u dan ghaliex l-allegat titolu li r-rikorrenti qed jirriklama li ghandha s-socjeta` Adria Yachting huwa wiehed vizzjuz u dan ghaliex il-bastiment ma jappertjenix lilha u cioe` s-socjeta` Adria Yachting NV izda lit-terza persuna.*

*Konsegwentement ir-rikorrenti la ghandu dritt jirriklama lura l-bastiment u wisq inqas ma ghandu dritt l-mittenti jirrillaxxa l-bastiment lis-socjeta` rikorrenti u dan ghaliex il-mittenti odjern ma ghandu l-ebda titolu legali fuq dan il-bastiment. Jigi rilevat illi l-mittenti gja intavola proceduri quddiem din l-istess Qorti ghar-revoka tal-mandat ta’ arrest ta’ Bcejjec tal-Bahar il-fuq minn ghaxar metri numru 785/2020 liema proceduri ghadhom sub judice.*

*Jigi rilevat li l-mittenti ma kkawza l-ebda danni lis-socjeta` rikorrenti izda hija s-socjeta` rikorrenti semmai li kkagunat danni lil mittenti bl-intavolar ta’ dawn l-proceduri.*

*Ghaldaqstant ghar-ragunijiet fuq imsemmija t-talbiet rikorrenti ghandhom jigu michuda peress li mhuwiex possibli li l-mittenti nomine jigi kkundanat jirritorna l-bastiment lis-socjeta` rikorrenti meta l-bastiment jappertjeni ghal terzi, u ghalhekk l-esponenti jirriserva id-dritt li jressaq talba quddiem din l-Onorabbli Qorti sabeix is-socjeta` rikorrenti tigi dikjajrata responsabbli ghal danni ikkagunati minnha u in oltre ghalhekk l-esponenti ma ghandux jigi kkundanat ihallas l-ispejjes ta’ dawn il-proceduri.*

Having seen that during the sitting of the 25th November 2020, the Court ordered that the proceedings were to be conducted in the English language.

Having seen that in virtue of a decree dated the 15<sup>th</sup> March 2022 the Court acceded to the defendant's request to file a note of additional pleas.

Having seen that in virtue of an additional note dated 16<sup>th</sup> March 2022 the defendant filed the following additional plea:

*That in view of Clause number 7.6 of the Novation Agreement dated 24<sup>th</sup> April 2018 which relates to various matters regarding the relationship between Altra Foundation and the defendant, and in particular clause number 3.7.5 which related to the revocation and termination of the rights of use granted to the defendant over the vessel SY Adria 1934, the defendant is invoking the non-jurisdiction of this court since the parties had agreed to give exclusive jurisdiction to the performance of the contract in Zurich, Switzerland. Therefore, this court cannot take cognisance of the plaintiffs claims. The Novation Contract was already presented in original apostilled format marked as Document JSH 1, together with a translated version marked as Dok. JSH 2 in the applicants note submitted filed on the 16<sup>th</sup> November 2021.*

*In terms of Section 730 of Chapter 12 of the Laws of Malta, the defendant is asking this court to give a separate preliminary judgement on this additional plea prior to moving on to the merits of the case.*

Having seen that during the sitting of the 7<sup>th</sup> April 2022 the Court acceded to the demand raised by the defendant and ordered the annexation of the acts of the revocation of the precautionary warrant of arrest of sea vessels in the names Avv. Cedric Mifsud noe vs Stephan Christoph Schlosser (Rik. No. 785/20 and 667/20).

Having seen that the case was to proceed with the submission of evidence that relates strictly to the additional plea of jurisdiction.

Having seen the note of submissions filed by the plaintiff and that filed by the defendant in relation to the plea of jurisdiction.

Having seen that the case was adjourned for today for judgment limitedly on the additional plea as raised by the defendant.

Having seen the acts of the proceedings.

The Court considered that this case was filed by plaintiff nomine requesting the Court to order defendant to return the vessel S/Y Adria to the applicant company. Plaintiff has also advanced a claim for the liquidation of damages allegedly incurred by the applicant company in view of the fact that the defendant detained the said vessel without its permission.

In addition to the various pleas raised in his sworn reply, the defendant filed an additional plea whereby he challenged the jurisdiction of this Court to preside over the case in question. The main argument raised by defendant in this regard is that the Novation Agreement signed on the 24<sup>th</sup> April 2018 between Altra Foundation and the defendant expressly states that exclusive jurisdiction in matters relating to the said agreement shall lie with the Court in Zurich.

The Court has duly examined all the documentation forming the acts of proceedings including the afore-mentioned novation agreement. This Court notes that the said agreement refers exclusively to debts that accrued between the parties' signatories to the said agreement. The novation agreement makes absolutely no reference to the vessel in question.

The Court also notes that the crux of this case relates to the identification of the lawful owner of the vessel. Applicant company claims that it is still the owner of the said vessel and hence it instituted these proceedings to claim back possession of

the vessel which from the acts of the case transpires to be still registered in the name of the said applicant company. Court also notes that the applicant company is not a party to the novation agreement hence it is neither bound by those terms and conditions neither has it got any rights or obligations arising therefrom in relation to the vessel of which it claims to be the rightful owner. Now therefore, without delving into the merits of the case, it is the opinion of this Court that if the applicant company wishes to advance claims of ownership of the vessel it certainly could not do so in terms of the novation agreement. The only possible way for the applicant company to enforce its claim *vis-a-vis* the said vessel, whether rightfully or not, was precisely that of initiating separate proceedings against the defendant.

Having established that the applicant company is not bound by the terms and conditions of the novation agreement and having established that the question of ownership of the vessel is not dealt with in the novation agreement, the Court will now pass on to make its' considerations with regards to the merits of the plea of jurisdiction of these courts.

In virtue of Article 742 (1)(c) of the Code of Organisation and Civil Procedure:

*"742 (1) Save as otherwise expressly provided by law, the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:-*

...

*(c) any person, in matters relating to property situate or existing in Malta;"*

From the acts of the case it transpires that the vessel in question is still in Maltese territorial waters to the extent that it has been arrested in virtue of the precautionary warrant mentioned above, which warrant was requested and granted on the application of



the applicant company in view of the rights which it claims to have over the said vessel.

As stated in the case *Avv. Dr Philip Manduca noe vs Avv. Dr. Mark Chetcuti et noe* decided by the Commerical Court on the 25<sup>th</sup> February 1993, although this ground that warrants the jurisdiction of the courts is generally applicable when the matter relates to property that is situated in Malta, the same provision also applies with regards to movables as long as the movable is located in Malta and the merits of the case concern specifically that movable.

The jurisdiction of this Court is rooted in the merits of the claims being put forward in the sworn application. The principal claim refers to the ownership of the vessel which is presently found in Maltese territorial waters whilst the other claims referring to the issue of damages are only ancillary and secondary to the principal claim. Hence, given that the principal issue in these proceedings is the question of ownership of an immovable that is found within the Maltese territory, and given also that should the applicant company succeed in proving its' claims, the principal remedy being sought is that of returning the vessel to the rightful owner.

For the reasons above, the Court is hereby rejecting the additional plea raised by the defendant and declares that in virtue of Article 742(1)(c) of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta, it has jurisdiction to try and determine this case.

The Court orders the continuation of proceedings.

Costs are being reserved for the final judgement.

IMHALLEF

DEP/REG